

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND DEPARTMENT

Ram v. Dann

84 A.D.3d 1204, 924 N.Y.S.2d 482 (2d Dep't 2011) · Decided May 24, 2011

SUMMARY

The New York Appellate Division affirmed a judgment awarding Paul and Patricia Ram fee-simple title to real property and an order directing the sheriff to convey the property by quitclaim deed. The court held that the third-party plaintiffs failed to prove by clear and convincing evidence that they acquired title by adverse possession, including the required continuity and intent to convey necessary to tack their predecessors' possession.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Angiolillo, J.E.; Dickerson, J.; Belen, J.; Sgroi, J.
JURISDICTION	New York
DECIDED	May 24, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Third-party plaintiffs appealed from a judgment entered after a nonjury trial awarding Paul Ram and Patricia Ram fee-simple title to the subject property and from a subsequent order directing the Suffolk County Sheriff to convey the property by quitclaim deed.
STANDARD OF REVIEW	In a bench trial, the Appellate Division may make its own factual determinations and render the judgment warranted by the facts, while giving appropriate consideration in a close case to the trial judge's opportunity to observe the witnesses.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Third-party plaintiffs v. Paul Ram, Patricia Ram

TOPICS

- adverse possession
- title disputes
- quiet title
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the third-party plaintiffs proved all elements of adverse possession by clear and convincing evidence.
2. Whether the third-party plaintiffs could tack their predecessors' adverse possession onto their own where the disputed parcel was omitted from the deed description.
3. Whether the Supreme Court properly awarded title to the plaintiffs/third-party defendants and directed conveyance of the property by quitclaim deed.

HOLDINGS

1. The third-party plaintiffs failed to prove by clear and convincing evidence that they acquired title to the subject parcel by adverse possession.
2. Successive adverse possessions may be tacked for property omitted from a deed only when the evidence shows that the prior adverse possessor intended to and actually transferred possession of the omitted property with the portion included in the deed; the third-party plaintiffs failed to make that showing.
3. Although the Appellate Division has broad authority to make its own factual determinations in a nonjury case, it may give weight in a close case to the trial judge's opportunity to observe the witnesses.

KEY QUOTATIONS

“A party seeking to obtain title by adverse possession must prove by clear and convincing evidence the following common-law requirements of adverse possession: that (1) the possession was hostile and under claim of right; (2) it was actual; (3) it was open and notorious; (4) it was exclusive; and (5) it was continuous for the statutory period of 10 years” (1205)

“Reduced to its essentials, this means nothing more than that there must be possession in fact of a type that would give the owner a cause of action in ejectment against the occupier throughout the prescriptive period” (1205)

“The rule is that successive adverse possessions of property omitted from a deed description, especially contiguous property, may be tacked if it appears that the adverse possessor intended to and actually turned over possession of the undescribed part with the portion of the land included in the deed” (1206)

FACTUAL BACKGROUND

The dispute concerned a parcel of real property omitted from the description in a deed. The third-party plaintiffs claimed that they acquired the parcel by adverse possession and sought to tack their predecessors' possession onto their own. It was undisputed that the third-party plaintiffs themselves had not continuously possessed the parcel for the required ten-year statutory period, and they failed to establish that their predecessors intended to convey the omitted parcel together with the land described in the deed.

PROCEDURAL HISTORY

The Supreme Court, Suffolk County, after a nonjury trial, determined that the plaintiffs/third-party defendants held fee-simple title to the property and entered judgment accordingly. The court later directed the Sheriff of Suffolk County to convey the property by quitclaim deed. The Appellate Division deemed the appeal from the order an application for leave to appeal, granted leave, and affirmed both the judgment and order.

DISPOSITION

affirmed

CASES CITED

- Skyview Motel, LLC v Wald, 82 A.D.3d 1081, 1082 (2011)
- BTJ Realty, Inc. v Caradonna, 65 A.D.3d 657, 658 (2009)
- Goldschmidt v Ford St., LLC, 58 A.D.3d 803, 804-805 (2009)
- Hall v Sinclair, 35 A.D.3d 660, 662 (2006)
- Brand v Prince, 35 N.Y.2d 634, 636-637 (1974)
- Best & Co. Haircutters, Ltd. v Semon, 81 A.D.3d 766, 767 (2011)
- Ray v Beacon Hudson Mtn. Corp., 88 N.Y.2d 154, 159 (1996)
- Walsh v Ellis, 64 A.D.3d 702, 703-704 (2009)
- Reis v Coron, 37 A.D.3d 803, 804 (2007)
- Zeltser v Sacerdote, 52 A.D.3d 824, 825-826 (2008)
- Northern Westchester Professional Park Assoc. v Town of Bedford, 60 N.Y.2d 492, 499 (1983)

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