

Miller v. Mobley

Fla.

136 Fla. 351, 186 So. 797 (Fla. 1939) · 1939-02-21

Buford, J.

— The facts are sufficiently stated in the opinion prepared by Mr. Justice Chapman so as to need no repetition by me, except to say that in my opinion the statement, “There was no money or other consideration moving from Mary E. Mobley to J. S. Long and wife, Hazel T. Long,” is not correct. Mary E. Mobley and her husband, Irvin E. Mobley were owners of the mortgage and notes as an estate by the entirety and when she surrendered her interest in that mortgage and the notes in consideration of a re-conveyance of the property it constituted a good and valuable consideration.

Our conclusion is that when Mobley and his wife sold and conveyed the property for full consideration, part of which was \$13,000 cash and the balance evidenced by mortgage and notes executed to them in such manner as to constitute an estate by the entirety; moved off of the property and delivered possession to their vendees, they thereby abandoned the property as the homestead and brought to an end the homestead status of that property; and when they later took conveyance of the property from the Longs as an estate by the entirety in consideration for the surrender of the notes and mortgage which were held as an estate by the entirety and re-established their home thereon, the property then took on a new and independent homestead status unconnected with that which had existed prior to the abandonment, which occurred on the sale and delivery of the property to the Longs, and thereafter they occupied that property as homestead under a title vested in Mobley and his wife as an estate by the entirety.

It follows that under this state of facts and the legal principles applicable thereto on the death of Irvin E. Mobley the entire title became vested in his surviving wife under the law as to estates held by the entirety. See *Gulf Refining Co. v. Ankeny, et al.*, 102 Fla. 151, 135 So. 521, and cases there cited.

This case is to be differentiated from those cases where husband and wife conveyed without consideration to a third party as a conduit for the purpose of having the property reconveyed to the wife or to the husband and wife as an estate by the entirety. Therefore, the rule applying to those cases has no application here because in this case there was a valid and binding sale of the property and a conveyance thereof by the husband and wife in the manner provided by law for a good and sufficient consideration and; as we see it, there is no difference between the result of this transaction and that which would have obtained had Mobley and his wife sold the property to the Longs for cash and put that money in the bank as an estate by the entirety, and at some later date negotiated with the Longs, or some successor in title, for the repurchase of the property and had taken the same money from the bank and paid for the property, taking a deed to the land conveying it to them as an estate by the entirety.

We, therefore, think the decree of the Chancellor should be affirmed.

So ordered.

Terrell, Brown and Thomas, J. J., concur.

Chapman and Whitfield, J. J., dissent.