

Hinson v. Booth

Fla.

39 Fla. 333 (Fla. 1897) · 1897-01-15

Taylor, C. J.:

The court below has erred in that feature of its decree that adjudges the will of Hadley Hinson, deceased, to be inoperative to convey or dispose of the ■■■§1000 personal property exemption to which the testator, as the head of a family residing in Florida, was *345 •entitled under the Constitution, and that said exemption inured to the heirs at law according to the statutes of descent regardless of the disposition made thereof by the will, and that the complainant, through his deceased wife, Annie E. Booth, a grandchild of the testator, was entitled as one of the heirs at law to a one-seventh part of such constitutional exemption.

Sections 1, 2 and 4 of article 10 of our Constitution, ■entitled “Homesteads and Exemptions,” are as follows: “Section 1. A homestead to the extent of one hundred and sixty acres of land, or the half of one acre within the limits of any incorporated city or town, owned by the head of a family residing in this ■State, together with one thousand dollars’ worth of personal property and the improvements on the real estate, shall be exempt from forced sale under process of any court, and the real estate shall not be alienable without the joint consent of husband and wife, when that .relation exists. But no property shall be exempt from sale for taxes or assessments, or for the payment -of obligations contracted for the purpose of said pi’operty, or for the erection or repair of improvements on the real estate exempted, or for house, field or other labor performed on the same. The exemptions herein provided for in a city or town shall not extend to more improvements or buildings than the residence and business house of the owner; and no judgment or decree or execution shall be a lien upon exempted property except as provided in this article.”

“Section 2. The exemptions provided for in section 1 shall inure to the widow and heirs of the party entitled to such exemption, and shall apply to all debts, except as specified in said section.”

“Section 4. Nothing in this article shall be con*346 strued to prevent the holder of a homestead from alienating his or her homestead so exempted by deed or mortgage duly executed by himself or herself, and by husband and wife, if such relation exists; nor if the holder be without children to prevent him or her from disposing of his or her homestead by will in a manner-prescribed by law.”

This court in the case of Godwin vs. King, 31 Fla. 525, 13 South. Rep. 108, in construing the second section of the Constitution quoted above has said: “The construction put upon the old Constitution was that the exemptions provided for was an exemption from sale for the debts of the homesteader, and that this exemption was all that inured to the heir after the death of the ancestor, by virtue of the Constitution. The provision in this Constitution, that the exemption, should accrue to the heir, did not cast upon him an estate in the exempt property, but was a shield for so much of his inheritance against the debts of his ancestor. The homestead article in the Constitution of 1885 is no more a regulation of the descent of property than the former one of 1868. The term inure is employed instead of accrue, but this term is not equivalent to the word descend, or any other word importing the descent of property. The exemption provided for is an exemption from forced sale for the debts of the homesteader who is the head of a family residing in this State, and this exemption is all that inures to the widow and heirs by virtue of the

