MARY TWEH, Appellant, *v.* **PETER KOFFA** et al., Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT COURT, MONTSERRADO COUNTY.

Heard: May 24, 1979. Decided: June 15, 1979.

1. It is a well-settled principle of law that an injunction will not issue when the plaintiff's title is in dispute, for it is the duty of an equity court to protect acknowledged rights rather than to establish new and doubtful ones.
2. When there is a dispute about ownership to land, the practice and procedure is for a jury to decide who has the better title; the proper action being an action of ejectment.
3. Although the purpose of an ejectment is to gain possession, an ejectment action may be instituted for the purpose of proving or establishing title.
4. An injunction is not a possessory action and therefore cannot serve the purpose of an ejectment action, which determines title and places the rightful owner in possession. An injunction has only a restraining or prohibitive power.
5. Two parties who join issue regarding title to real property in an injunction case must look to law and not equity for a settlement of that issue.
6. Where there is no pending suit, such as an ejectment suit to determine ownership to property, said property can neither be held in *status quo* by injunction nor can the party plaintiff be placed in possession, the latter being the distinct function of an ejectment action.
7. In ejectment action, where the right of a party is doubtful, an injunction will not generally be granted to prevent interference therewith until the right is established at law.
8. Nothing is better as a rule of equity procedure than that the complainant is not entitled to a preliminary injunction to protect a right which depends on disputed question to be determined by a court of law.
9. When the principles of law on which rights are disputed will admit of doubt, a court of equity, although satisfied as to what is the correct conclusion of law upon the facts, will not, without a decision of the court at law establishing such principles, grant an injunction.

Appellant brought an action for an injunction against the appellees, claiming that

appellees were digging a foundation on her land for the purpose of constructing a building, and destroying fruit trees on her land. She alleged that if the writ of injunction were not issued against the appellees, irreparable injury would be sustained by her. In support of her case, appellant proferted her deed for the property.

In response, appellees claimed title to the property and proferted their own deed as evidence of their title. In addition to that defense, appellees requested the trial court to quash the writ of injunction since an injunction was not a possessory action and cannot be used to determine title to real property. Appellees contended that an injunction was an equitable remedy, ancillary to a main suit, and that in the absence of a main suit filed against them by appellant that was pending determination, appel-lant was not entitled to the writ of injunction.

The trial judge entertained a hearing and sustained appellees' position on the inappropriateness of the injunction, and quashed said injunction for the reasons advanced by the appellees. Appellant excepted to the ruling and appealed to the Supreme Court.

The Supreme Court *affirmed* the trial judge's ruling in its entirety for the same reasons stated by the lower court.

Francis N. Torpor appeared for appellant. *Edward N. Wollor* appeared for appellees.

MR. JUSTICE BARNES delivered the opinion of the Court.

Appellant, who was plaintiff in the lower court, filed an injunction suit against the defendants, now appellees, in the Sixth Judicial Circuit Court, Montserrado County, to enjoin and res-train appellees from constructing a house and destroying the fruit trees on a parcel of land which appellant claimed to be her bona fide property. In the complaint, appellant stated that if appellees were not restrained, their acts would cause her irreparable injuries.

In support of her case, appellant proferted a warranty deed as proof of her title to the parcel of land. Appellees filed an answer praying for the dissolution of the injunction on the grounds that appellant should have filed a main suit of ejectment to establish title during the pendency of which litigation, an injunction could be sought to restrain the acts appellant consi-dered injuries, and that an injunction could not serve the purpose of ejectment. Appellees also proferted a title deed for the land in dispute.

In her reply, appellant contended that because she was in possession of the premises, the

purpose for an ejectment action did not exist. Therefore, injunction would lie.

After hearing arguments, the court below dismissed the complaint and dissolved the injunction. Appellant, plaintiff below, noted exceptions and has come before this Court on a regular appeal on a bill of exceptions containing six counts.

The parties having argued their briefs, we shall now proceed to review the contentions raised in the bill of exceptions commencing in the descending order.

Appellant contended in count one (1) of her bill of exceptions that the lower court committed reversible error when the judge in his ruling upheld appellees' contention that appellant should have filed a main suit of ejectment although appellant is in possession of the land. We consider it necessary to quote word for word the ruling of the lower court from which this contention and others to follow have arisen:

