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Maria B. Lepasiotes v. Sophronia Woodland Dinsdale, Chester F. Dinsdale and Darrell Dinsdale : Brief of Appellants

Utah Supreme Court

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7655

Case No. 7655
IN THE SUPREME COURT
OF THE STATE OF UTAH

MARIA B. LEPASIOTES,
Plaintiff and Respondent

-vs-

SOPHRONIA WOODLAND DINSDALE,
CHESTER F. DINSDALE and
DARRELL DINSDALE,
Defendants and Appellants.

APPELLANTS' BRIEF

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT
OF THE STATE OF UTAH

MARIA B. LEFASIORES,

Plaintiff and Respondent.

-vs-

SOPHRONIA WOODLAND DINGDALE,
CHESTER F. DINGDALE and
DARRELL DINGDALE,

Defendants and Appellants.

STATEMENT OF FACTS

The facts in this case appear to involve two elements as follows:

1. A dispute as to the boundary line between the real property that is Tract #1, as described in the plaintiff's complaint, and which is vested in the defendant, Sophronia Woodland Dingdale, and the property described in paragraph Two of the plaintiff's complaint and which title is vested in the plaintiff.

2. A question of damages to trees planted in a line running North and South in the vicinity in question, the exact location of the same being more particularly delineated on defendants and appellants

"Exhibit #2" on file herein.

Also damages to a ramshackle fence and irrigation ditch, the locations of which are set forth in detail on the defendants and appellants said "Exhibit #2".

Each of the parties hereto, as appears from plaintiff and respondent's "Exhibit A" and defendants and appellants "Exhibit #3 and #4" are vested with title to respective parcels of real property hereinabove referred - that is the plaintiff and the respondent is vested with the title to parcel of land which it is admitted that she owns and defendant and respondent, Sophronia Woodland Dinsdale, is vested with title to the property which is identified as Tract #1 in the proceedings in said matter.

It appears from the evidence that defendant and appellant, Sophronia Woodland Dinsdale's husband Chester F. Dinsdale, who is also a party to this action, obtained title to said Tract #1 in question on or about December 31st, 1918, and that thereafter up to on or about August 17th, 1931, enjoyed quiet and peaceable possession of the entire tract when he conveyed title to defendant and respondent, Sophronia Woodland Dinsdale, by warranty deed and for a valuable consid-

eration with the exception of the brick home located on the premises of both defendant and respondent, Sophronia Woodland Dinsdale, and that further, their predecessors in interest also enjoyed like peaceable use and possession of said premises. (See defendant's "Exhibit #3") Further, for the location of the house in question, see defendant's "Exhibit #2".

The facts further seem to be uncontradicted that all parties to this action have paid the taxes, both state and county taxes, on the respective parcels of land herein involved, and which have been particularly referred to hereinabove, and which taxes have been levied against said parcels in question by the proper taxing authority.

It further appears to be the fact that plaintiff and respondent acquired title to the property with which it is admitted, as described in the deed by which she obtained title on or about December 8th, 1924, plaintiff's "Exhibit #A".

The facts further seem to be as shown by the evidence that the defendants and appellants, Chester F. Dinsdale and Sophronia Woodland Dinsdale, as well as their predecessors in interest at all times up to

about 1931, enjoyed quiet and peaceable possession of the entire parcel described hereinabove without claim of right being asserted by the plaintiff and respondent.

Further, it appears from the evidence and in particular the testimony of William Lepasiotes, one of the witnesses for the plaintiff and respondent, that the boundary fence line between the two parcels in question was on the line as called for in the respective deeds by which the respective parties hereto, and their predecessors in interest, obtained title to the respective parcels in question, and the plaintiff and respondent admits that up to 1933 the fence line in question and the location of which is set out on defendant and appellant's "Exhibit #3" was never in existence.

The facts further appear to be that the plaintiff's and respondent's, and her predecessors in interest, never used or claimed any part of parcel of defendant and appellant's property herein concerned until about 1931, with the exception of the exact spot of land upon which the house stood.

Sometime about 1932 or 1933 it is the fact that

ent, and Chester F. Dinsdale, one of the defendants and appellants and the husband of defendant and appellant, Sophronia Woodland Dinsdale, and at a time when neither of them were vested with title to either of the parcels in question, and hereinabove referred to, engaged in personal differences which developed to such an extent that court action resulted in both a criminal and civil nature. Wm. Lepasiotes being the complaining party in each instance. The disposition of the criminal action does not seem to be of moment in this matter. However, the civil action was disposed of by the Honorable Judge Pratt requiring Mr. Wm. Lepasiotes and Mr. Dinsdale herein to erect a "Peace Fence" which is the fence heretofore referred and which it is contended by the plaintiff and respondent is the boundary line between the parcels in question. It is admitted a "make shift fence" of little consequence was constructed, but it is further definitely claimed and is uncontradicted that defendant and respondent, Sophronia Woodland Dinsdale, the owner of the Tract #1 hereinabove particularly referred, never was a party to said action - did not participate in the construction of said "peace fence" and did not

authorize or condone the construction of the same. And said Chester F. Dinsdale, while he had title to said parcel designated in plaintiff's complaint as Tract #1, and the said Sophronia Woodland Dinsdale have always claimed title and the right to the entire tract #1, and so used the same up to about 1931 or thereafter without adverse claim or interference by any one.

