

Texas Land & Loan Co. v. Blalock

Texas Supreme Court
76 Tex. 85, 13 S.W. 12 · February 11, 1890

STAYTON, Chief Justice.

On March 1, 1887, and for a long time prior thereto, James A. Blalock was the head of a family consisting of himself, wife, and children, and had and at that date was with his family residing on a tract of land containing less than two hundred acres. On day named Blalock and wife executed a deed of trust on that land to secure to appellant a loan of 8800 then made.

Application for the loan was made by Blalock on February 24, 1887, was sworn to by him, and contained the statement “that no portion of the above described property is now or can become our homestead, or the homestead of any other person, until after the loan ajiplied for has been paid in full; that I am in actual possession of said lands; * * * that M. J. Blalock is my lawful wife, and that I was married to her on the 18th day of March, 1875. * * * The above lands do not form any part of my homestead. The following described property is the homestead of myself and family, and we are living on it and using and occupying the same as such; and I will further add that the same has been fully paid for, and is free from every lien except as follows, due the State S320 two years hence; and our homestead is described as follows: Bastrop section school land No. 14, in Burnet O.ounty, Texas.”

This application was made on a blank form furnished by appellant, and there is conflict in the evidence as to whether the jiersons who conducted the negotiations were the agents of appellant or appellee.

The trust deed contains the following declaration: “ The parties of the first part hereby declare that the property hereinbefore mentioned and conveyed to the party of the second part forms no part of any property by them owned, used, or claimed as exempted from forced sale under the laws of the State of Texas, and disclaim and renounce all and every claim thereto under any such law or laws, and hereby designate the following described property, to-wit, Bastrop section school land No. 14, in Burnet County, Texas, on which in good faith they reside, as their homestead, and as constituting all the property (of nature similar to that herein conveyed) used or claimed by them as exempt under said laws; and *88 we declare that we have never used the property herein conveyed, and are not now so using it, and the aforesaid designation is made for the purpose of securing a loan on the property conveyed, with the occupancy of which the party of the second and third part are wholly unacquainted.”

The property above designated as homestead at no time was ever occupied by Blalock as a home.

The borrowed money not having been paid, this suit was brought to enforce its payment through foreclosure of the lien claimed through trust deed. Blalock and wife, the trustee, and John Markward, who had bought the property, were made defendants.

In defense Blalock and wife alleged that the land was their homestead before and at the time the trust deed was executed, and that for this reason the lien claim was void.

Markman adopted their answer, and further alleged that on November 9, 1888, he bought the land in ignorance of any lien or claim set up by appellant.

The cause was tried without a jury, and the court admitted evidence of Mrs. Blalock and of the officer who took her acknowledgment, tending to show that she may not have known that recitals in reference to the homestead before copied were contained in the trust deed.

If that was true, there is no evidence tending to show that the agents or officers of appellant had any knowledge or reason to believe that she did not know the contents of the paper she executed when they received it and advanced money on it, and in the absence of some such fact the evidence of the witnesses should have been excluded.

The uncontroverted fact, however, remains that Blalock and his family were occupying the land as their home continuously from a period long before until after all the facts transpired on which the rights of the parties depend. It was the homestead of the family •

The Constitution declares that “no mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor or improvements made thereon, as hereinbefore provided, whether such mortgage or trust deed or other lien shall have been created by the husband alone or together with his wife.”

There is no doubt that the application for the loan and the recitals and declarations in the trust deed that the property was not homestead went as far as words could go to assure the lender that it might safely lend its money without fear that lien would be defeated by the existence of homestead rights; and after the many protestations made, the wonder is that the borrowers were not required to make and did not make a further statement that no agent or officer of appellant had capacity to know that land owned and occupied by a husband with his wife and children as their sole place of residence was their homestead.

Discarding all evidence tending to show that the declarations in trust *89 deed that property was not homestead were placed there without the knowledge or consent of its makers, and after its execution, which in view ■ of all the evidence seems to us incredible, how does the matter stand? The undeniable facts are that Blalock had such interest in the land as homestead rights would attach to, as against any person other than his vendor, to whom balance of purchase money was due; that with his family he was occupying the land as his sole home when the trust deed was executed and money loaned, and so had been for a long time prior to that date, and that the land designated as homestead was not and had not been so occupied.

The fact of actual possession and use as the home of the family was ■ one against which the lender could not shut its eyes; and this fact, coupled with the interest held by the borrower in the land, made the property homestead in fact and in law, on which the Constitution declares no lien such as claimed in this case can exist.

Every person dealing with land must take notice of an actual, open, ■ and exclusive possession, and where this, concurring with interest in the possessor, makes it homestead, the lender stands charged with notice of that fact, it matters not what declarations to the contrary the borrower may make.

It has been held that one remaining in possession of land after having • executed and permitted to be placed on record an absolute conveyance, could not rely upon his possession as notice of a secret agreement that the absolute conveyance, as between the parties to it, was only intended as a mortgage, and thus defeat the right of a subsequent innocent purchaser.

That, however, is not this case. Here nothing was hidden; possession was open, certain, and in character in no respect ambiguous. It was such as gave homestead rights, and the lender can not be heard to say that it did not know it.

The Constitution forbidding the fixing on the homestead of liens other than such as are thereby expressly permitted, no estoppel can arise in favor of a lender who has attempted to secure a lien on homestead in actual use and possession of the family, based on declarations of the husband and wife made orally or in writing contrary to the fact. To hold ■ otherwise would practically abrogate the Constitution.

If property be homestead in fact and law, lenders must understand that liens can not be fixed upon it, and that declarations of husband and wife to the contrary, however made, must not be relied upon. They must further understand that no designation of homestead contrary to the fact will enable parties to evade the law and encumber homesteads with liens forbidden by the Constitution. *Mortgage Co. v. Norton*, 71 Texas, 683; *Pellat v. Decker*, 72 Texas, 581; *Kempner v. Comer*, 73 Texas, 203.

At the time the deed of trust was executed and the money loaned there *90 was a vendor's lien on the land to secure \$475 and accrued interest, and although application for loan stated that the land was free from encumbrance, the lender knew better, and before paying the money to Blalock had so much as was necessary applied to discharge the lien.

Under this state of facts- the court did not err in subrogating appellant to all the rights held by the holder of the note given for purchase money, and in finding the lien. *Hicks v. Morris*, 57 Texas, 658.

It is insisted, however, as the note sued on provided for the payment of ten per cent as attorney fees in case suit became necessary, that the court ought to have at least allowed ten per cent on the principal and interest due on purchase money. The court did not err in refusing this, for all appellant was entitled to recover through enforcement of lien was by reason of its right to subrogation, which could not extend to any sum the vendor of the land would not have been entitled to receive had he sued. The note given for purchase money had no provision for payment, of attorney fees.

Defendant Markward bought after the trust deed was executed, and with knowledge of the facts, and can not complain that the land was. subjected in his hands to the .payment of purchase money or sum equivalent thereto.

Moreover, it seems that he has in his hands property intended as a part of the purchase price he was to pay to Blalock, in value more than sufficient to discharge the judgment for which the property in his hands' is made liable. If there be any matter of error as to him, he has not presented it.

The improper admission of evidence, especially in a case tried before the court, is no ground for reversal, when on the uncontroverted and vital facts no other judgment could have been rendered than that entered.

The judgment will be affirmed.

Affirmed..

Delivered February 11, 1890.