Adjei v. Grumah

[1982-83] GLR 985.

Court of Appeal, Accra

14 December 1982

[986]

APPEAL from the judgment of the High Court, Sunyani, allowing an appeal against the decision of the trial district court wherein the plaintiff was given judgment in his action for, inter alia, general damages for trespass against the defendant. The facts are sufficiently set out in the judgment.

Adamu–Bossman for the plaintiff.

No appearance by or on behalf of the plaintiff.

[987] JIAGGE J.A. delivered the judgment of the court. This appeal is from the judgment of the High Court, allowing in favour of the defendant, an appeal against the decision of the District Court, Grade II, Goaso. The plaintiff's claim was for general damages for tress and specific damages for the crops destroyed on the land is dispute.

The plaintiff, a "stranger" at Mim claim that he rendered services as the chairman of the Mim Town Board claimed that he married a wife from Mim. He applied to the Mimhene for land to cultivate and after paying the customary fee of N ¢5 and a bottle of schnapps, he was granted virgin forest land on which he planted cocoa and other crops. He alleged that the defendant entered his farm and damaged 100 cocoa trees.

The defendant denied the allegation and asserted that he purchased the virgin forest land for N¢80 from the Mimhene and that he destroyed no crops because the area he cultivated was virgin forest land. The Mimhene, giving evidence for the defendant, admitted that he and his elders sold to the defendant virgin forest land within the area granted earlier to the plaintiff. The Mimhene claimed that he in 1967, ordered an inspection of the area granted to the plaintiff for farming in 1951: that upon the report received, he and his elders decided to re–enter and sell the virgin forest land which the plaintiff had failed to cultivate to anyone requiring land for farming. The plaintiff for about twenty years after his acquisition was able to cultivate only a small portion of the area granted to him.

The Mimhene asserted that according to the local custom the stool had the right to re–enter a stool land that was not acquired by purchase. Whenever there was failure to develop to within a reasonable time after the land had been acquired.The Mimhene asserted that the stool re–entered the virgin forest land appurtenant to the plaintiff's secondary forest on the ground that the plaintiff failed to reduce the in dispute to actual possession within the twenty years of the grant and that the stool had the right of re–entry even for much shorter periods of default.

The district court accepted the evidence of the Mimhene but held that the court was not satisfied that the right on failure to cultivate was made known

to the plaintiff. He held: "I accordingly find that no condition of forfeiture for non-development was attached the land to the defendant without justification." He found that, "the plaintiff was in actual possession of the entire land granted to him because his labourers were clearing portions of the land and actually working on it . . . " The district court gave judgment in favour of the plaintiff.

[988] On appeal, the High Court held that the district have found that the area in dispute was virgin forest land, erred in coming to the conclusion that there was trespass. The High Court held also that the plaintiff was never in actual possession of the virgin forest land and that he had no "physical control" over the area in dispute. The appeal was allowed and the judgment of the district court was set aside.

The grounds of appeal argued before this court were that (1) the judgment was against the weight of the evidence and (2) that the judgment was bad in law. Counsel for the plaintiff–appellant (hereafter called the plaintiff) argued that before the re–entry, the plaintiff should have been called upon to show case why the uncultivated land should not be taken away from him and that in spite of the local custom the plaintiff should have been heard. Counsel conceded that one could not tie down virgin forest land for long periods without cultivating it. He submitted, however, that notice of re–entry should be given in any case.

Re–entry of virgin forest stool land is distinguishable from forfeiture of stool land from a subject in occupation. Forfeiture is regarded as an extreme punishment for misconduct or denial of allegiance to the stool. Before such extreme punishment is inflicted on the occupier, the chief and the elders may at their discretion decide on an inquiry to offer the occupier an opportunity to state his case. Re–entry of virgin forest stool land is in my view a realistic customary approach to development of the land.

In this case, the trial court found that the plaintiff was a stranger–farmer who was treated as a subject of the stool. That being so, he must be presumed, as a subject of the stool, to know the local custom on re–entry of the stool land. There is nothing on record to rebut this presumption. The principle of customary law that a subject of the stool acquires a determination or usufructuary title in the stool land he occupies does not apply to virgin forest land on which he expended no labour. The principle is an equitable one rooted in actual possession. It creates an encumbrance or burden on the absolute title of the stool, and vests the subject in occupation with a possessory title that prevails even against the stool itself. The very nature of this possessory title precludes any extension of the principle to cover area of virgin forest land not reduced to actual possession.

Notice of re–entry to such areas may be desirable but failure to do is so not fatal nor can it defeat the customary right of the stool to re-enter and re–locate virgin forest land where there has been a default in its development. It is unreasonable, I think to permit large tracks of virgin stool land to lie idle while stool subjects and other seek land to cultivate or otherwise develop. The customary **[989]** right of re–entry of stool land ensures development within reasonable period after the grant of land.

We find no merit in this appeal and we dismiss it.

Appeal dismissed.
D.R.K.S.