13/1955

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No. 23 of 1953.

In the Privy Council.

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL (GOLD COAST SESSION).

BETWEEN

THE STOOL OF ADANSI represented by NANA BONSRA ADJEI II (Plaintiff) . . . . *Appellant*

AND

THE STOOL OF BRENASE represented by NANA AMOABAN OKO II (Defendant) . . . *Respondent.*

CASE FOR THE APPELLANT

RECORD.

1. This is an appeal from a Judgment of the West African Court of Appeal at Accra, dated the 17th day of March 1952, which dismissed the appeal of the Plaintiff, from a Judgment of Jackson J. in the Divisional Court at Kumasi of the Supreme Court, dated the 13th day of January 1950. p. 72. p. 56.

2. According to a Judgment of Jackson J. dated the 21st day of September 1949— p. 102, l. 3.

> " A suit between the parties was instituted some time in 1937 in the Asantehene's Native Court ' A ' and from which decision the Defendant appealed to the Court of the Chief Commissioner of Ashanti.
>
> " On the 25th February 1941 the learned Commissioner held that neither that Court nor that of the Asantehene had any jurisdiction as the suit being one between a Chief in the Colony and a Chief in Ashanti was triable only by the Court of the Chief Commissioner of the Northern Territories.
>
> " On the 29th July 1941 the Plaintiff applied to the Colonial Secretary by a letter that the Governor might be pleased to make

an Order under Section 67 (1) (*b*) of the Courts Ordinance to enable the Court of the Chief Commissioner of the Northern Territories to exercise his jurisdiction.

An Order, dated the 29th(?) November 1941 was duly made by the Governor."

Section 67 (1) (*b*) of the Courts Ordinance, chapter 4, reads thus :—

" (1) The Chief Commissioner's Court shall have and may exercise within the Northern Territories jurisdiction as follows :—

* * * * *

(*b*) For the hearing and determination of all suits relating to the ownership, possession, or occupation of lands arising between a Paramount Chief or Chief of the Colony and a Head Chief or Chief of Ashanti provided that such jurisdiction shall be exercisable in any such dispute only by Order of the Governor published in the *Gazette*. Such Order may prescribe any place in the Gold Coast for the hearing of such dispute."

By the provisions of the Courts Ordinance, chapter 4, Schedule 3, Part I, Order 2, Rule 1 :—

" Every suit shall be commenced by a Writ of Summons to be issued by the Registrar. The Summons shall issue without application in writing."

Commenting on the two foregoing provisions in the Courts Ordinance, the learned Judge said :—

" It appears that before the Order under Section 67 was made by the Governor no Writ of Summons had been issued out of the Court of the Chief Commissioner of the Northern Territories, and that there was solely the written application to the Governor for the Order, but no application or issue of any writ out of the appropriate Court. It follows that when the Order of the Governor was issued it assumed, and it appears assumed wrongly that a Writ had been issued since without a ' writ ' there can be no ' suit,' and the Order referred specifically to ' the said Suit ' "

He held that the Order so made in the absence of a writ was inoperative and void and for these reasons he found that there was no suit pending in the Court of the Chief Commissioner of the Northern Territories at the time immediately prior to the coming into force of Ordinance No. 27 of 1945 and that there was nothing pending before him under Section 6 thereof.

Section 6 of The Courts (Amendment) (No. 2) Ordinance, 1945, reads as follows :—

" Jurisdiction in all suits relating to the ownership, possession or occupation of lands between a Paramount Chief or Chief of the Colony and a Head Chief or Chief of Ashanti or between a Head Chief or Chief of the Northern Territories, which are pending

immediately prior to the commencement of this Ordinance, is hereby exclusively conferred upon the Supreme Court. The Court in which any such suit is pending shall forthwith cause the process and proceedings in such suit to be transmitted to the appropriate Divisional Court."

3. Having found as he did in the Judgment dated the 21st September 1949 and on the Ordinances therein mentioned in the preceding paragraph, the learned Judge went on to say :—

" I have suggested to learned Counsel that to enable this dispute p. 102, l. 33.
10 to be heard at the same time as two others now pending the Plaintiff may wish to issue a writ out of the Divisional Court and that the pleadings filed in the former and abortive proceedings may be treated as pleadings in any new action. I make no order as to costs —the matter of jurisdiction having been raised by the Court."

