

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

Pakula v. Podell

103 A.D.3d 864, 962 N.Y.S.2d 254 (N.Y. App. Div. 2d Dep't 2013) · Decided February 27, 2013

SUMMARY

The Appellate Division, Second Department, reversed an order granting the plaintiff summary judgment in an action involving disputed real property, quiet title, ejectment, and adverse possession counterclaims. Applying the pre-2008 adverse possession law because title allegedly vested by 1999, the court held that the plaintiff failed to establish prima facie that the defendants' possession was not under a claim of right or was nonexclusive.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Rivera, J.P.; Chambers, J.; Hall, J.; Miller, J.
JURISDICTION	New York
DECIDED	February 27, 2013
DISPOSITION	reversed
PROCEDURAL POSTURE	The Podell defendants appealed from an order granting the plaintiff summary judgment on her first and third causes of action and dismissing their counterclaims.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether the movant established entitlement to judgment as a matter of law; the court held that the plaintiff failed to establish prima facie that the defendants' possession was not under a claim of right or was nonexclusive.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Herbert Podell, Loraine Podell v. Pakula

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the adverse-possession law in effect before the 2008 statutory amendments governed the Podell defendants' claim.
2. Whether the plaintiff established prima facie entitlement to summary judgment on her quiet-title and ejectment claims and dismissal of the Podell defendants' adverse-possession counterclaims.
3. Whether the Appellate Division should search the record and award the Podell defendants summary judgment on their adverse-possession counterclaim.

HOLDINGS

1. Because the Podell defendants' title allegedly vested no later than 1999, the adverse-possession law in effect before the 2008 amendments applied to their claim.
2. To establish adverse possession under the applicable pre-2008 law, the claimant had to prove possession that was hostile and under a claim of right, actual, open and notorious, exclusive, and continuous for the required period.
3. The plaintiff was not entitled to summary judgment on her quiet-title and ejectment claims or to dismissal of the Podell defendants' counterclaims because she failed to establish prima facie that their possession was not under a claim of right or was nonexclusive.

KEY QUOTATIONS

“Accordingly, to establish a claim to property by adverse possession, the Podell defendants were required to prove, inter alia, that their possession of the property was: (1) hostile and under a claim of right, (2) actual, (3) open and notorious, (4) exclusive, and (5) continuous for the required period” (865)

FACTUAL BACKGROUND

The parties owned adjoining properties in East Hampton. The plaintiff alleged that the Podell defendants encroached onto her property by planting shrubbery and trees in the disputed area. The Podell defendants claimed that they had acquired title to that area by adverse possession, with title allegedly vesting no later than 1999.

PROCEDURAL HISTORY

The plaintiff brought an action under RPAPL article 15 to quiet title and eject the Podell defendants from a disputed area allegedly encroached upon by shrubbery and trees. The Podell defendants counterclaimed that they had acquired the disputed area by adverse possession and sought an injunction protecting their property rights. The Supreme Court, Suffolk County, granted the plaintiff summary judgment and dismissed the counterclaims; the Appellate Division reversed and denied the plaintiff's motion.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order was reversed, with costs; the plaintiff's motion for summary judgment on her first and third causes of action and for dismissal of the Podell defendants' counterclaims was denied.

CASES CITED

- Hogan v. Kelly, 86 A.D.3d 590 (N.Y. App. Div. 2d Dep't 2011)
- Walling v. Przybylo, 7 N.Y.3d 228, 232 (2006)

OPINION

PER CURIAM.

In an action, inter alia, pursuant to RPAPL article 15 to determine claims to certain real property, the defendants Herbert Podell and Loraine Podell appeal from an order of the Supreme Court, Suffolk County (Asher, J.), dated October 20, 2011, which granted the plaintiffs motion for summary judgment on her first and third causes of action and dismissing their counterclaims.

Ordered that the order is reversed, on the law, with costs, and the plaintiffs motion for summary judgment on her first and third causes of action and dismissing the counterclaims is denied. The plaintiff and the defendants Herbert Podell and Loraine Podell (hereinafter together the Podell defendants), are the owners of adjoining properties in East Hampton.

The plaintiff commenced this action, inter alia, pursuant to RPAPL article 15 to quiet title and to eject the Podell defendants, who had allegedly encroached onto her property by, inter alia, planting shrubbery and trees.

The Podell defendants counterclaimed, alleging that they had acquired title to the disputed area by adverse possession, and sought to enjoin the plaintiff from interfering with their property rights. In 2008, the Legislature enacted changes to the adverse possession statutes (see L 2008, ch 269).

Here, however, since title allegedly vested in the Podell defendants at the latest, in 1999, the law in effect prior to the amendments is applicable to their claim (see Hogan v Kelly, 86 AD3d 590 [2011]). Accordingly, to establish a claim to property by adverse possession, the Podell *865defendants were required to prove, inter alia, that their possession of the property was: (1) hostile and under a claim of right, (2) actual, (3) open and notorious, (4) exclusive, and (5) continuous for the required period (see Walling v Przybylo, 7 NY3d 228, 232 [2006]).

The Supreme Court erred in granting the plaintiffs motion for summary judgment on her first cause of action, which sought to quiet title to the subject disputed area, and her third cause of

action, which sought ejectment, and dismissing the counterclaims of the Podell defendants, which sought, inter alia, to enjoin the plaintiff from interfering with their property rights.

The plaintiff failed to establish, prima facie, that the Podell defendants' possession was not under a claim of right or nonexclusive (see *id.* at 232). The plaintiffs remaining contentions are without merit. Accordingly, the Supreme Court should have denied the plaintiffs motion for summary judgment on her first and third causes of action and dismissing the Podell defendants' counterclaims.

We decline the Podell defendants' request that we search the record and award them summary judgment on their counterclaim alleging adverse possession. Rivera, J.P, Chambers, Hall and Miller, JJ., concur.