Constitution. Upon no reasonable construction of language can the present Constitution, any more than the former one, be construed as granting a title to, or the casting of a descent, as to the homestead exemption upon either the widow or heir. The homestead exemption inures *347 to the widow, as widow, and to the heirs as such, and their respective rights in this property must be ascertained from other sources.” It was said further in that case that “the exemption provided is an exemption from sale for debts of the owner of the property who is the head of a family residing in this State, and this exemption as homestead is all that inures to the widow and heirs after his death by virtue of the Constitution.” It was held in that case also that these provisions of the homestead article of the Constitution did not repeal, abridge or affect in any way the statutes of this State entitling a widow to dower in her deceased husband’s estate, but that under such dower statutes she was entitled to dower in all of the exempt property both real and personal, unaffected by these provisions of the Constitution. *Purnell vs. Reed*, 32 Fla. 329, 13 South. Rep. 874. These cases and others cited therein have settled the doctrine in Florida that the homestead provisions of our Constitution do not undertake to east an estate in the exempted properties upon the widow or heirs or to regulate or establish their rights' of property inheritance therein, but that such rights must be ascertained from other sources, viz: The statutes regulating dower and the laws of descent, but that all that inures to the widow and heirs under the second section quoted from the Constitution is the right to exempt the property from forced sale for the debts of the deceased head of the family. The widow and heirs, on the death of the-pater familias, acquire their proprietary rights of property in the things exempted, not from the constitutional provisions quoted, but entirely from the statutes regulating dower and the descent of property, unaffected by such constitutional provisions, except that *348 the latter instrument appends to the things exempted, in their transmission to the widow and heirs, the feature of immunity from forced sale for the debts of the ancestor. All this being settled, it remains to be seen whether the Constitution, by appending to the property exempted this immunity in the hands of the •widow and heirs from forced sale for the debts of the ;ancestor, or in any other manner abridges the right of ■alienation of it by the ancestor during his life, or his right- to dispose of it by will to take effect at his ■death: Mr. Freeman, in a note to *Poole vs. Gerrard*, 65 Am. Dec. 482, correctly and tersely says: ■“In the absence of statutes restricting alienation of homesteads, the owner thereof has undoubtedly as full and perfect a right to convey the property as he would have had if it had not been a homestead, the mere exemption of it from forced sale having no tendency to limit the • right of voluntary alienation. The power of alienation is not derived from the statute relating to alienation of homesteads. It is an incident of the ownership of the property in•dependent of the homestead law, and' the directions ■and prohibitions of the statute as to the alienation are mere restrictions upon this antecedent power. With•out any such restriction the property passes, by a conveyance, as if there were no homestead. No express waiver of the homestead is essential, unless the statute requires it, because the property having passed by the ■conveyance the homestead necessarily ceases. There ■can be no homestead for one person in another’s property.” Has our Constitution in any manner restricted this antecedent right of alienation incident- to the ownership of property, and if so, how and to what extent? Section 1 of said article 10, quoted above, expressly *349 renders the real estate inalienable, except with the-joint consent of husband and wife when that relation exists, but the silence of this section as to the alien-ability of the personal property is so pointed as to become an express proclamation of the applicability to-it of the maxim, *expressio unius est exclusio aUerius*, Section 4, quoted above from the same article, from its-language, was seemingly intended to make clear and unmistakable the extent to which the restrictions should be carried that were, by the entire article, designed to be thrown around the antecedent power of' alienation, and this section, too, with equal exclusiveness of expression, confines itself to the “homestead” or real estate; and, in laying a further

restriction upon, the disposition of it by will, when there are children, as pointedly confines such restriction to the "homestead" or real estate. We think it is clear, therefore, that the Constitution has not undertaken to restrict, regulate or abridge the antecedent power of alienation of the owner of the personal property that it gives him and his widow and heirs the privilege of exempting from forced sale for his debts; neither do we think that his power to dispose of such personal property by will has been thereby regulated, abridged or restricted; but that, as to such personal property, he is left by the Constitution with the same unrestricted right to dispose of it by will, to take effect on his death, as he is left free by the Constitution and laws to alienate it absolutely during his life. The immunity from debts that inures to the heirs is appended only to such property as the heirs acquire a right of ownership in at the death of the ancestor. There can never be in one the right to an exemption of property that belongs to another. The right of the heir to the property of the ancestor does not accrue until the death of such ancestor. When the ancestor while in life disposes of his effects by will, to take effect on his death, the instant of his death brings to the dispositions of property therein made a consummated effectiveness, as though he had made the same dispositions thereof absolutely during his life by deed. When the ancestor, then, disposes of such property by will, if it is therein given to others than his heirs at law, such heirs at his death find themselves in the presence of such a will, with no right of ownership to any property to which the constitutional immunity from debt could attach.

The decree of the court below is reversed in the feature thereof herein adjudged to be erroneous, but in all other respects it is affirmed. The costs of the appeal to be taxed against the appellee.

(Mr. Justice Carter, being disqualified in this case, took no part in the consideration thereof).