

SUPREME COURT OF ILLINOIS

Wehrheim v. Smith

226 Ill. 346 (1907) · Decided February 21, 1907

SUMMARY

The Illinois Supreme Court held that a judgment creditor with a valid lien was a necessary party to a foreclosure proceeding if the foreclosure sought to affect the creditor's rights. Because the creditor's rights were established when the equity action was filed, the later dormancy of the judgment did not eliminate the creditor's right to redeem, and the lower court was directed to protect the lien through an appropriate decree.

OPINION

WIEICIN, J.

Mr. Justice Wieicin delivered the opinion of the court: The judgment of the Euclid Avenue Savings and Banking Company against Otto C. Meinshausen, which was subsequently assigned to the appellee, was, as above stated, rendered November 10, 1897, and execution having been issued thereon within a year, under section 1 of chapter 77 (Hurd's Stat. 1905, p. 1253,) became a lien on the real estate of Meinshausen for a period of seven years from the date of its rendition.

Meinshausen purchased the premises involved in this suit on September 11, 1901, and said judgment became a lien thereon subject to the trust deed to appellant, which was given to secure a part of the purchase price.

In other words, it became a lien on the difference between the value of the property and the amount necessary to discharge the balance due appellant upon her trust deed. This was the condition of affairs on July 1, 1902, when appellant filed her bill for the foreclosure of the trust deed, and therefore appellee was not only a proper party to that foreclosure proceeding, but was a necessary party, if appellant sought thereby to affect in any way his rights and interest in the premises.

(*Boynton v. Pierce*, 151 Ill. 197; *Beadle v. Cole*, 173 id. 136; *People v. Bowman*, 181 id. 421.) If appellee had been made a party defendant in that case he would have had an opportunity to be heard concerning his rights, and those rights could have been determined and fixed by the decree.

In that case he might have been compelled, under section 20 of chapter 77, to redeem from the foreclosure sale after the expiration of twelve months and before the expiration of fifteen months from the date thereof, and upon failure to do so his equity of redemption would have been forever foreclosed and the absolute fee simple title vested in the purchaser.

The appellant, however, did not see fit to make him a party defendant, and therefore the decree of foreclosure and sale had no force or effect whatever upon his rights, which remained the same as if that proceeding had never been had. (*Rodman v. Quick*, 211 Ill. 546.) At the expiration of the fifteen months from the date of sale, there having been no redemption, appellant received from the master-a deed to the premises on March 23, 1904.

That deed, however, was subject to any outstanding rights of appellee as a judgment creditor. On May 4, 1904, as stated above, appellant filed her bill against appellee to settle and determine his rights to the premises, which is said by her counsel to be in the nature of a supplemental bill to the original foreclosure proceeding. At the time it was filed appellee's judgment was still in full force and effect, and an execution could have been issued upon it on that day and levied upon any property of the judgment debtor which was subject to levy.

Between the filing of the bill and rendering the decree, which was on February 17, 1905, some nine months intervened. Appellee's judgment having been rendered on November 10, 1897, and execution duly issued within a year, remained a valid lien until November 10, 1904, or about six months after appellant filed her bill to determine appellee's rights as a judgment creditor.

If a decree had been rendered upon her bill within that six months there could have been no doubt but that, the judgment being in full force and effect, the relief sought under appellee's answer would have been granted. But it is claimed by appellant that on the day the decree was- actually rendered the judgment of appellee had become dormant by lapse of time; that no execution could then be issued upon the same, and therefore there could be no redemption from the foreclosure sale under the provisions of the statute, and therefore he had no interest in the premises and no' right to redeem therefrom.

We do not think this contention can be maintained. On the day the bill was filed, and for six months thereafter, the judgment of appellee was in full force and effect. A suit had been commenced in equity by complainant to determine the rights of appellee as a judgment creditor. A summons had been served upon him and he had appeared and set up his right to redeem.

A court of equity therefore had jurisdiction of the person of appellee and of the subject matter of the suit. It is a well known rule that when a court of equity acquires jurisdiction for one purpose it acquires jurisdiction for all purposes, and will do full and complete justice between all the parties and determine all their rights. It makes no difference that some of those rights may be in the nature of legal rights which otherwise could not be enforced outside of a court of law.

(*Morrison v. Morrison*, 140 Ill. 560; *Pool v. Docker*, 92 id. 501; *Keith v. Henkleman*, 173 id. 137; *Longshore v. Longshore*, 200 id. 470.) The rights of the parties in this case were fixed and determined upon the date the bill was filed.

The decree related back to the filing of the bill, and the rights of the parties should have been fixed as of that date. The mere fact that six months after that date, and before the rendition of the decree, the judgment of appellee had become dormant makes no difference. That judgment could have been revived in a court of law by scire facias, but appellee was not required, under the circumstances, to go from a court of equity to a court of law for the purpose of reviving the judgment.

A court of equity had full power and authority to determine the equities of the parties and make a decree protecting appellee's rights. If the decree for any reason was not rendered until after November 10, 1904, it was the duty of the court to provide in its decree for an extension or revival of the judgment and not to compel appellee to resort to his action at law for that purpose.

The record shows, however, that on January 27, 1905, the judgment was revived by appellee in the superior court of Cook county, and on January 28 this fact was called to the attention of the circuit court. This was twenty days before the rendition of the decree. But notwithstanding all these facts the court entered a decree barring appellee from all right of redemption.

Upon a consideration of all the facts we are convinced that the decree of the circuit court was erroneous, and that the Appellate Court committed no error in reversing said decree and remanding the cause to the circuit court for further proceedings.

The judgment of the Appellate Court will therefore be affirmed. We do not, however, agree with all the views expressed by the Appellate Court, and upon reinstatement of the cause in the circuit court that court is directed to enter a decree against the property in question in favor of appellee for the amount of his judgment, interest and costs, fixing a day within which the same may be paid by appellant and the property thereby relieved from the lien, and providing that in default of such payment said premises be sold to satisfy said judgment, interest and costs, and costs of sale, subject to the right of redemption.

Judgment affirmed.