SUPREME COURT OF GEORGIA

Canoeside Properties, Inc. v. Livsey; Ferdinand v. Livsey, 277 Ga. 425

589 S.E.2d 116 (2003) · No. Nos. S03A0966, S03A1155 · Decided November 26, 2003

SUMMARY

The Supreme Court of Georgia held that an interlocutory appeal was timely despite an earlier defective application and that the trial court could vacate and reenter its interlocutory orders. On the merits, the court held that a judicial tax foreclosure sale was void because the property had already been conveyed to Livsey but was sold in the name of Livsey's grantor. The judgment denying summary judgment to the defendants was affirmed.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Benham
JURISDICTION	Georgia
DECIDED	November 26, 2003
DOCKET	Nos. S03A0966, S03A1155
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from denial of summary judgment to defendants in an action to set aside a deed from a judicial tax foreclosure sale.
STANDARD OF REVIEW	De novo
PRECEDENTIAL VALUE	binding
PARTIES	Canoeside Properties, Inc.; Arthur E. Ferdinand v. Leonard E. Livsey

TOPICS

wrongful foreclosure · property tax · appellate procedure · real estate · civil procedure

PRACTICE AREAS

real estate · tax · appellate procedure · civil procedure

QUESTIONS PRESENTED

1. Whether Ferdinand's application for interlocutory appeal was timely under OCGA § 5-6-34(b) after the trial court vacated and re-entered its order denying summary judgment.
2. Whether a tax sale of property is void when the property is sold in the name of a person who was not the owner at the time of the sale.

HOLDINGS

1. No. A defective attempt to seek interlocutory review pursuant to OCGA § 5-6-34(b) does not have the effect of making the judgment appealed from res judicata of the issue.
2. Yes. Summary judgment orders are interlocutory and remain within the breast of the court until final judgment, subject to revision at any time.
3. Yes. When property is sold at a tax sale as the property of someone other than the actual title holder, the sale is void and passes no title.

KEY QUOTATIONS

> *"A defective attempt to seek interlocutory review pursuant to OCGA § 5-6-34(b) does not have the effect of making the judgment appealed from res judicata of the issue."* (at 427)

> *"One cannot transfer or convey an interest in real property greater than he has. [Cits.] Generally, the tax sale of property belonging to someone other than the delinquent taxpayer is not recognized as a proper sale. [Cit.] ... [W]here the owner fails to return the land [for taxation], there is no provision of law whereby his title can be divested by levy and sale as the property of another person under a tax execution issued against such other person. [Cit.] When a person without lawful authority sells and conveys as his own real property belonging to another person and receives the consideration paid, "such pretended sale and conveyance will not operate to divest the title of the owner nor will the purchaser derive any title." [Cit.] ... [I]f the tax commissioner attempted a levy and sale of property neither owned by nor titled to [the defendant in fi. fa]. ..., it would appear that the tax commissioner had nothing to sell or to convey. [Cits.] The purchaser of property at a void tax sale is entitled only to a return of his money. [Cit.]"* (at 428-29)

FACTUAL BACKGROUND

Livsey purchased property in Fulton County in July 1999 and filed the deed. In August 1999, Ferdinand, as Tax Commissioner, filed a judicial in rem tax foreclosure petition naming Livsey's grantor as the owner. Canoeside bought the property at the resulting tax sale in November 1999. Livsey then filed a petition to quiet title, tendering the difference between the sale price and tax liability into court.

PROCEDURAL HISTORY

Livsey filed a petition in equity to quiet title against Canoeside and Ferdinand. The trial court denied both defendants' motions for summary judgment. The Supreme Court granted applications for interlocutory review.

DISPOSITION

affirmed

CASES CITED

- Powell v. City of Snellville, 275 Ga. 207, 563 S.E.2d 860 (2002)
- Glenn v. State, 271 Ga. 604, 523 S.E.2d 13 (1999)
- International Indem. Co. v. Robinson, 231 Ga.App. 236, 498 S.E.2d 795 (1998)
- Mitchell v. Oliver, 254 Ga. 112, 327 S.E.2d 216 (1985)
- Wade v. Whalen, 232 Ga.App. 765, 504 S.E.2d 456 (1998)
- Clarence L. Martin, P.C. v. Wallace, 248 Ga.App. 284, 546 S.E.2d 55 (2001)
- GE Capital Mtg. Svcs. v. Clack, 271 Ga. 82, 515 S.E.2d 619 (1999)

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