4. THE PRESENT SUIT was instituted, as suggested by the learned Judge, by a Writ of Summons p. 4.
dated " October, 1949 " in the Supreme Court of the Gold Coast, Ashanti, Divisional Court holden at Kumasi, with Statement of Claim of prior date, p. 1.
19th June, 1948, and with a Statement of Defence of prior date, p. 2.
20 9th July, 1948.

5. The Plaintiff by his Writ of Summons dated October 1949, and pp. 4, 5.
by his Statement of Claim dated 19th June 1948, claimed to establish title pp. 1, 2.
to land bounded on the north by the southern boundary of the Kokofu Stool lands from the point where it is intersected by the line of longitude 1° 20′ West to the point where it meets the Anum River thence bounded on or towards the east by the right bank of the River Anum to its confluence with the River Prah, thence bounded on the east by the right bank of the River Prah to the point where it is crossed by the line of latitude 6° 05′ North, thence bounded on the south by the said line of
30 latitude 6° 05′ North to its intersection with the line of longitude 1° 20′ West to its intersection with the said southern boundary of the Kokofu Stool lands.

The Plaintiff therein alleged that his predecessor in title Kwa Ntwi Barima was placed in possession of (*inter alia*) the land the subject-matter of this action by the then Asantehene Nana Osei Yaw and that the said land thenceforth remained in the possession of the Plaintiff's Stool without interruption.

6. By his Statement of Defence the Defendant alleged (*inter alia*) p. 3.
that " The Defendants ancestor Yaw Frempon migrated from Kokofu
40 in Ashanti with his relatives and founded the village of Brenasi, having cleared the virgin forest over the land in dispute up to the boundaries of the said land namely on the north by land belonging to the Ohene of Murenem in the Akyim Abuakwa State, on the south by land belonging to the Ohene of Otweresu in the Akyim Abuakwa State, on the east by the Rivers Prah and Anu and on the west by land belonging to the Ohene of Bodwisango in Adansi aforesaid as shown in the plan filed herewith."

p. 7. The said plan, dated the 24th day of December 1947, was adopted by the Plaintiff for the purpose of identifying only the area in dispute.

The Defence further alleged that " a portion of the land originally
p. 3. owned by the Defendant's Stool was acquired by the Government from the Stool of Brenase the sum of £75 having been paid by the Government to the said Stool in respect of the said acquisition."

p. 4. In paragraph 10 of the Statement of Defence the Defendant denied the allegations in the Statement of Claim and averred that the Plaintiff had never been in possession of the land in dispute.

7. Evidence for the Plaintiff was given by 19 witnesses and for the 10
p. 20. Defendant by 7 witnesses. Ekow Selby in his evidence about the plan, Exhibit " 1," dated the 24th December 1947, said he made the plan on the instructions of Counsel for the Defendant; that no representative from the Adansi Stool was present, only Brenase representatives; and that the town of Brenase was about 3 miles east of the River Prah—east of the confluence of the Prah and Anu rivers.

For the Plaintiff, Kwasi Addai deposed (*inter alia*) that he was
pp. 7–14. Abadiacherihene to the Adansi Stool and was 70 years old. The following passages occur in his evidence :—

p. 8. " My ancestor told me the land belonged to the Adansi Stool." 20

p. 8. " I attended a meeting at Brenase at which the then District Commissioner, Obuasi, called Armitage and the then District Commissioner at Cape Coast was also present."

* * * * *

p. 12. " The Government made us pay £75 to the Chiefs of Brenase and Akim-Swedruhene we also paid £50 to Brenasehene."

