To'a v Veikune

Privy Council
App 10/1980

Appeal - decision on matters of fact should be reversed and case remitted for rehearing if court has wrongly refused to admit evidence.

Land - decision of Land Court on matters of fact should be reversed and case remitted for re-hearing if Court has wrongly refused to admit evidence.

Latu Veikune, the registered holder of a town allotment, brought proceedings in the Land Court for the eviction from the land of Sione To'a. These proceedings were resisted by To'a on the ground that Veikune's father, 'Inoke Veikune, who had previously held the land, had promised that To'a and his wife could stay there until they died.

Veikune's claim for possession was upheld by the Land Court which held that To'a had not produced sufficient evidence to prove the alleged promise by his father, since much of the evidence upon which he relied wsa hearsay, and therefore inadmissible. To'a appealed to the Privy Council.

HELD:
Upholding the appeal.

(1) The evidence considered by the Land Court to be inadmissible hearsay was admissible and should have been considered by the Land Court;

(2) The case should be remitted to the Land Court to hear again.
(See subsequently in Land Court at [1981-1988] Tonga Law Report 131).

Privy Council

Judgment

The respondent has bought this case requesting the ejectment of the appellant from his registered town allotment known as "Tavahi" in Kolofo'ou. The town allotment has an area of 3 acres 1 rood 32.2 perches and is registered in the name of the respondent under Deed of Title Book 189 Folio 27 and was inherited by the Plaintiff from his father, 'Inoke Sateki Veikune when the latter died in 1969. The title of the respondent to the allotment is not disputed by the appellant.

A separate application for an order of eviction was filed by the respondent against the appellant over the same allotment but this has been superceded by and has become part of the present action. In that application the respondent claimed that the appellant's stay on his allotment was only on a temporary basis and that he had given notice to the appellant to move but he refused.

In answer the appellant states that his stay on the allotment was on a permanent basis in that he has lived there since 1946 in the belief, from an understanding with the respondent's father 'Inoke Sateki Veikune, that the allotment would be subdivided and an allotment given to the appellant. He alleges that based on that understanding he has erected a dwelling house to the value of $6,000, part of which is concrete and part wooden, and including a 3000 gallon cement tank. He now claims that because of the understanding with the respondent's father, the Plaintiff is estopped from denying him possession of the land on which his house is situated and ejecting him therefrom. There is one further allegation that he has stayed on the land for over 10 years in which case section 148 of the Land Act would be applied and the respondent's claim would be statute barred.

The following passage from the judgment is important. It reads:-

> "The evidence the Defendant has asserted that he has lived on this allotment on the understanding that when the allotment is sub-divided, he would be granted an allotment of his own. His understanding is based on words spoken to him by the Plaintiff's father almost ever since he first came on the property. The Defendant's wife support this belief again because of words spoken by the Defendant's uncle, Viliami Telefoni Latu of conversations he had with the Plaintiff's father. There was no other evidence to corroborate the basic understanding of the Defendant that he was to stay on the allotment until it was subdivided when he would be given an allotment of his own. The only evidence brought to this court is of alleged statements made by the plaintiff's father to the defendant, to the defendant's wife and to the defendant's uncle. Such statements allegedly made to these three witness are hearsay, and not within the accepted exceptions to the rule against hearsay are therefore inadmissible as evidence of the very fact in issue in these proceedings. The Plaintiff has denied either hearing such statements made by his father or his father making such statement to him".

This evidence is in our view admissible. The general principle is stated in Halsbury's Laws of England 4th Edition Volume 16 p.996 paragraph 1475 where it states:-

"The Court will also protect a person who takes possession of land or exercises an easement over it under an expectation, created or encouraged by the owner, that he is to have an interest in it, and, with the owner's knowledge and without objection by him, expends money on the land. The protection may take the form of requiring repayments of the money, or the refusal to the true owner of an order for possession, or of holding the person expending the money entitled to a charge or lien, or of finding a constructive trust. Similarly, where person who mistakenly believes that he has an interest in land, being ignorant of his want of title, expends money on it in buildings or other improvements or otherwise dealing with it, and the true owner, knowing of the mistaken belief and the expenditure, raises no objection, equity will protect the person who makes the expenditure, as by confirming that person's supposed title, or by requiring that he be compensated for his outlay, or by giving him such a charge or lien. This equity is available against the Crown. So again, the innocent purchaser of a chattel from a person having no title to it is entitled, as against the true owner to an allowance, improvement of another's property, made with the knowledge of that other, may constitute part performance".

In leading cases are Ramsden v. Dyson (1886) L.R 1 H.L. 129, 170; Plimmer v. Wellington Corp. (1884) 9 App. Cas. 699, 713 and Inwards v. Baker [1965] 2 QB 446.

In our opinion the case ought to be remitted to the Land Court for further consideration on the basis that the rejected evidence is admissible. It is then for the Court to conduct the further trial in such manner as it thinks fit in as Justice may require.

120 The appeal is allowed - the judgment is set aside and the case is remitted for further hearing accordingly. No costs are allowed. (See Veikune v To'a [1981-1988] Tonga Law Report 131).