Relative to the claim of the plaintiff for damages, defendants and respondents admit that defendant and respondent Darrell Dinsdale individually and of his sole volition, bored holes in approximately four of the trees along the row of trees in question during the spring of 1949, and poured a salt solution in said holes. However, the record is silent of the fact that the trees in question were damaged.

Further, the facts seem to show that the irrigation ditch used by the plaintiff and respondent for irrigation purposes and which runs northerly immediately west of the row of trees in question, was used by them during the irrigation seasons of 1949 and 1950 without any difficulty or inconvenience.

turbance seems to be that defendants and respondents Chester F. Dinadale and Darrel Dinadale, during the early part of 1949, reset or strengthened up a post without otherwise disturbing the rest of the posts or wire along the fence.

The Court at the conclusion of the trial, disregarding the evidence in said matter and the deeds of conveyance by which the plaintiff and respondent and Sophronia Woodland Dinadale, one of the defendants and appellants, and all of their predecessors in interest, obtained title to said parcels of property in question, found the boundary line between the two parcels of property to be on the line of the "Peace Fence" herein referred to and so ordered a judgment to be entered accordingly.

It seems important at this time to set forth that this action was instituted on June 23, 1949 - and came on for trial on October 17, 1950, and that on October 13, 1950, the counsel for defendants and appellants and who substituted in place and instead of Arthur Wealley, Esq., their former attorney, caused to be filed an affidavit executed by the said Chester F.

who tried said matter, be disqualified to sit for the reasons set forth therein. See the entire transcript on appeal in plaintiff's "Exhibit #A", and defendants' "Exhibits 2, 3, 4 and 5".

ARGUMENT

POINT I

"THE COURT ERRED IN FAILING TO REFER THE QUESTION OF HIS QUALIFICATION TO HEAR SAID MATTER TO ANOTHER JUDGE FOR DETERMINATION OF SAID QUESTION."

At the time this matter came on for hearing on the merits on October 17th, 1950, the Utah Rules of Civil Procedure had been adopted in this state and were in full force and effect, and according to said rules the Trial Judge when an affidavit (see Tr.1-10) has been filed setting forth that said judge is biased or prejudiced against said parties, shall refer said question to another judge for his determination and such requirement is necessary.

This requirement is expressly set forth in Rule 63 B, of the Utah Rules of Court Procedure.

POINT II

"THAT THE TRIAL JUDGE IN THIS MATTER WAS BIASED AND PREJUDICED AGAINST THE DEFENDANTS AND APPELLANTS

AND THEIR COUNSEL WHO TRIED SAID MATTER AND FOR THAT
REASON THEY WERE PREVENTED FROM HAVING A FAIR TRIAL
ON THE MERITS OF SAID CASE*.

In support of Point II, the argument the defendants and appellants call this Honorable Court's attention to the entire trial proceedings as set forth in the transcript (Ex. 1-315). The evidence as cited clearly shows the bias and prejudice of the Court.

POINT III

"THAT THE COURT ERRED IN FAILING TO GRANT DEFENDANTS' MOTION to dismiss said action at the close OF PLAINTIFF'S PRESENTATION OF EVIDENCE".

That at the conclusion of the plaintiff's case, defendants made a motion for a dismissal of said action upon the grounds and reasons set forth in said motion (Tr. 165-166).

That defendants and appellants contend upon the pleadings and evidence introduced by plaintiff up to that time - the cases are legion that the Court erred in this regard.

POINT IV

"THAT THE COURT ERRED IN ESTABLISHING THE BOUND.

ANY LINK BETWEEN THE PLAINTIFF AND RESPONDENT'S AND

PROPERTIES AS SET FORTH IN THE DECREE IN SAID MATTER".

In view of the pleadings, the evidence and the facts in this matter (see entire record on appeal) the cases are legion in this jurisdiction that plaintiff and respondent is not entitled to the establishment of the boundary line as found by the court, and that it should be established according to the description in their respective deeds. Tripp vs. Bagley - Utah - 276 Pac 912; Annotation 69 A L R 1430 Brown vs. Milliner Utah - 232 - Pac 28 202.

POINT V:

"THE COURT ERRED IN GRANTING A MONEY JUDGMENT AGAINST THE DEFENDANTS AND APPELLANTS AND IN PARTICULAR DEFENDANT AND APPELLANT SOPHERONIA WOODLAND DINSDALE FOR \$275.00 AND COSTS".

That it is concluded by the defendants and appellants that the money judgment awarded plaintiff and respondent against the defendants and appellants and in particular Sophronia Woodland Dinsdale is not supported by law or the facts in said matter. (See entire transcript on appeal).

POINT VI

"THAT THE COURT ERRED IN THE ADMISSION OF TESTIMONY AND EVIDENCE PRODUCED AT THE TRIAL BY THE PLAINTIFF AND RESPONDENT AND THE DEFENDANTS AND APPELLANTS WHICH WAS DULY OBJECTED TO BY THE DEFENDANTS AND APPELLANTS".

That the defendants and appellants submitted to this Court that the trial court improperly admitted testimony and evidence introduced and offered by the plaintiff and respondent in said matter. (See entire transcript on appeal).

THEREFORE, in view of the foregoing facts, evidence, authorities and pleadings in said matter, it is respectfully submitted that the judgment of the trial court in said matter be reversed, and that the defendants and appellants be granted such other and further relief as may be meet and just in the premises.

The foregoing is respectfully submitted.

GEORGE M. MASON

Attorney for Defendants and Appellants.

Dated at Brigham City, Utah,
this 10th day of January, A.D. 1952.