* * * * *

p. 13. " Armitage and District Commissioner, Cape Coast said that when we paid the money he would give it to Akim-Swedru and I saw the two District Commissioners standing together and they gave the money to their clerk to give to Akim-Swedru."

p. 14. Kofi Sei deposed (*inter alia*) that he had lived at Nsese for about 15 years; 30 that he collected money from certain villages on the disputed land; that
p. 17. it was the Nana Asantehene who gave the land in dispute to the Adansihene. He also gave evidence regarding the said meeting held at Brenase as follows :—

p. 19. " There was a dispute about the land between Adansihene and Brenasehene. Yes, it was the same land as is in dispute now. Kofi Ankrah the Swedruhene came. Kwabena Fa, the Odikro of Brenase, Adansihene came. The Commissioner at Cape Coast came."

* * * * *

" When we were discussing the matter—there were 2 white men and they said that no Adansi man should cross to the other side of the Prah and that no Akyem should cross and come on to the Adansi side to work . . .

The white man said that my master (Adansi) should be on one side of the river and the others on the other."

The said witness also deposed to the effect that he came to Fomena 35 years previously. When the Brenase people came they were driven out by Adansi: that they had only recently asserted their right to settle on the Ashanti side of the Prah. p. 18.

Other witnesses deposed for the Plaintiff to the effect that they had lived on the disputed land for periods varying from 11 to 30 years, paying tribute to the Adansi Stool.

After Counsel for the Plaintiff had applied for an adjournment to enable him to call the linguist of the Asantehene the learned trial Judge refused to agree to the said application.

8. Amoaban Oko for the Defendant deposed that he was the Adontehene of Akim-Busume and a representative of Nana Kokofuhene of Asante. His evidence contains (*inter alia*) the following passages :— pp. 41–43.

" That land belongs to Nana Kokofuhene. We were all in Asanti when he sent his nephew Yaw Frimpong. I am speaking of what I was told by my elders. The then Kokofuhene was named Agyeman Ponfi. At that time the Ohene of Asanti was called Nana Osei Tutu (i.e. the Asantehene). He sent his nephew Yaw Frimpong to the land now in dispute to go and settle there." p. 41.

* * * * *

" When Yaw Frimpong went there he settled at a place called Asaso (spelt as Asaasa). He was a hunter and that was the only use to which he put the land. He came with his brother Andoh. Andoh settled at a place called Supom." p. 42.

9. Exhibit " H " deals with proceedings in *Coffee Bontoe* v. *Pataquin and Quaw Mensah* on the 25th September 1880, 6th and 8th January 1881, before Mr. Justice Smith when the judgment was in these terms :— p. 77.

" The Assessors are of opinion that the two lands in dispute are the lands of the Plaintiff. Judgment for the Plaintiff with costs." p. 80.

Exhibit " F " is the Court Order in this case and is made in the same terms. p. 81.

Exhibit " C " deals with the proceedings in *John Daniel* v. *Anno* before Mr. Justice Redwar on the 24th, 27th and 28th March 1893. Mr. Justice Redwar said :— p. 81.

" Without considering the question of Native Law, I am of opinion that there is no evidence to sustain a claim of trespass and that the Defendant is not called upon for a defence. Plaintiff non-suited and with costs to be taxed." p. 90.

p. 90. On the 10th May 1894 the Plaintiff asked for the case to be struck out and Mr. Justice Smith ordered accordingly.

p. 91. 10. Plaintiff's Exhibit No. 6, which is a Receipt and Renunciation of Claim to land, and is dated the 1st February, 1909, is in the following terms :—

" I, Kobina Fah, Chief of Beronase, and nephew and successor of Coffee Boontoe, Plaintiff in *Coffee Boontoe* vs. *Pataquin and Quaw Mensah* Coram Smith J. and of Anno Defendant in *John Daniel* vs. *Anno* Coram Redwar J. and in *Daniel* v. *Andor* Coram Griffith C.J. hereby declare that in consideration of a present of the sum of fifty pounds (£50) by the Government, I hereby renounce all claim to land and property on the right bank of the Prah River to which I may have been entitled under that above mentioned Judgments as successor to Coffee Boontoe and Anno or Andor

KOBINA FAH
Chief of Brenase
His X Mark

Witness :

KOFI AHINKURA
Omanhin of Akim Soadro
His X Mark

KOBINA EWURU
Chief of Amantia
His X Mark

KOFI EWUAH
Head Linguist of Akim Soadro
His X Mark

Witnesses to Marks :

(sgd) A. B. JOSIAH, Jnr.

