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Peter G. Condas v. Sugarhouse Mercantile : Plaintiff's Brief on Appeal

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

PETER G. CONDAS,
— vs. —
SUGARHOUSE MERCANTILE
COMPANY,
Plaintiff and Appellant,
Defendant and Respondent.

Case
No. 9657

FILED
SEP 17 1962

Clerk, Supreme Court, Utah

Plaintiff's Brief On Appeal

Appeal From the Judgment of the
Third District Court for Salt Lake County
Hon. Stewart M. Hanson

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 Plaintiff and Appellant,
— vs. —
SUGARHOUSE MERCANTILE
COMPANY,
 Defendant and Respondent.

}
Case
No. 9657

Plaintiff's Brief On Appeal

STATEMENT OF KIND OF CASE

This is an action by plaintiff to quiet title to an undivided one-half interest to certain real property and to partition said property.

DISPOSITION IN LOWER COURT

Prior to trial, the defendant in the above entitled case moved for summary judgment. Said motion was granted by the trial court. Plaintiff now appeals from the summary judgment.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the summary judgment.

STATEMENT OF FACTS

Inasmuch as the trial court disposed of this case on the motion for summary judgment, plaintiff is entitled for the purpose of this appeal to have the facts considered in the light most favorable to him. See *Abdulkidir v. Western Pacific Railroad*, 7 Utah 2d 53, 318 P. 2d 339. With this rule in mind, the files, records and affidavits herein show the following facts:

On May 19th, 1948, the plaintiff, Peter G. Condas, obtained a tax deed from Salt Lake County, covering the property in question (R. 17). Sugarhouse Mercantile Company, the defendant in this action, and R. J. Fry, Inc., were the record title owners of the property.

After the issuance of the tax deed, Sugarhouse Mercantile Company filed an action to quiet title in the District Court of Salt Lake County, Case No. 80371. Salt Lake County, Peter G. Condas, Mrs. Peter G. Condas and R. J. Fry Company were named party defendants to said suit (R. 22 and 23). The case was tried and judgment entered in favor of the tax title claimant on February 6, 1950 (R. 46); thereafter, an appeal was taken to the Utah Supreme Court and on December 26, 1950, the judgment was reversed by a per curiam decision of the Court (R. 46). The complete decision of the Supreme Court is as follows: (119 Utah 235, 225 P. 2d, 1050)

“IN THE SUPREME COURT OF THE
STATE OF UTAH

Sugarhouse Mercantile Company,
Plaintiff and Appellant,

v.

Salt Lake County and R. J. Fry, No. 7487
Incorporated, Peter G. Condas and
Mrs. Peter G. Condas,
Defendants and Respondents.

PER CURIAM:

This case is controlled by our decision in the case of *Toronto v. Sheffield*, Utah, 222 P. 2d 594, in which Section 104-2-5-0, Laws of Utah, 1943, was held to be unconstitutional.

The judgment is reversed and the cause remanded with instructions to grant a new trial wherein defendants may present their claims for the amounts they have paid to the county for this property as a condition of quieting appellant's title thereto. Appellant shall recover its costs on appeal."

After the case was reversed and remanded by the Supreme Court, the rehearing was eventually held and judgment finally entered on November 3, 1958 (R. 23).

After the original trial of the above-mentioned case and during the time the case was pending on appeal, plaintiff Peter G. Condas acquired title to the same property from another source. On October 20, 1950, plaintiff received a quit claim deed to the property from R. J. Fry, Inc. (R. 37).

Although R. J. Fry, Inc. had been named a party to all of the litigation, it had never been properly joined in the suit nor served with process. Thus the findings of fact and final decree in the case expressly provided "that the defendant R. J. Fry, Inc. was not served with summons and that no appearance was entered for them and no judgment is entered for them" (R. 22).

In this new action, the plaintiff, Peter G. Condas, has filed suit to quiet title, claiming to be the successor to the interest of R. J. Fry, Inc.

Defendant's motion for summary judgment in this action was wrongfully granted on principles of res judicata.

POINTS URGED FOR REVERSAL

POINT I.

PLAINTIFF IS NOT BARRED FROM ASSERTING HIS NEW TITLE ACQUIRED BY VIRTUE OF A DEED OBTAINED AFTER THE TRIAL OF THE FIRST CASE.

POINT II.

A JUDGMENT CANNOT BE RES JUDICATA AS TO MATTERS WHICH THE COURT EXPRESSLY REFUSES TO DETERMINE.

POINT III.