> "Plaintiff's complaint in this injunction action alleges that she is owner of a parcel of land in New Kru Town, on which she lives in a house and proferted a warranty deed to the complaint. She complains that the defendants, without any color of right, entered upon the land and dug a founda-tion to construct a building and destroyed fruit trees and that if defendants are not restrained she will suffer irre-parable injuries for which she will not recover in damages. She prays court therefore to enjoin, prohibit and restrain the defendants from digging and constructing any edifice on the land and to restrain them from trespassing on the land.
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> Defendants countered the complaint with a seven-count answer in which they prayed dissolution of the injunction action, contending in count two of the answer that plaintiff's failure to show the pendency of a main suit in ejectment, to which main suit the application for the writ of injunction will be an auxiliary, renders the preliminary injunction suit quashable.
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> Section 7.61 of the Civil Procedure Law, Rev. Code 1 - Grounds for Preliminary Injunction, states:
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> > 'A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's right respecting the subject of the action, and tending to render the judg-ment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment, restraining the defendant from the commission or con-tinuance of an act which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.'
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> In keeping with the statute hereinabove quoted, it appears to me that none of the

grounds as contemplated by the statute exists in plaintiff's application for preliminary injunction. There is no action of any kind pending before any court the subject of which is the basis of the prelimi-nary injunction, nor in which the judgment of the court would be rendered ineffectual if the acts of the defendants in trespassing on the plaintiff's land and digging a foundation to construct a building are not prohibited and restrained. There is no action pending before any court in which plaintiff has demanded or is entitled to judgment and during the pendency of which, if defendants are not enjoined from building on plaintiff's land, would produce injury to the plaintiff's action. Can a court of equity prohibit anyone claiming title to real property in favour of another who claims title to the same property? The court says no. Equity will not interfere because there is remedy at law. An equitable remedy will be granted only where no adequate remedy exists at law. *Paterson, Zochonis & Co., Ltd. v. Cooper*, 13 LLR 348 (1959). An action of injunction is neither a possessory action nor an action to recover money for damages done or to decide title to real property, both parties having claimed title to the property and proferted deeds to establish their rights. *Johnson v. Powell and Russell,* 4 LLR 221 (1934).

Where a suit in equity or at law is pending, an injunction may be granted to preserve matters in *status quo* until a final determination of the case. But no other action is pending, which may decide the right or title to the land, the both parties having claimed and attempted to establish title to said land.

Under these circumstances and in view of the citations of law hereinabove raised, it is the considered opinion of this court that the preliminary writ of injunction be and the same is hereby quashed and the preliminary injunction dissolved, with costs against the plaintiff .And it is hereby so ordered."

It is a well-settled principle of law that an injunction will not issue when the plaintiff's title is in dispute, for it is the duty of an equity court to protect acknowledged rights rather than to establish new and doubtful ones. 42 AM JUR. 2d., *Injunction,* §29.

Appellant has claimed title to a piece of property for which she has exhibited a deed. Appellees, on the other hand, have made profert of an adverse title. Equity cannot decide who has cleaner hands. The remedy lies at law. In our jurisdiction, when there is a dispute about ownership to land the practice and procedure is for a jury to decide who has the better title. The proper action is therefore an action of ejectment. Also in ejectment, where the right of a party is doubtful, an injunction will not generally be granted to prevent an interference therewith until the right is established at law. Nothing is better as a rule of

equity procedure than that the complainant is not entitled to a preliminary injunction to protect a right which depends on a disputed question to be decided by a court of law. When the principles of law on which rights are disputed will admit of doubt, a court of equity, although satisfied as to what is the correct conclusion of law upon the facts, will not without a decision of the court at law establishing such principles, grant an injunction. So if the facts on which the right to the injunction is based are in dispute the injunction will not be granted. *Cooper v. Macintosh,* 8 LLR 400 (1944); *Simpson and Lomax v. Obeidi*, 18 LLR 273 (1968).

Appellant argued that ejectment would not lie because she is in possession of the property. Although the purpose of an ejectment is to gain possession, an ejectment action may also be instituted for the purpose of proving or establishing title. *Fiske et al. v. Artis et al.,* 11 LLR 334 (1953). In that case the action may be sued out by one in actual possession whose right to such property has been trespassed upon by invasion, which if not adjudicated, may lead to an ouster of the one who claims to be in possession. In the instant case, although the appellant is occupying the land, the appellees's action of digging a foundation and constructing a house on a portion of said land, destroying fruit trees, and showing a deed for the same property are suffi-cient manifestation of appellees' intention of getting said premises, which appellant believes to be her bona fide property, into their possession. The proper and immediate remedy therefore is to settle the dispute as to the ownership, which can be done only at law. After that, if judgment is rendered in appel-lant's favour, equity can then be resorted to for its own remedies, or an injunction may be sued out as an auxiliary suit to restrain appellees and to maintain the property in status quo pending the determination of an action at law for the purpose of preventing injury to the property. An injunction will not issue for the purpose of holding in abeyance a property right. It is therefore our considered opinion that the lower court did not err as to its position on this issue. Hence, count one (1) of the bill of exceptions is therefore not sustained.

Appellant contended in count two (2) of her bill of exceptions that the trial judge's ruling that the statutory grounds upon which an injunction would issue did not exist in appellant's application for preliminary injunction, was erroneous because it is not supported by the records; that is, the complaint and reply. We are in agreement with the position taken by the trial judge, for his ruling is not only in keeping with the records of the case but is also in conformity with existing statutes. Here is the provision of the relevant statutes:

> "A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's right respecting the subject of the action, and

> tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act which, if committed or continued during the pendency of the action, would produce injury to the plaintiff." Civil Procedure Law, Rev. Code 1:7.61.