(sgd) W. B. DSANE

Before us at Beronase this first day of February 1909

(Sgd) E. C. ELIOT C.C.P.

(Sgd) C. H. ARMITAGE
Commr. S.P.A."

p. 97, l. 28. p. 98. In response to a request made by the Adansihene for a certified copy of the foregoing document this was provided and is in the Record.

11. Plaintiff's Exhibit No. 3—Renunciation of Claim to land is in the following terms :—

" I, Kofi Ahinkora Amanhin of Akim Soadro on behalf of myself my heris [*sic*] and successors and we, the undersigned

sub-Chiefs and Elders of Akim Soadro on behalf of ourselves our heirs and successors, and, together with the said Kofi Ahinkora, on behalf of the people of Akim Soadro hereby declare as follows :— p. 92.

That in consideration of the Government of the Gold Coast Colony having taken over certain land on the right bank of River Prah, bounded as follows :—

On the North by the road from Anwiaso from the point where it crosses the Anum River to the point where, after passing in an Easterly direction through the villages of Jadamwa, Banka, Tokwe and Kokoben, it crosses Prah River to Akontanse —On the East by the Prah River—On the South by the Prah River—On the West by Anum River, and on the said land becoming the property of the Government and of a present of Seventy five pounds (£75), by the Government to the said Kofi Ahinkora, we hereby renounce all claim we may have possessed to the said land or property situated thereon.

2. We further declare that we hereby renounce all claim or rights we may have possessed to other lands or property situated on the right bank of the Prah River in the Southern and Central Provinces of Ashanti."

By their respective marks, the foregoing deed of renunciation was acknowledged by Kofi Ahinkora, Omanhin of Akim Soadro, by Kobina Fah, Chief of Brenase, by Kobina Ewuru, Chief of Amantia, by Kwaku Adai, Etufuhin, by Kwaku Ben, Safohin, by Kwasi Ewuah, Head Linguist of Akim Soadro, and by Yow Yeboa, Chief of Ofuasi.

The witnesses to the marks were A. B. Josiah Jnr. and W. B. Dsane.

The Deed was executed " Before us at Beronase this first day of February 1909. (Sgd.) E. C. Eliot, Commissioner—Central Province. (Sgd.) C. H. Armitage, Commissioner, Southern Province of Ashanti." p. 93.

12. After Counsel for both parties had addressed the Court Mr. Justice Jackson delivered judgment. He treated the claim of the Plaintiff as being one " praying for a declaration that the title of exclusive possession and ownership be vested in the Plaintiff Stool." pp. 52–55.

Dealing with the evidence of Kwasi Adai with regard to the payments of £50 and £75 he held such payments to be evidence in rebuttal of the Plaintiff's case. p. 58.

After reviewing the evidence relating to the meeting with the Commissioners in 1909 the learned trial Judge found " the Commissioners intended to make the Prah not only the administrative boundary but the boundary of Stool rights in land," and he further held that under the agreements of 1909 the Plaintiff Stool could acquire no interest in the land unless they could show that they had a subsequent assignment of rights from the Government. pp. 59–60. p. 60. p. 60.

pp. 61–62. After dealing with the oral evidence for the Defendant the learned Judge then referred to the cases—

Boontee v. *Pataquin Quacoe Monsah*,
John Daniel v. *Anno*, and
Daniel v. *Andor*,

p. 81. and observed that " a study of these judgments does afford some support
p. 62. for the evidence given by the Defendant Stool."

p. 63. Referring to the first of the said cases he found that it afforded " some evidence of acts of ownership on the land by persons who were predecessors
p. 64. in title to the present Defendant." 10

Dealing with the meeting with the Commissioners in 1909 the learned Judge made the following remarks :—

p. 64. " Now it is perfectly clear that the then Adansihene was present and made no protest whatsoever." " It was an admission by conduct that Brenase and not Adansi had the interests in land on the right bank of the Prah."

p. 65. The judgment of the learned trial Judge also includes (*inter alia*) the following passages :—

p. 65. " There is ample evidence that prior to 1909 some people of Brenase who had migrated from Kokofu in Asante did possess 20 interests in land west of the Prah and land which to the community was valuable to hunters alone. By customary law the first establishment of a right to hunt would be regarded by custom as having been acquired from the Stool to which the hunters owed allegiance, in this case the Kokofu Stool."

p. 66. " It is quite clear that until about 15 years ago neither the Plaintiff's nor the Defendant's people made any substantial use of the land and the Plaintiff's certainly none at all."

