

1977

Charles Walter Rushton v. Sage Land Co. : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

CHARLES WALTER RUSHTON, :
Plaintiff-Appellant, :
v. : Case No. 15295
SAGE LAND COMPANY, :
Defendant-Respondent.:

APPELLANT'S BRIEF

Appeal from the Granting of Defendant's Motion For Summary Judgment,
in the District Court of Uintah County, State of Utah,
Honorable J. Robert Bullock, Judge

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v. :

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STATEMENT OF THE NATURE OF THE CASE

Appellant appeals from the granting of respondent's motion for summary Judgment.

DISPOSITION IN THE LOWER COURT

On June 16, 1976, a pretrial conference was held in the District Court in and for Uintah County, the Honorable J. Robert Bullock presiding. It was there stipulated by counsel that no material issue of fact remained to be decided and that the case could be decided on motion for summary judgment. Motions for summary judgment were duly filed with appropriate memoranda of points and authorities, oral argument held on August 27, 1976. On September 3, 1976, Judge Bullock ruled in respondent's favor.

RELIEF SOUGHT ON APPEAL

Appellant seeks to have the lower court determination vacated and judgment entered in its favor.

STATEMENT OF FACTS

On June 16, 1976, counsel for both parties stipulated to the following facts:

1. That defendant was the present record owner of the property in question, having purchased the property in a valid "May Sale" in 1973.

2. That plaintiff was the prior record owner of said property but was delinquent in the payment of his property taxes.
3. The property was sold in a preliminary sale to Uintah County in 1968 for nonpayment of taxes.
4. That plaintiff did not redeem the property prior to or on April 1, 1973 and, therefore, lost his right of redemption pursuant to Sec. 59-10-56 (1974).
5. That a check from plaintiff dated May 21, 1973, to Uintah County was in the hands of the Uintah County Clerk prior to May 23, 1973, the date of the valid "May Sale"
6. That plaintiff did not appear at, participate at, bid at, or in any other manner or respect participate in the valid "May Sale".

ARGUMENT

DOES TERMINATION OF PLAINTIFF'S RIGHT OF REDEMPTION UNDER SEC. 59-10-56, UTAH CODE ANNO., 1953, AS REVISED IN 1974, BAR PLAINTIFF'S RIGHT TO REDEEM AFTER THE STATUTORY FOUR YEAR PERIOD HAS RUN BUT PRIOR TO A VALID "MAY SALE".

The most recent Utah case touching on this narrow point of law is Salt Lake Home Builders, Inc. v. Colman, 30 Ut. 2d 379, 518 P.2d 165 (1974). The reasoning of Justice Crockett's majority opinion is clear and unmistakable:

"[1] We are cognizant of the language of those cases. But even though they speak about ownership by the county, they also recognize

that the fee owner (plaintiff) does continue to have some interest in his property and a method of restoring full ownership to himself. In any event, that is the necessary, and the only reasonable conclusion that can be derived from an examination of our statutes. If the owner were divested of all interest in his property, and it was completely vested in the county, the owner would have no better standing than any other purchaser at the May sale. But such is not the fact.

* * *

"[3] From the foregoing it seems incontrovertible that the fee owner has an interest in his property which he can regain by payment of the amount due the county; and it is not of any great moment what terminology is used, right of redemption, reversion, or whatever.

"[4] That comes down to this proposition: as pointed out above, the plaintiff owner has the underlying ownership in the property, which can be reclaimed until there is a valid May sale; and this claim of ownership is superior to any asserted claim of the defendants, who have failed to acquire a valid title because of fatal defect in the taxing procedure."

It is clear that the above language indicates that plaintiff-appellant retained an interest in the property and that he could redeem that property until a valid "May Sale" occurred. The stipulated facts indicate that plaintiff redeemed the property prior to the valid "May Sale." In the lower court respondent attempted to discredit the use of Home Builders, supra, because the purported "May Sale" in Home Builders was, in fact, invalid while in the case at bar the "May Sale" was valid. Respondent's position was that if the "May Sale" were invalid, then any redemption prior to such sale would be valid, but if the "May Sale" were valid, then any redemp-

tion prior to such sale and after the four year statutory period is useless. In effect, respondent argues that redemption exists only if after the redemption the "May Sale" proves faulty. Such reasoning simply has no basis in logic. Such a position is untenable in the light of Home Builders, supra. As was noted in Home Builders, the defendants there argued essentially that after the four year statutory period no right of redemption existed. Defendants in the present case seek to further require the prior owner to be present at the "May Sale" if he wishes to buy the land at all after the four year statutory period has run. These arguments have no validity in the face of Justice Crockett's majority opinion.

The issue before this Court, as it was before the lower court, is whether or not Home Builders, supra, is still valid law. The lower court avoided this issue by declaring the language dicta. With all due respect to the lower court, the language in Home Builders is not dicta because the holding in the case granting plaintiffs the right to redeem cannot be reached without the reasoning used by Justice Crockett. If the lower court were correct, the case would have held the "May Sale" invalid, thereby denying defendants the deed, and the Court would have denied plaintiffs relief because their right of redemption would have terminated with the end of the four year statutory period. However, in an attempt to explain its holding in favor of plaintiff, the Court discussed the existence of a right of redemption. Consequently, the language in Home Builders as quoted in this brief is not dicta.

faulty. The issue before the Court in Home Builders was not just the validity of the "May Sale." To rule in favor of plaintiff a second issue was also the right of redemption after the four year statutory period. Respondent's argument fails to analyze the case completely.

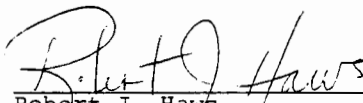
Should Home Builders continue to be followed? The answer must be yes. The language of the statute is the same now as then and the interpretation given by the Court in Home Builders is still reasonable. Furthermore, the policy considerations still remain: 1) Should private property be sold for less than value, the loss to be borne by the owner; 2) Should a private property owner be allowed an opportunity to redeem himself from unfortunate circumstances so that his investment is not lost; 3) All people must pay their property taxes. Of the three policies, none are violated by the rule announced in Home Builders. Furthermore, respondent cannot argue that he is entitled by right or law to a windfall. Such a right cannot stand next to the above policies.

Finally, for purposes of this case, there are no equitable principles that warrant a finding in favor of defendants. They have made no substantial investment, improvement, or anything else. In this case plaintiff has paid the 1974, 1975 and 1976 taxes and he has further offered and is willing to reimburse defendants for any and all sums expended at the "May Sale" with interest to comply in every way with Home Builders, supra.

CONCLUSION


Appellants submit that the controlling case in this matter is Home Builders, supra, and that no reason exists to overturn that decision and, therefore, appellant submits that this Court should vacate the lower Court's decision and enter judgment in favor of appellant.

Respectfully submitted,



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Mailed two copies of the foregoing Appellant's Brief this 11th day of October, 1977, postage prepaid, to Roger A. Livingston, Attorney for Defendant-Respondent, 530 East Fifth South, Salt Lake City, UT 84111.



Robert J. Haws