[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

ANNA SOTERIOU,

Appellant (plaintiff),

v.

THE HEIRS OF DESPINA K. HJI PASCHALI, i.e. GEORGHIOS KYRIACOU AND EIGHT OTHERS,

Respondents (Defendants).

(*Civil Appeal No.* 4380).

Immovable property—Acquisition by adverse possession—"Possession" as far as acquisition of ownership by prescription is concerned, implies acts of ownership in some form or other—Positive evidence as to the acts of ownership which the nature of the land admits required—Land Code.

The appellant by his action claimed, *inter alia*, ownership of the land in dispute by adverse possession for a period of fifteen years completed prior to 1946. The evidence adduced in support of this was slender and unsatisfactory.

Held : (1) The "possession" in the Land Code implies as far as acquisition by prescription is concerned acts of ownership in some form or other on the part of the person who asserts adverse possession.

(2) In the case in question the evidence adduced was slender and unsatisfactory and the trial Judge could not find otherwise than what he did.

(3) From the evidence it is not clear who has planted the disputed area with reed plantation or whether the appellant had exercised any act of ownership over it. There must be positive evidence as to acts of ownership which amount to possession as the nature of the land admits.

Appeal dismissed.

Appeal.

Appeal against the judgment of the District Court of Famagusta (A. Kourris D.J.) dated the 19/10/61 (Action No 974/59) whereby it was adjudged that a certain area of land, 55 square feet in extent, was the property of the respondents.

N. Hji Gavriel for the appellant.

G. Santis for the respondent.

The judgment of the Court was delivered by ZEKIA, J.

WILSON, P. : We think it is unnecessary to call for the counsel of the respondents in this case. Mr. Justice Zekia will deliver the judgment of the Court.

ZEKIA, J. : This is an appeal from the judgment of the District Court of Famagusta which found that a certain area of land, 55 square feet in extent, was the property of the respondents. This is a boundary dispute case and the area in dispute, according to the evidence of the Land Registry clerk, which was accepted by the trial court, was included in the title deed of the respondents. It was further found that the appellant failed to prove adverse possession over the disputed portion.

The main grounds of appeal are two : One is that the court was wrong in finding, on the evidence before it, that the area in dispute was not included in the title deed of the appellant. The second ground is that the appellant had by evidence established adverse possession over the disputed land for the required period.

This being a mulk property the appellant had to prove by positive evidence that she had adverse possession over the disputed land for a period of 15 years prior to 1946.

First ground :— In respect of the disputed land local inquiries by the Land Registry clerk or surveyor are held at least on four occasions — in 1935, 1937, 1957 and 1960. The disputed land was found to form part of the plot 136 registered in the name of the respondents' predecessors in title. The result of the 1937 local inquiry supported the contention of the appellant but this was explained by the Land Registry clerk called as a witness that it was a mistake and the trial court accepted this evidence.

Apart from this the learned counsel for the appellant during the hearing of this case dropped this ground. There remained the ground which relates to the adverse possession.

Second ground : – We have gone into the evidence and we have heard the arguments relating to such evidence but the

fact remains that the evidence relating to the possession of this particular portion of land was vague and uncertain and, in our view, the trial judge was justified in not accepting and rejecting it. We find no reason to interfere with this finding and therefore we are of the opinion that the second ground also fails.

We have indicated during the hearing that the word "possession" in the Land Code implies, as far as acquisition by prescription is concerned, acts of ownership in some form or other on the part of the person who asserts adverse possession. In this particular case the evidence adduced was slender and unsatisfactory and the trial judge could not find otherwise than what he did. The disputed area, it was stated, was covered by a reed plantation. It is not clear who had planted it or whether appellant had exercised any act of ownership over it. There must be positive evidence as to the acts of ownership which amount to possession which the nature of the land admits.

We are of the opinion, therefore, that this appeal should be dismissed with costs.

Appeal dismissed.