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OREGON SUPREME COURT DECISIONS

Full Text Published by Courtesy of J. A. Turner, Reporter of the Supreme Court.

Stephenson v. Van Blokland, Union County.

Decided Nov. 28, 1911.

Thomas Stephenson, respondent, v. Andrew Van Blokland, appellant. Appeal from the circuit court for Union county. The Hon. J. W. Knowles, judge. Argued and submitted November 1, 1911, at Pendleton. J. D. Slater for respondent. Jno. S. Hodgin for appellant. Bean, J. Modified.

This is a suit to quiet title to the south half of northwest quarter of section 19, in township 3 south of range 38 E. W. M., Union county, Oregon. From a decree awarding one-half of the land to each party, defendant appeals.

The plaintiff alleges that he is owner in fee, in the possession of theland, and entitled to the possession of the same; and that defendant Van Blokland claims some interest therein, adversely to plaintiff.

Defendant Van Blokland, by his answer, denies the main allegations of the complaint, and alleges that he is the owner of the land by virtue of a deed from the state of Oregon, and in possession thereof.

Plaintiff replies, denying the new matter of the answer, and avers that on August 21, 1882, he went into actual possession of said premises, claiming to own the same against all the world except the state of Oregon, and so continued until the state land board refused to grant him title to the lands; that since that time he has been in adverse possession of the land, and by reason thereof, defendant is estopped from claiming said land under his deed from the state, and pleads title to the land by prescription. The members of the state land board were made parties defendant but the complaint on motion of plaintiff, was dismissed as to them.

Bean, J. It appears from the evidence and record, that on March 9, 1872, the state land board executed a deed to the land in question, to one C. Laxton, who, on the 18th day of July, 1872, conveyed the same to E. S. and J. T. McComas. The latter with their wives, on September 1, 1877, in consideration of $560.89, executed a deed thereof to the state of Oregon, J. T. McComas and wife acting by E. S. McComas as attorney in fact. The evidence does not disclose that any power of attorney or authority was given to E. S. McComas to convey the interest of J. T. McComas and wife. On August 21, 1882, the state land board contracted to sell the land in question to the plaintiff, together with the north half of the greater section, and issued to him a certificate of sale, conditioned upon the payments for the land being made. Plaintiff made a payment of $64.58, and executed two notes, each for $64.58, payable in one and two years respectively, for the balance of the purchase price, and as his receipts show, paid interest on the deferred payments until September 2, 1893, when payment was discontinued. He was infrmed by the clerk of the state land board, on November 14, 1898, that unless he paid the amount then due, his certificate No. 122 would be cancelled. About this time Mrs. M. R. Stephenson, the plaintiff's wife, applied for the purchase of the land, and both Mr. and Mrs. Stephenson were informed by the clerk of the state land board that the state could not execute a deed to the south half of the quarter section, for the reason that the same had been conveyed to Laxton a long time before. Plaintiff requested the state land board to credit the amount he had paid for the south half of the quarter section upon the payment of the north half, and informed the board that if they would not do so, they could cancel his certificate. In his testimony, referring to his claim to the land, he said, "I threw it up." After notice had been duly given him, the state land board, on December 27, 1898, cancelled his certificate for non-payment, notifying him to that effect, and Mrs. M. R. Stephenson applied for and purchased the north half of the quarter section.

It appears that plaintiff, while holding this certificate of sale, cut from the land large quantities of wood, about a thousand cords; built a cabin on the tract and cultivated a garden of about one acre fenced separately. By connecting a fence with fences on adjoining lands, he enclosed the quarter section, using a portion thereof for pasture. Formerly the land was timbered, and now it is partially covered with brush, being suitable for pasture, about five acres of which is tillable.

Defendant Van Blokland, in consideration of $400, purchased the land in question about December 14, 1909, and obtained a deed therefor from the state on May 3, 1910, which was duly recorded in Union county on May 7, 1910.

It therefore appears that the plaintiff claims title to the tract, by adverse possession thereof for the statutory period, while the defendant, Van Blokland, claims title by virtue of his deed from the state of Oregon.

Plaintiff's contention is that after obtaining a certificate of sale from the state in 1882, he had been in the actual, exclusive possession of the land, claiming so own the same against all the world except the state of Oregon, until the state land board informed him that it could not convey the land, and plaintiff's counsel argues that the case comes within the rule announced in Boe v. Arnold, 54 Or. 52. In other words, it is not claimed that the statute commenced to run as against the state or its grantee, until December, 1898. The plaintiff, during all that time, recognized the title of the state, and held possession of the premises in subordination thereto, attempting for a while to obtain title from the state. At the time of the cancellation of his entry and the purchase of the north half of the quarter section by his wife, the plaintiff appears to have abandoned all claim of right to purchase from the state, and the whole matter in regard to his application to purchase from the state was at an end.