PLAINTIFF IS NOT BARRED FROM ASSERTING HIS ORIGINAL TAX TITLE AGAINST THE INTEREST OF R. J. FRY, INC.

ARGUMENT

POINT I.

PLAINTIFF IS NOT BARRED FROM ASSERTING HIS NEW TITLE ACQUIRED BY VIRTUE OF A DEED OBTAINED AFTER THE TRIAL OF THE FIRST CASE.

The judgment of the trial Court was erroneously based upon the assumption that Peter G. Condas failed to assert all of his claims to title in the prior action.

Plaintiff does not dispute or take issue with the well established body of law, holding that a party litigant is concluded in a subsequent action not only as to matters actually raised in the first action, but to all other issues which could have been raised (See *Todaro v. Gardner*, 3 Utah 2d 404, 285 P. 2d 839; *Logan City v. Utah Power & Light*, 86 Utah 340, 16 P. 2d 1097; C.J.S. Judgments, Section 731).

Plaintiff could not have asserted his title in the first action. He did not get a deed to the property until October 20, 1950. This was approximately 9 months after the case was decided by the District Court. It would clearly have been impossible to assert title in the prior action under a conveyance which was not yet in existence.

Defendant successfully argued in the trial court that the new title could, and should have been asserted at the rehearing of the first case after the appeal had been decided. This was the argument which apparently persuaded the trial court to grant defendant's motion for

summary judgment. This argument may have had merit if the Supreme Court in the first case had granted a complete new trial; such, however, was not the case. The decision was reversed and a new trial granted only for a restricted purpose — that is to determine the amounts paid by the tax title claimant for which he was entitled to reimbursement as a condition to the quieting of the record owner's title. Such procedure would naturally be required under Section 59-1-65, Utah Code Annotated, which gives the purchaser of an invalid tax title a lien on the property to the extent of the amount of taxes, penalties and interest actually paid.

It has generally been held by the Courts that where a cause is remanded to the trial court for a restricted purpose, the pleadings may not be amended unless the amendment concerns the purposes for which the cause was remanded. *Consolidated Stone Company v. Seidenbach*, 180 Okla. 128, 114 P. 2d 480; *Jorgensen v. Bigelow*, 37 Idaho 541, 217 Pac. 265; C.J.S. Appeal and Error, Section 1969(5).

Under the above rule of law, plaintiff could not have asserted his title at the rehearing even if he had attempted to do so. The rehearing was for the sole purpose of establishing the extent of the tax title claimant's lien. Thus, plaintiff has never had a previous opportunity to assert his title based upon the deed from R. J. Fry, Inc. and the action to quiet title herein was properly filed.

POINT II.

A JUDGMENT CANNOT BE RES JUDICATA AS TO MATTERS WHICH THE COURT EX- PRESSLY REFUSES TO DETERMINE.

In *Todaro v. Gardner*, 3 Utah 2d 401, 285 P. 2d 839, the Utah Supreme Court has clearly held that a judgment cannot be res judicata as to any matters which the Court expressly refuses to determine.

The findings of fact and decree of the prior case here expressly recite that only the "interest" of Sugarhouse Mercantile Company in the property is quieted as against the defendants in the action. Both the findings and decree specifically state that R. J. Fry, Inc. was not served with process and no judgment is entered as to the interest of the corporation.

Inasmuch as the Court expressly refused to determine the interest of R. J. Fry, Inc., the successor to the corporation, to-wit the plaintiff herein, cannot be barred from asserting his title.

POINT III.

PLAINTIFF IS NOT BARRED FROM AS- SERTING HIS ORIGINAL TAX TITLE AGAINST THE INTEREST OF R. J. FRY, INC.

Even if plaintiff had not obtained a deed from R. J. Fry, Inc., this action could still be maintained on the basis of his original tax title.

The first case in the Supreme Court was reversed

because the tax title was defective. Since the time of the Supreme Court decision, however, the Utah State Legislature has passed a valid Statute of Limitations which prevents the questioning of the validity of a tax title after a period of four years. See 78-12-5.2 Utah Code Annotated 1953, as amended. This statute has been upheld as constitutional (*Hansen v. Morris*, 3 Utah 2d 310, 283 P. 2d 884).

Inasmuch as the interest of R. J. Fry, Inc., was not adjudicated in the first action, plaintiff would be entitled to assert his tax title against said interest, the Statute of Limitation having now run against R. J. Fry, Inc.

CONCLUSION

Plaintiff respectfully requests the Court to reverse the decision of the trial Court.

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