" The Plaintiff's claim to any declaration for title has neither been evidence by any root or by any evidence upon which any 30 Court could come to any reasonable conclusion that they were entitled as owners to exclusive possession. Such ' rights ' as they sought to acquire were those of squatters on land acquired from Brenase, land which appears to have been abandoned by the Government and which in abandonment reverts to the original owners (Brenase) and who justifiably regard the Adansi as mere trespassers."

He dismissed the Plaintiff's claim and entered judgment for the Defendant with costs to be taxed.

pp. 67–69. 13. From this judgment the Plaintiff appealed to the West African 40 Court of Appeal.

p. 72. The judgment delivered by Coussey J.A. on the 17th March 1952, with which the other two learned Judges concurred did not differ from any statement or finding of the learned trial Judge and the Appeal was dismissed.

The following passages occur in the said judgment :—

Referring to Exhibits 3 and 6 : p. 74.

" The Plaintiffs clearly have no rights of title under these agreements." p. 75.

" The evidence of occupation and user preponderates in favour of the Defendant Stool, the sum total of them characterises ownership." p. 75.

" I would dismiss this appeal on the ground that the Plaintiffs have failed to prove a root of title or any title or that they have had such exclusive possession of the land as would entitle them to a declaration in their favour confirming a title." pp. 75–76.

14. On the 20th October 1952 the West African Court of Appeal granted to the said Plaintiff final leave to appeal to Her Majesty in Council. p. 76.

15. The Appellant respectfully submits that this appeal should be allowed and that the judgment of the Courts below should be set aside and his claim allowed with costs throughout or that this Suit should be sent back for a new trial and that in that event he should be granted his costs of these proceedings throughout, for the following, amongst other

REASONS

(1) BECAUSE the learned trial Judge erred in treating the claim of the Plaintiff as being one praying for a declaration that " the title of exclusive possession and ownership is vested in the Plaintiff Stool."

(2) BECAUSE the learned trial Judge misdirected himself in law in holding that the payment of monies by the Adansi Stool afforded evidence in rebuttal of the Plaintiff's case or any part of it.

(3) BECAUSE the learned trial Judge misdirected himself in law in holding " that such ' rights ' as the Plaintiffs sought to acquire were those of squatters on land acquired by the Government from Brenase."

(4) BECAUSE the learned trial Judge and the West African Court of Appeal erred in holding that on " relinquishment by the Government " such land would revert to the Brenase Stool.

(5) BECAUSE the learned trial Judge and the West African Court of Appeal erred in holding that the Plaintiff Stool could acquire no interest in the land unless they could show a subsequent assignment from the Government.

(6) BECAUSE the learned trial Judge misdirected himself as to the evidential value of copies of proceedings in three earlier suits, being Defendant's Exhibits H, F, and C.

(7) BECAUSE the learned trial Judge misdirected himself in holding that the presence without protest of the Adansihene at the Palaver in 1909 was an admission by conduct that the Brenase and not Adansi had the interest in land on the right bank of the Prah.

(8) BECAUSE both Courts failed to have regard to the evidence of tradition presented by the Plaintiff Stool.

(9) BECAUSE the learned trial Judge erred in holding that by customary law the first establishment of a right to hunt would establish an interest in land.

(10) BECAUSE the learned trial Judge misdirected himself in holding that until about 15 years previously the Plaintiff made no use of the land in that such a finding is inconsistent with other parts of his judgment.

(11) BECAUSE the learned trial Judge was right in finding that the Commissioners intended to make the River Prah the boundary between Stool lands and because by virtue of the same and the above-mentioned payments the Plaintiff Stool is entitled in equity or in law to the benefit of the 1909 agreements and to the interests (if any) which were transferred thereby.

T. B. W. RAMSAY.

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