

SUPREME COURT OF ILLINOIS

Hardin v. Forsythe

99 Ill. 312 (1880) · Decided May 18, 1880

OPINION

CRAIG, J.

Mr. Justice Craig delivered the opinion of the Court: It is contended, on behalf of the plaintiff, that the “defendants having entered upon the possession of the plaintiff, they are not allowed in law to set up, in defence of suit to restore possession, a title in some third party, under whom they have no authority to act, and have none such till suit commenced, and even if they obtain it afterwards and before suit, it does not avail.” In this connection it is urged that the court erred in refusing plaintiff’s instruction Ho.

14, which was as follows: “If the jury find, from the evidence, that the plaintiff was first in the actual possession of the land in controversy, under a deed purporting to convey such land to him, and find also that afterwards the defendants entered upon such possession against the will and without the permission of the plaintiff, having no better title to the land than the plaintiff had, and remaining there till the commencement of this suit, having acquired no better title than the title of the plaintiff at the commencement of the suit, February 17, 1866, then the jury are instructed that the law is for the plaintiff, and he has a right to recover t^lie possession of the premises of the defendants.” The law may be regarded as well settled by the decisions of this court and the courts of other States, that a tenant can not dispute the title of his landlord.

Where a person enters into the possession of lands as a tenant, before he can assail or call in question the title of the landlord under which he entered, he must restore the possession, — he must place the landlord in the same position he occupied before he parted with the possession of his lands. *Tilghman v. Little*, 13 Ill. 239; *Franklin v. Palmer*, 50 id. 202.

The same principle which forbids a tenant to dispute the title of his landlord, applies to any person who may acquire the possession from, through or under the tenant. If, by collusion with the tenant, or through other means, he is induced to vacate and surrender the possession to a stranger, such person will acquire no greater rights than the one who occupied as a tenant.

This rule of law is founded in justice, and any departure from it would prove disastrous to the rights of landholders, especially where titles are defective, and would be of no practical benefit to the occupant unless it might aid a designing and dishonest tenant to take advantage of his position to turn over the land occupied by him to some one who had a conflicting title in the premises.

Courts are not, however, organized to encourage the reckless or the dishonest, or to assist them in their dishonest schemes. But while the rule is well established that a tenant can not dispute the title of his landlord, or set up an adverse title to that of the landlord, he may, however, show that the title of the landlord has terminated, — that the landlord has conveyed to another, or that his title has been sold on execution, and in that manner passed into other hands.

The tenant may purchase, himself, of the landlord, and in such a case he is under no obligation to surrender the possession back to the landlord, but should the landlord, after a conveyance to the tenant, undertake to recover the possession from the tenant, the tenant may defeat a recovery by showing a purchase and conveyance of the property.

The same principle will apply where a stranger succeeded to the possession of the tenant, and then obtained a deed from the landlord. He would, in such a case, be under no obligation to restore the possession to the landlord, but the deed of the landlord would be a sufficient protection as against any action the landlord might bring to recover the possession of the premises.

As was said in *Franklin v. Palmer*, supra: “ When the landlord conveys his title to his tenant, the latter is not bound to restore possession to his^o landlord, and then resort to an action to regain possession. By receiving a deed from his landlord, the relation of landlord and tenant ceases, and the tenant then is in and holds as grantee, and he is in under the same title under which he entered.

When a landlord conveys to a stranger, the tenant is not bound to restore possession to his landlord, but may attorn to his grantee, and in doing so he does not dispute his landlord’s title, but fully recognizes and submits to it; and after such a conveyance the tenant may attorn to the grantee, and if sued by his former landlord for possession, he may set up his deed to his grantee to defeat a recovery.” Conceding the correctness of the proposition that an intruder upon the possession of one in the quiet and peaceable possession of lands can not, when sued in ejectment, set up title in a third party or in himself to defeat the action, as declared by the authorities cited by plaintiff in his argument, yet it by no means follows that the court erred in refusing the instruction.

One branch of the defence interposed by the defendants was, that after they took possession of the premises, and after suit brought, they obtained Wake-man’s title, who was plaintiff in the action. If the jury, from the evidence, found the fact to be that after the suit was commenced the defendants acquired the plaintiff’s title, we perceive no reason why such fact would not defeat a recovery on behalf of plaintiff.

But this principle was entirely ignored by the instruction. Suppose defendants did invade plaintiff’s possession and oust his tenant, when sued in ejectment, while they might not have the right to defend by proving an outstanding title, they had an undoubted right to prove that plaintiff’s title had expired, or that they had purchased plaintiff’s title after the action was commenced.