This portion of the statute is so plain that we think it is unnecessary to interpret it. We shall only comment here that whenever acts of a defendant are sought to be restrained -- such as: (a) where the defendant threatens or is about to do or is doing or procuring or suffering to be done, or (b) where the continuance of an act which, if committed or continued would produce injury to the plaintiff -- the spirit and letter of the statute require that there must be a suit pending between the plaintiff and the defendant involving the subject matter of the injunction. In a proper case, the defendant would be restrained so that he will not act in violation of the plaintiff's rights or that defendant would not commit acts or continue to commit acts that would make a judgment rendered in plaintiff's favour ineffectual.

We see no proof or allegation, neither in appellant's com-plaint nor in the reply, of the existence of an action between appellant and appellees touching the subject land, except the injunction suit that we are now reviewing.

Appellees contended that the grounds for issuance of an injunction do exist in her pleadings. By that, we suppose she was referring to the allegation that appellees were building a house and destroying fruit trees on the land for which she holds a title deed, and if such acts were not restrained, she would incur irreparable loss. Whether these injuries are reparable or not, an injunction will not issue under the circumstances of this case. Before the strong arm of the law can be properly used to restrain, appellant and appellees must first join issue and be in litigation before a court of competent jurisdiction to determine the rightful owner of the property. Were the appellees to be restrained from construction and the land held in *status quo,* could equity permit appellant to enter on said land to construct? A thing is held in *status quo* pending the outcome of something, say a determination of a matter. But where there is no pending matter what is the use and purpose for holding property (land) in *status quo*? Because appellant's contentions gave no answer to these queries, we are in full agreement with the court below that the grounds for issuance of injunction do not exist in appellant's complaint.

Because we consider the other four counts of the bill of exceptions to be couched in the first and second counts, which we have overruled, said counts will not be treated specially.

Appellant has relied on the case *Fiske et al. v. Artis et al.*, 11 LLR 334 (1953) in contending that an injunction is not issuable in ejectment and that the court below did not pass upon that issue. We are of the opinion that the judge's ruling quoted earlier was comprehensive and that all issues relevant to a fair determination of the case were considered in said ruling when he ruled that appellant should have filed an ejectment suit, during the pendency of which an injunction could be prayed for to restrain interference with said property

Appellant has also relied on *Fiske et al. v. Artis et al.,* 11 LLR 334 (1953) in support of her argument that an injunction is not issuable in ejectment, the two being separate and distinct actions. That particular principle laid down in that case is inapplicable to this case because of the differences in the facts and the circum-stances that led to the two litigations.

Appellants in the *Fiske* case had previously filed an action of ejectment in the Second Judicial Circuit Court for Grand Bassa County against the appellees and then instituted an injunction suit to restrain appellees from leasing a house on said premises, which was the subject of the ejectment suit. In the injunction suit, there was no issue joined as to title, that being an issue before the circuit court sitting in law. The judge nevertheless dismissed the injunction action on grounds that since title was involved the parties should "first establish their rights at law in order to justify the interposition of a court of equity." The Supreme Court, in reversing that judgment and in sustaining the injunction, held that the judge of the lower court erred. We quote the relevant portion of that opinion:

> "That the judge of the lower court flagrantly erred in making this ruling is beyond dispute. Since actions involving title to property are possessory actions, they are distinct in character. The issue of title is foreign to the instant action. Moreover, it is settled law that the courts will decide only such issues as are joined between the parties and set forth in the pleadings."

The material difference between the two cases is that in the *Fiske* case an ejectment action involving the same parties and subject matter was already pending determination and that the issue of title to the property was not raised in the injunction pleadings. The plaintiffs in that case had taken all steps necessary for issuance of the injunction. In this case, however, there is no ejectment suit pending determination, even though appellant and appellees are claiming title to the same property by proffering deeds. The circumstances of the two cases being different, the same rule can not apply.

It seems to us that counsel for appellant neither fully comprehended the material difference between the *Fiske* case and the instant case, nor the application of the rule in the *Fiske* case, which he relied upon in support of his argument in the present case.

The main issue in the instant case is whether or not an injunction will issue to enjoin or restrain appellees from constructing a house and destroying fruit trees on a piece property, which is claimed by both the appellant and appellees, in the absence of an ejectment action pending to determine the rightful owner of said property. We hold no. An injunction is not a possessory action and therefore cannot serve the purpose of an ejectment action, which determines title and places the rightful owner in posses-sion. An injunction has only a restraining or prohibitive power. Therefore, two parties who join issue on the title to real property in an injunction case must look to law and not equity for a settlement of that issue. Where there is no pending suit, like in this case, to determine ownership to property, said property can neither be held in *status quo* by injunction nor placed in possession of the appellant, the latter being the distinct function of an ejectment action.

In view of the foregoing, it is our considered opinion that the judge of the lower court did not err in quashing the writ of injunction. The judgment of the lower court is therefore hereby affirmed. Costs are ruled against the appellant.

Judgement affirmed