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Taxation -- Equitable Attack Upon Title Based upon County in Rem Foreclosure Proceeding

RECENT CASES

TAXATION—EQUITABLE ATTACK UPON TITLE BASED UPON COUNTY IN REM FORECLOSURE PROCEEDING

How good is title to land acquired through county in rem foreclosure (sometimes called quieting title) proceedings? In a recent Florida case[1] the Supreme Court decided that title thus acquired was not valid as against the claim of the equitable owner.

In 1921, the defendant had purchased six lots from the Board of Public Instruction of Escambia County, but due to an error, one of these lots, lot eighteen, was omitted from the record title. Defendant went into possession, paying taxes on five of these six lots, for twenty-two years thinking that he was paying taxes on all six lots. During the first eighteen years of the Defendant's occupancy, this odd lot was not assessed by the county, since the record title remained in the School Board. From 1939 to 1942, the county assessed this lot to "persons unknown". Later it was erroneously assessed to a third party. In about the year 1945, the property was foreclosed for non-payment of taxes, and in this county procedure title was adjudged to be in said county.[2] In March, 1946, the county sold the land to the Plaintiff.[3] Relying on his title, Plaintiff made demand on Defendant for possession which demand was refused. Plaintiff then proceeded in equity with a rule to show cause. The court decided that in answer to the rule to show cause, Defendant could offer any defense amenable to a suit in equity.[4]

This case seemed to turn on the Court's interpretation of that part of Section 194.54 F.S.A. which reads that the purchaser of a tax deed from the county may file a petition in the Circuit Court and secure an order directed to the person in possession requiring him to show cause why a writ of possession should not issue against him. The person in possession is allowed five days to file his answer and then the "matter shall proceed as in equity cases".[5] In determining that any equitable defense would suffice in this answer, the court in

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1 *Whittington v. David*, 32 So. (2d) 158 (Fla, 1947).

2 All proceedings were complete and regular, in compliance with the provisions of Sec. 194.47, F.S.A.

3 The deed thus executed to Plaintiff was also complete and regular as required by Chap. 194, F.S.A.

4 Therefore Defendant's claim that he had an attorney represent him in his original purchase from the School Board, and that he had paid his taxes, thinking he had paid taxes on all of the six lots, was sufficient for the court to decide that Defendant's title was superior to the record title of the Plaintiff.

5 F.S.A. Sec. 194.54.

reality reopened a case which had been finally decided—the original county foreclosure proceeding. Should not the foreclosure proceeding have been res judicata as to the title of the property? Sections 194.47 (4) and 194.53 F.S.A. seem to answer this question in the affirmative. There is no question raised in this case as to the validity of the county in rem procedure. By said in rem proceedings, the court had jurisdiction. In a recent Florida Case, REINA v. HOPE,[6] the court said that the city in rem procedure "may be justified on the theory that the land owner is on notice that his taxes are due every year; that they are required to support the government, and being so, the published notice, without more, is sufficient, to apprise him that his lands will be sold to satisfy his taxes." The city procedure is similar to that of the county.[7] In referring to the county proceeding, another recent case declared "if the decree is valid and regular on its face, the Defendants were entitled to rely on it as being a new and independent title vested in the county." In this last case the Plaintiff was not allowed to question the title in the county after the final decree became absolute. The final decree had also become absolute and complete in the case at hand; should not the doctrine of res judicata have been controlling?

"Res judicata is defined as a legal or equitable issue which has been decided by a court of competent jurisdiction; a thing or matter settled by a judgment."[8] Res judicata rests on two principles. One: no one should be twice sued for the same cause of action; two: it is in the interest of the state that there should be an end to litigation.[9] In applying these principles to the case at hand, we have first the county foreclosing on the land in a valid in rem proceeding, and a court of competent jurisdiction decreeing that title be vested in the county. Secondly we have the Plaintiff claiming through the county, suing the Defendant, who, by virtue of the in rem suit, was put on notice regarding the foreclosure proceeding on the land. Under what principle of law could the first suit be reopened to be retried on its merits unless there was a vital defect in the county in rem proceedings? The supreme court in deciding as it did, said, "In this conclusion we do not overlook our holding[10] . . . . that no sale or conveyance of real estate for the non-payment of taxes shall be held invalid except on proof that it was not subject to taxation, or that the taxes had been previously paid, or that the property had been redeemed prior to the execution and delivery of the tax deed. Neither do we overlook the requirement of Section 42, C. 20722, Acts of 1941, as amended

6 158 Fla., 771 30 So. (2d) 172, (1947).

7 *Green v. Smith,* 157 Fla. 454, 26 So. (2d) 181, (1946).

8 *Gray v. Gray,* 91 Fla. 103, 107 So. 261, (1926).

9 *Coral Realty Co. v. Peacock Holding Co.,* 103 Fla. 916, 138 So. 622, (1931).

10 *Bancroft Investment Corp. v. City of Jacksonville,* 157 Fla. 546, 27 So. 2d 162, (1946); *Reina v. Hope,* 158 Fla. 771, 30 So. 2d 172, (1947), and the requirement of Section 1, Chapter 22079, Acts of 1943 F.S.A. 192.21.

by C. 22079, No. 19, Acts of 1943 F.S.A. Section 194.53, that after the entry of the *decree of foreclosure, all right, title, interest in or liens on such property shall be cut off and extinguished and forever declared null and void and the title to such lands when conveyed by the county shall be construed in all respects as a new original title.*"

The court goes on to say that considering the act as a whole, it was not meant to "punish the man who makes an honest endeavor year after year to pay his taxes as appellants were alleged to have done in this case. Neither was it designed as a ruse to cut one loose from a title that he was offering year after year to preserve." In so construing the act, the court perhaps did do justice as concerned the present Plaintiff, but what the court failed to consider was the vast effect of such a ruling. What guarantee has the purchaser of property from the county, said county having acquired title through valid tax foreclosure proceedings, that the former owner will not come into court and claim that he was "unlettered in the niceties of real estate transactions"[11] thereby nullifying the tax deed? Will title insurance be written on any property where the chain of title has passed through a county in rem foreclosure proceeding? In effect, the court has here ruled that the title to such property acquired from the county is not a "new and independent title",[12] but one which is open to any equitable defenses which the court may consider valid.

The effect of this decision will be far reaching unless it is reversed or modified at some future date. It is shocking to think that after an equity cause is complete, absolute and final, its subject matter may be relitigated de novo in a proceeding for a writ of possession or writ of assistance. Attorneys should continue to litigate this question in all parts of the state and on every possible occasion in the hope that the court will ultimately realize what disastrous effects such decisions have upon real estate titles and will recede from its position.

11 Note 1, supra.

12 F.S.A. 194.53.

FUTURE INTERESTS—CONTINGENT REMAINDERS—INTENT OF TESTATOR

It makes little difference whether the ultimate enjoyment of an interest in remainder is dependent upon a condition precedent or a condition subsequent: if the right of enjoyment cannot be finally assured until determination of the particular[1] estate, a remainder is contingent

1 "Particular estate" is a term of art used to denote the precedent estate, consequent upon which a remainder vests in possession. "This precedent estate is called the *particular* estate, as being only a small part, or *particula,* of the inheritance. 2 Blackstone, "Commentaries on the Laws of England" (1765), *164.