*Privy Council Appeal No.* 23 *of* 1953

**The Stool of Adansi** - - - - - - - - - *Appellant*

*v.*

**The Stool of Brenase** - - - - - - - - - *Respondent*

FROM

## THE WEST AFRICAN COURT OF APPEAL

## JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH APRIL, 1955

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*Present at the Hearing:*

LORD TUCKER
LORD SOMERVELL OF HARROW
MR. L. M. D. DE SILVA

[*Delivered by* MR. L. M. D. DE SILVA]

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This is an appeal from a decision of the West African Court of Appeal affirming a decision of the Supreme Court of the Gold Coast dismissing an action for declaration of title to land.

In the action the Stool of Adansi, represented by the appellant, sued the Stool of Brenase, represented by the respondent, for a declaration of title to land. The land in dispute, it is agreed, is correctly delineated in the plan Exhibit No. 1 produced in the case and is bounded on the East by the river Prah.

The action originated in the Asantehene's Court (Grade " A ") but by reason of certain judicial decisions and procedural steps, the correctness of which is not disputed, came to trial before the Supreme Court of the Gold Coast in November, 1949. The learned Trial Judge dismissed the action summarising his observations thus:—

> " In conclusion I would say that the plaintiff's claim to any declaration for title has neither been evidenced by any root or by any evidence upon which any Court could come to any reasonable conclusion that they were entitled as owners to exclusive possession."

On appeal to the West African Court of Appeal Coussey, J. (with whom two other Judges sitting with him concurred) agreed generally with the Trial Judge and concluded his judgment with the words:—

> " . . . I would dismiss the 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."

The concurrent findings on the facts of the courts below, *prima facie*, entitle the respondent to a dismissal of this appeal.

The first question is whether the appellant can bring himself within any of the recognised exceptions to this rule. If not the appeal must fail. The appellant sought to rely on an exception formulated by Lord Thankerton in the judgment of the Board in *Srimati Bibhabati Devi* v. *Kumar Ramendra Narayan Roy* [1946] A.C. 508 namely:—

> " (4) That, in order to obviate the practice, there must be some miscarriage of justice or violation of some principle of law or procedure. That miscarriage of justice means such a departure from the

> rules which permeate all judicial procedure as to make that which happened not in the proper sense of the word judicial procedure at all. That the violation of some principle of law or procedure must be such an erroneous proposition of law that if that proposition be corrected the finding cannot stand; or it may be the neglect of some principle of law or procedure, whose application will have the same effect. The question whether there is evidence on which the courts could arrive at their finding is such a question of law."

Seeking to bring the case within the ambit of the exception, counsel for the plaintiff-appellant has argued strenuously that there has been a miscarriage of justice caused by failure on the part of the courts below to give adequate weight and to draw proper inferences from two documents Exhibits 3 and 6 produced on behalf of the appellant. These exhibits, he contended, almost conclusively, if not conclusively, entitled the appellant to succeed. The courts below have in fact not only not drawn inferences favourable to the appellant's Stool, but have drawn inferences adverse to it, from the exhibits. Counsel for the appellant contended that these inferences are unsustainable.

By the Exhibits Nos. 3 and 6 the Chief of the Brenase (respondent Stool) in the year 1909 after renouncing in favour of the Government title to certain specified land which lay on the right (Western) bank of the Prah river, renounced "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". It is argued that as the respondent Stool had renounced their rights the appellant Stool was entitled to succeed. This argument is clearly erroneous and ignores the principle correctly adopted by both courts below that "a plaintiff can succeed only upon the strength of his title and not upon the weakness of his opponent's title". Moreover the two documents prove that in the year 1909 the respondent Stool was dealing with the land which is the subject matter of this action. It was possible to take the view that the documents, which undoubtedly established at least dealing with certain rights to the land, supported other oral evidence that those rights had in fact been exercised by the respondent Stool before the renunciation of 1909—evidence which negatived the appellant's case that prior to 1909 the appellant Stool had exercised rights over the land to the exclusion of all others. Both courts took this view of the documents, and their Lordships are quite unable to say that it is erroneous. There is accordingly no ground for re-opening the concurrent findings of the Court below.

Counsel for the appellant complained that the Trial Judge had refused to grant an adjournment to enable the appellant to call a witness, who was said to be a linguist of the paramount chief of Ashanti, to give evidence as to history and tradition. The granting of an adjournment for the purpose of calling a witness is essentially a matter for the exercise of his discretion by the trial judge. In the case before their Lordships the Trial Judge has given a number of reasons for refusing an adjournment. The Court of Appeal agreed with these reasons. There has been nothing said which satisfies their Lordships that in refusing an adjournment the Trial Judge exercised his discretion wrongly.

It was held by the Trial Judge that "under these agreements (Exhibits Nos. 3 and 6) the plaintiff Stool can acquire no interest in the land unless they can show that they have had a subsequent assignment of these rights from the Government" and that the plaintiff-appellant had not established or endeavoured to establish such an assignment. The Court of Appeal held that "the plaintiff had no rights under these agreements". It was suggested before their Lordships for the first time that there is evidence that the appellant Stool provided the money which the Government paid to the respondent Stool, and that as a matter of law it should be held that the Government held the land in trust for the appellant Stool. Their Lordships cannot entertain this argument because even if the submission be correct in law, the facts upon which it is based are disputed,

and there is no finding by the courts below that the money was provided by the appellant Stool. Moreover the submission now made to their Lordships for the first time involves a view of the facts directly opposed to the facts sought to be established by the appellant in the courts below namely that the respondent Stool had had no rights in the land in question at any time. The appellant asked for an order for retrial for the purpose of dealing with the submission, but in their Lordships' opinion there is nothing which would justify such an order.

One other point argued should be mentioned. The learned Trial Judge held that the land acquired from the respondent Stool appeared to have been abandoned by the Government and that on abandonment it reverted to the respondent Stool. It was argued as a matter of law that this view was wrong. Their Lordships do not find it necessary to express an opinion on this point of law as they are of the view that, even if the learned Trial Judge's view of the law was wrong, it did not affect his finding on the facts that the appellant had failed to establish title to the land.

Their Lordships are of opinion that the case before them does not come within the exception referred to above to the rule relating to concurrent findings on facts or within any other exception. They are of opinion that the concurrent findings should be upheld. For these reasons they will humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the respondent the costs of this appeal.

(39308) Wt. 8082—57 150 5/55 D.L

**In the Privy Council**

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THE STOOL OF ADANSI

*v.*

THE STOOL OF BRENASE

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DELIVERED BY MR. L. M. D. DE SILVA

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