

SUPREME COURT OF GEORGIA

Ponder v. Ponder, 275 Ga. 616

571 S.E.2d 343 (2002) · No. S02A1209; S02X1210 · Decided October 15, 2002

SUMMARY

The Supreme Court of Georgia considered whether an heir and cotenant's interest in inherited real property had been extinguished through adverse possession, color of title, or procedural defenses. The court held that factual questions remained concerning respondents' knowledge of the cotenancy, fraud, statutory requirements for adverse possession against a cotenant, and laches. It reversed the summary judgment in the main appeal and affirmed the denial of summary judgment in the cross-appeal.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Justice Thompson
JURISDICTION	Georgia
DECIDED	October 15, 2002
DOCKET	S02A1209; S02X1210
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitioner appealed from a final order adopting a special master's report and granting respondents summary judgment in a quiet-title action. Respondents cross-appealed from the denial of summary judgment on laches and statute-of-limitations defenses.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, and judgment is proper only when no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published opinion; precedential authority of the Supreme Court of Georgia.
PARTIES	Stanley A. Ponder v. Kyoto S. Ponder, Respondents' three children

TOPICS

- quiet title
- adverse possession
- title disputes
- summary judgment
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether respondents established as a matter of law that they acquired petitioner's cotenancy interest by adverse or prescriptive possession under color of title.
2. Whether the statutory requirements for adverse possession against a cotenant applied despite respondents' claim that they possessed the property under color of title as owners of the entire estate.
3. Whether factual questions remained regarding respondents' knowledge of the cotenancy, actual ouster or notice, fraud, and good faith.
4. Whether petitioner's quiet-title claim was barred as a matter of law by laches.
5. Whether petitioner's claim was barred by a seven-year statute of limitations.

HOLDINGS

1. Summary judgment for respondents was improper because material factual questions remained regarding whether respondents took possession with actual or implied knowledge that petitioner was a cotenant, whether their possession originated in fraud, and whether they satisfied at least one statutory condition for adverse possession against a cotenant.
2. The court did not resolve the sufficiency of respondents' writings as color of title because factual questions remained regarding whether respondents falsely swore in the no-administration petition and therefore lacked the good faith necessary for prescriptive title.
3. Laches did not bar the claim as a matter of law because mere lapse of time does not bar a cotenant's claim, and whether the circumstances made recovery inequitable was a question of fact.
4. The claim was not barred by a seven-year statute of limitations as a matter of law because Georgia substitutes title by prescription for a statute of limitations in suits to recover land.

KEY QUOTATIONS

“A party who asserts a claim of title by adverse possession must show possession which did not originate in fraud, that is continuous, exclusive, uninterrupted, peaceable, and which is accompanied by a claim of right.” (571 S.E.2d at 345)

“A party who asserts a claim of title by adverse possession against a cotenant has the burden of proving not only the usual elements of prescription, see OCGA § 44-5-161, but also at least one of the elements of OCGA § 44-6-123” (571 S.E.2d at 345-46)

“As between cotenants no bar is shown by mere lapse of time.” (571 S.E.2d at 347)

“Laches, however, operates independently of the statute of limitations.” (571 S.E.2d at 347)

FACTUAL BACKGROUND

James Wallace Ponder died intestate in 1980, leaving petitioner Stanley A. Ponder, his son from a prior marriage, and Kyoto S. Ponder and their three children. Kyoto's 1981 petition for an order declaring no administration

necessary identified herself and her three children as the decedent's only heirs and did not notify Stanley, although respondents knew of his existence and possible relationship to the decedent. Respondents thereafter exchanged recorded renunciations concerning four tracts of land and possessed the property from approximately 1981 onward. Stanley alleged that he did not learn of the probate proceeding until 1998 and filed the quiet-title action in 1999.

PROCEDURAL HISTORY

Stanley A. Ponder brought an action to quiet title and establish an inherited ownership interest in four tracts of land. A special master considered cross-motions for summary judgment, found no material factual disputes, and recommended judgment for respondents; the trial court adopted that recommendation. The Supreme Court of Georgia reversed the summary judgment for respondents in the main appeal and affirmed the denial of respondents' summary-judgment motion on their laches and limitations defenses.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was returned to the trial court for proceedings consistent with the demand for a jury trial. The judgment was reversed in Case No. S02A1209 and affirmed in Case No. S02X1210.

CASES CITED

- Wright v. Wright, 270 Ga. 530, 532, 512 S.E.2d 618 (1999)
- Jordan v. Robinson, 229 Ga. 761, 194 S.E.2d 452 (1972)
- Mattison v. Barbano, 249 Ga. 271, 272, 290 S.E.2d 41 (1982)
- Erwin v. Miller, 203 Ga. 58(3), 45 S.E.2d 192 (1947)
- Capers v. Camp, 244 Ga. 7, 11(3), 257 S.E.2d 517 (1979)
- Graham v. Lanier, 179 Ga. 744, 745-46(2), 177 S.E. 574 (1934)
- Quarterman v. Perry, 190 Ga. 275, 276(4), 9 S.E.2d 61 (1940)
- Lee v. O'Quinn, 103 Ga. 355(3), 30 S.E. 356 (1898)
- Chambers v. Schall, 209 Ga. 18, 20(2), 70 S.E.2d 463 (1958)
- Latham v. Fowler, 192 Ga. 686, 691(1)(c), 16 S.E.2d 591 (1941)
- Johnson v. Sears, 199 Ga. 432, 34 S.E.2d 541 (1945)