In the case of Boe v. Arnold, it was held that, "One claiming title to land by adverse possession for the period of 10 years as against all persons, but recognizing the superior title of the United States government, and seeking in good faith to acquire that title, may assert such adverse possession as against any person claiming to be the owner under a prior grant."

In that case, one Chandler, who was the predecessor in interest, and from whom defendant's lessor deraigned title, filed his application for a homestead entry on the land, February 18, 1893, alleging continuous settlement since 1881, and after a contest in the local land office the decision being in favor of Chandler, final certificates was issued to him on December 26, 1904, and a patent to the premises issued to the heirs of Chandler, March 6, 1906. In the case at bar, plaintiff attempts to assert adverse possession as again a subsequent grant, defendant claiming title as grantee of the state of Oregon, and standing in the shoes of the state as to the very title to the land, which the plaintiff at all times recognized from 1882 until 1890, differing entirely from the facts in the case of Boe v. Arnold.

The statute of limitations does not commence to run until a cause of action accrues; and it is not claimed in this case, that, as against the state, the possession of plaintiff was adverse, or that the statute was set in motion until December, 1898. It is conceded that the statute did not run after the passage of the act of 1903; L. O. L. Sec. 13; State v. Warner Valley Stock Co. 56 Or. 283; 108 Pac. 861.

"In legal language, the intention guides the entry, and fixes its character." Ewing v. Burnet, 36 U. S. 40, 51.

It is said, "Adverse possession may best be defined as an actual, visible, and exclusive appropriation of land, commenced and continued under a claim of right—either openly avowed or constructive, as arising from the acts and circumstances attending tre appropriation—to hold the land against him who was seized. The principle upon which the statute of limitations is applied is not merely that the party pleading it has set up an adverse claim as having existed during the period specified in the statute, but that the adverse claim is accompanied by such an invasion of the rights of the opposing party as to give the latter a cause of action, which, not having been prosecuted within the time limited by law is presumed to be extinguished or surrendered." Buswell's Limitations and Adverse Possession, Sec. 237.

"Where the possession commences by the permission of the owner, there can be no disseisin or adverse possession until there has been a disclaimer by the assertion of an adverse title, and notice thereof, either actual or constructive." Wood on Limitation of Actions, Sec. 256, p. 597; 1 Am. & Eng. Enc. of Law, 798.

The plaintiff entered under an executory contract of purchase and thereafter in no way notified the state that he claimed the land in hostility to its title, and there was no overt act on his part which would amount to constructive notice thereof. In 1882 he entered and held the land under the defendant's grantor, by virtue of his certificate of sale or contract to purchase, until 1898. His possession appears to have been sufficient to set the statute in motion, if his possession had been hostile to the state. Since that time he has shown no different claim except that he abandoned his right to purchase, allowed the cancellation of his entry, and permitted his wife to purchase the remainder of the quarter section. Plaintiff does not show that he claimed ownership in any way since that time or before, except in subordination to the title of the state, and it is not shown that he ever asserted any title. He appears to claim some right by virtue of his contract with the state, and introduces evidence of payments thereunder.

It was said by Mr. Chief Justice Eakin in Bayne v. Brown, (Or.) 118 Pac. 282: "It is the adverse possession under a claim of ownership that establishes the title. * * *" Plaintiff's possession was not hostile to the state nor under claim of ownership.

It is urged by counsel for plaintiff, that on account of the letter of the clerk of the state land board to the effort that the state could not convey the land, that thereby the presumption of the delivery of the deed from E. S. McComas et al. to the state, was contradicted. It is not shown by any testimony that the officers of the state did not have full cognizance of the deed referred to, at the time of its execution and for many years thereafter.

The fact that the clerk of the state land board, at one time, did not have the land in question listed, and did not know that the same had been deeded to the state, and the instrument duly recorded in 1877, would not, in our opinion, in the absence of proof tending to show that there was no delivery of the deed, and without the assertion by plaintiff of a valid claim of title to the land, defeat the title of the state or change the effect of the deed to the state, or overcome the presumpion of delivery of the deed arising from the recording of the same. If so, the title of the state to its land, while its officers and agents are periodically changing, would be of but little force or value. The conveyance was apparently executed at the instance of, and accepted by, some agent or attorney of the state. The clerk of the state land board had no authority to disclaim title to the tract of land for the board or for the state.

"The mere parol declarations, against his own interest, of the owner of the record title are held not evidence to defeat such title, as being inadmissible under the statute of frauds." Buswell's Limitations and Adverse Possession, Sec. 236, citing Jackson v. Gary, 16 Johns. 302. On the other hand, under L. O. L., Sec. 799, subdiv. 15, creating the presumption that official duty has been regularly performed, it should, we think, be assumed that the deed referred to, recorded in 1877, was regularly accepted, pursuant to law, by the proper officers of the state: McLeod v. Lloyd, 43 Or. 260.

(Continued on Page 6.)

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