

Lee v. Bradley Fertilizer Co.

Fla.

44 Fla. 787, 33 So. 456 (Fla. 1902) · 1902-06-05

Per Curiam

(After stating the facts).

It nowhere appears in express terms from the pleadings in this cause that at the time of the filing of the bill the appellants were such heads of families as to entitle them to homestead exemptions under our constitution, but it does appear from the two deeds exhibited with their original answer that they were both married men with living wives on the sixth day of January, 1887, which would then entitle them as heads of families to a homestead exemption, and the rule is that a status once shown to exist is presumed to continue unless the contrary is expressly shown. It is, however, shown by the bill that the appellants occupied such a status towards the property in controversy as to successfully prevent and deter the sheriff from levying upon and selling such property upon the claim that it was exempt to them, and that in order to effect such levy and sale the appellee was compelled to file its bill to have the validity of such claim of exemption adjudicated by the court, and by such bill in alleging the reasons why such exemption should not be allowed it is nowhere pretended or alleged that said appellants are not heads of families or do not reside upon the lands in controversy as their respective homes and places of abode, but the sole reason alleged against the propriety of the asserted exemption is that the appellee's judgment was recovered upon causes of action that existed in its favor against the appellants as copartners, and that subsequently to the contraction of such debts the property in controversy was owned by them as copartners, and that the conveyances of the respective portions thereof by each to the other by which they each became the owner in severalty of the parts respectively conveyed to each was done for the purpose and with the intention of placing or putting said property, which was partnership property, so that it would be exempt to them as individuals and beyond the reach of partnership creditors, thereby practically admitting that but for and aside from the particular reasons urged in the bill against such exemptions the appellants were otherwise in position successfully to assert them.

The decree appealed from was rendered at a hearing upon the amended bill and answer thereto, without other evidence than that afforded by such pleadings. As before stated, no replication was filed to the amended answer of the defendant, and the cause was therefore not at issue when the complainant set it down for hearing upon bill and answer, and consequently it was thus set down, for hearing before the expiration of the time allowed by the rule for taking testimony.

Circuit Court Equity Rule 71 provides that three-months shall be allowed to the parties in equity causes, within which to take testimony after the cause is at issue. The defendants under the circumstances had the right to introduce proof to sustain the allegations in their answer, and the complainant in shutting them off from making such proof by setting the cause down for hearing on bill and answer must be held at the hearing thus had to have admitted the truth of all the allegations of the answer, notwithstanding any formal defect in the oaths to such answer. If the answer, as is contended, was insufficiently or defectively sworn to, the complainant's remedy was to except to it or to move to strike it from the files, or to have ignored it and applied for decree pro confesso; but having recognized it as being sufficient for a hearing upon bill and answer it thereby waived such formal defects in its verification, and brought it within the

application of the rule that upon a hearing on bill and answer the allegations of the answer must be held to be admittedly true. The rule is thus stated in 1 Hoff. Ch. Pr., cited in note 1 Daniel's Ch. PL & Pr., p. 732: "All material allegations of the bill may be proved as if they had been distinctly put in issue by the answer; and if no replication is filed, the matters of defence set up will be considered as admitted by the plaintiff, as in the case of a sworn answer."1 The denials in this answer that are responsive to the allegations of the bill must be held, therefore, to have been admitted to be true at the hearing had in this case. -

The bill alleges that the deeds of partition whereby the defendants severed their joint interests as copartners in the respective parcels of -the property conveyed to each were executed by them for the purpose and with the intention of placing or putting said property which was partnership property, so that it would be exempt to them as individuals and beyond the reach of partnership creditors. This allegation of the bill is squarely denied by the answer, and upon a hearing on bill and answer such denial was admitted to be true.

This brings us to the question whether, after a dissolution of a partnership, or after partnership property has become vested in severalty in one individual partner, such property can be exempted to the partner who has acquired the title in severalty as against partnership debts. Judge Freeman in his work on Executions, Vol. 2, section 221 (3rd. ed.), after a full discussion of the authorities. lays down the rule as follows: "That the dissolution of a partnership or the transfer of all the property thereof to one partner, even though with a view to •entitle him or both of the partners to the privilege of the ■exemption laws, does not constitute a fraud upon their ■separate creditors or the creditors of the firm, and hence that, whenever the partnership relations cease, so that the legal title to the property is vested in the partners as tenants in common, or wholly in one as the transferee of the others, the right to hold such property as exempt from execution attaches, if it is of such a character that it might have been exempt had it never been partnership assets." Goudy v. Werbe, 117 Ind. 154, 19 N. E. Rep. 764; Worman v. Giddey, 30 Mich. 151; Bates v. Callender, 3 *798 Dak. 256, 16 N. W. Rep. 506; O'Gorman v. Fink, 57 Wis. 649, 15 N. W. Rep. 771; Harris v. Visscher, 57 Ga. 229; Watson v. McKinnon, 73 Texas 210, 11 S. W. Rep. 197. We think that partners, acting in good faith, have a right to sever their joint interest in the firm property by contract of sale from one partner to the other, or by a division of the property between them, at any time before the firm creditors obtain a lien thereon, Griffin v. Orman, 9 Fla. 22, and that they may thereafter successfully claim it as exempt from execution, although at the time of the severance the firm be insolvent. A firm^of copartners, whether solvent or insolvent, have the right at all times to sever their partnership relation, and, prior to the acquisition of liens upon their partnership property by creditors, to sever their joint ownership of such property and in good faith to acquire the ownership of part or the whole thereof in severalty, and such dissolution and severance in the ownership of the property in and of itself can work no fraud upon creditors, and when so severed the constitution, without any effort or action upon the part of the individual partner who has thus acquired the ownership in severalty, ex proprio vigore impresses upon it the quality of exemption from forced sale for debts. To say that if a party acquires property with the intention that the law shall exempt it from his debts ;such acquisition is a fraud upon creditors, is to impute fraud to the law in the face of the maxim *lex nemini operatur iniquum*: The title to the property sought to be exempted in this case, though formerly vested in the copartners was completely vested in each partner respectively in severalty by the deeds of conveyance mutually executed between them, and this was effected before the acquisition by the complainant of any lien thereon by judgment or otherwise, and inasmuch as *799 the answer, admitted to be true, avers such partition and severance of title to have been done in good faith, the property is exempt to the respective * defendants

under our constitution and laws from forced sale for debts, either partnership or individual.

The decree appealed from is reversed with directions to enter a decree dismissing the complainant's bill, and that the defendants therein go hence without day with their costs. It is further adjudged that the appellee do pay the costs of this appeal. .