

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)

OPINION

PER CURIAM.

In an action pursuant to RPAPL article 15 to determine claims *1205to real property, the third-party plaintiffs appeal from (1) a judgment of the Supreme Court, Suffolk County (Seidell, J.H.O.), dated July 8, 2008, which, after a nonjury trial, inter alia, awarded the plaintiffs/third-party defendants Paul Ram and Patricia Ram title to the subject real property in fee simple absolute, and (2) an order of the same court dated March 13, 2009, which, upon the judgment, among other things, directed the Sheriff of Suffolk County to convey the subject property to the plaintiffs/third-party defendants by quitclaim deed.

Ordered that on the Court's own motion, so much of the notice of appeal as appealed from the order is deemed to be an application for leave to appeal from the order, and leave to appeal is granted (see CPLR 5701 [c]); and it is further, Ordered that the judgment and the order are affirmed, without costs or disbursements. "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” (Skyview Motel, LLC v Wald, 82 AD3d 1081, 1082 [2011]; see BTJ Realty, Inc. v Caradonna, 65 AD3d 657, 658 [2009]; Goldschmidt v Ford St., LLC, 58 AD3d 803, 804 [2009]). “ ‘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’ ” (Hall v Sinclair, 35 AD3d 660, 662 [2006], quoting Brand v Prince, 35 NY2d 634, 636 [1974]). “Additionally, where, as here, the adverse possession is not founded upon a written instrument, the possessor must also establish, in accordance with the law in effect at the time this action was commenced, that the disputed property was either ‘usually cultivated or improved’ or ‘protected by a substantial inclosure’ ” (Skyview Motel, LLC v Wald, 82 AD3d at 1082, quoting RPAPL former 522; see BTJ Realty, Inc. v Caradonna, 65 AD3d at 658; Goldschmidt v Ford St., LLC, 58 AD3d at 805). “Since adverse possession is disfavored as a means of gaining title to land, all elements of an adverse possession claim must be proved by clear and convincing evidence” (Best & Co. Haircutters, Ltd. v Semon, 81 AD3d 766, 767 [2011]; see Ray v Beacon Hudson Mtn.

Corp., 88 NY2d 154, 159 [1996]; Walsh v Ellis, 64 AD3d 702, 703-704 [2009]). While “[t]his Court’s ‘authority to make factual determinations is as broad as that of the trial court and... as to a bench trial [this Court] may render the judgment [this Court] find[s] war*1206 granted by the facts,’ ” this Court will also “ ‘tak[e] into account in a close case the fact that the trial judge had the advantage of seeing the witnesses’ ” (Best & Co. Haircutters, Ltd. v Semon, 81 AD3d at 767 [some internal quotation marks omitted], quoting Zeltser v Sacerdote, 52 AD3d 824, 825-826 [2008]; see Northern Westchester Professional Park Assoc. v Town of Bedford, 60 NY2d 492, 499 [1983]).

Here, the Supreme Court properly determined that the third-party plaintiffs failed to demonstrate by clear and convincing evidence that they acquired title, by adverse possession, to the parcel that is the subject of the third-party action. It is undisputed that the third-party plaintiffs themselves did not continuously possess the subject parcel for the statutory period of 10 years.

The third-party plaintiffs assert that they should be entitled to tack on the immediately preceding period, during which their predecessors in interest possessed the subject parcel. However, “[t]he 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” (Brand v Prince, 35 NY2d at 637; see Reis v Coron, 37 AD3d 803, 804 [2007]).

Here, the Supreme Court properly concluded that the third-party plaintiffs failed to demonstrate that their predecessors in interest intended to convey the subject parcel along with the portion of the land included in the deed. Angiolillo, J.E., Dickerson, Belen and Sgroi, JJ., concur.

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