This suit was brought by Seth W. Hardin and Maurice Wakeman. Each filed a count in the declaration for the whole of the premises. It will be remembered -that the land was entered by Egan in 1836, March 25th. On the 7th day of July, 1836, he conveyed the premises to Wakeman, who paid all taxes assessed on the land for seven successive years, while it was vacant.

How, while the deed to Wakeman was not placed upon record until judgment liens had attached to the land against Egan, yet if Wakeman obtained possession of the land under his color- of title and payment of taxes, there can be no doubt he would hold the land as against those who acquired title by sale on judgment against Egan.

On the trial there was ample proof before the jury from which •they might find that Wakeman, on the 1st day of August, 1860, leased the premises to Seth W. Hardin, and that Hardin, in the fall of 1860, leased to James A. Perry and James Hamilton, who then were in the actual possession of the premises as squatters, without title.

Thus Hardin was in the possession of the land as a tenant of Wakeman. He is, therefore, in no position to dispute the title of Wakeman, who is his landlord. He is estopped by the lease. How, conceding it to be true that the defendants, when they entered upon the land, were intruders, they did not, how- - ever, intrude upon the possession of Hardin, but upon the possession of his lessees, who were the tenants of Wakeman.

It was, therefore, Wakeman's possession which was invaded, and he alone had a right to complain. When, therefore, on the trial, the defendants read in evidence a deed from Wake-man to Lord, and from Lord to themselves, we can not perceive how the jury could do otherwise than render a verdict in favor of the defendants.

The plaintiff, Wake-man, could not recover because he was estopped by his deed, as held in Jackson v. Dement, 9 Johns. 55. Hardin could not recover because he was a tenant of Wakeman, whose deed transferred not only the title, but the possession of the land to the defendants.

The plaintiff seemed to concede, by his instructions to the jury, that if the evidence established color of title, payment of taxes seven successive years, and possession in Wakeman, no recovery could be had, as is apparent from instruction Ho. 3, as follows: " As to the defence of title in Wakeman before suit brought, the jury are instructed, that to constitute this defence there should be in Wakeman: 1st.

Color of title in Wakeman. 2d. Payment of taxes for seven successive years, while the land is vacant. 3d. Subsequent possession of such land under such color of title, by himself or his tenant. Unless the jury find all of these points in favor of the defence, they must find for the plaintiff in this respect, as to title." The testimony before the jury was ample to establish each of the propositions named in the instruction in favor of the defendants, and doubtless the verdict of the

jury was founded upon the evidence of this branch of the case, under the law, as declared in plaintiff's instruction.

It is contended that the court erred in refusing plaintiff's 15th instruction. The law in regard to the validity, force and effect of the lease between Wakeman and Hardin was, in our judgment, fully given to the jury in plaintiff's instruction No. 4, and even if the refused instruction was free from objection, which it is not necessary here to determine, no error was committed.

Plaintiff also urges that the court erred in refusing his instructions Nos. 16 and 18. These instructions undertake to raise a question as to the strict legality of the lease as between Hardin and Wakeman. Whether Wakeman could have maintained an action against Hardin on the lease for any violation of its terms, is a question which did not arise on the trial.

If the lease was sufficient to create the relation of landlord and tenant between the parties, that was all that was necessary, and other questions were immaterial under the facts before the jury. We do not regard the instructions proper, and they were rightfully refused. It is also contended that the court erred in refusing other instructions of plaintiff, which it will not be necessary to refer to.

The jury was fully, and in our judgment fairly, instructed in regard to all questions which properly arose in the case, and even if some of the refused instructions were technically correct, the court did not err in refusing them.

The ruling of the court in the exclusion of evidence is relied upon as error. The record of a writ of forcible entry in Will county, (*Perry v. Kirk*), had no bearing on any issue on the case. The fact that a suit had been commenced and dismissed, would prove nothing either for or against the plaintiff, and as it was irrelevant, the court properly excluded the evidence.

The bill of exceptions, which contained an admission of the counsel for the defendant on a former trial, was properly ruled out. The admission was made only on and for the trial at the time it was made, and could not be used on a subsequent trial without the consent of defendants.

The plaintiff, on the trial, offered to prove the contents of a record of a deed which was recorded in Cook county, made by Wakeman to Ebenezer Dimon, purporting to convey the land in question. The court properly excluded the offered evidence, if for no other reason on the ground it did not appear that plaintiff could not produce the original deed, nor was it shown that plaintiff had used due diligence to procure a certified copy.

Some other questions of minor importance have been discussed by counsel for appellant, but we do not regard it necessary to consider them here. So far as appears from the record, the case was fairly submitted to the jury, under proper instructions, and we perceive no reason for disturbing the verdict and judgment.

The judgment will be affirmed. Judgment affirmed.

