Holt Vs. Rogers

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Decided On : 1834

Appeal No. : 33 U.S. 420

Appellant : Holt

Respondent : Rogers

Judgement :

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Holt v. Rogers

33 U.S. (8 Pet.) 420

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF TENNESSEE

SYLLABUS

Construction of a contract for the sale of a tract of land.

R. executed a bond to D. conditioned that he would make him a fair and indisputable title to a certain tract of land on or before 1 January, 1795, and if no conveyance was then made, that R. would stand indebted to D. in a certain sum of money, being the sum acknowledged to be paid to R. at the time of the contract.

By the Court:

"No other just interpretation can under the circumstances be put upon this language than that the parties intended, that R. should perfect his title to the land by a patent and should make a conveyance of an indisputable title to D. on or before 1 January, 1795, and if not then made, the contract of sale was to be deemed rescinded and the forty-five pounds purchase money was to be repaid to D."

In 1799, the heir of the vendor, he having died, obtained a complete title to the land by patent, and the vendee did not die until seven years afterwards. After his death in 1806, no step was taken by his heirs or devisees for the purpose of asserting any claim to a performance of the contract for the sale of the land, until 1819, and no suit was commenced until 1823. In the meantime, the property has materially risen in value from the general improvement and settlement of the country.

By the Court:

"The objection from the lapse of time is decisive. Courts of equity are not in the habit of entertaining bills for a specific performance after a considerable lapse of time unless upon very special circumstances. Even where time is not of the essence of the contract, they will not interfere where there have been long delay and laches on the part of the party seeking a specific"

performance. And especially will they not interfere where there has in the meantime been a great change of circumstances and new interests have intervened. In the present case, the bill is brought after a lapse of twenty-nine years.

The case as stated in the opinion of the Court was as follows:

The suit was brought in February, 1823, for a specific performance of a contract made in January, 1794, for the sale of land, under the following circumstances. On 6 January, 1794, John Rogers of Virginia executed his bond to James Dickinson of the same state in the penal sum of 2,000 upon condition, after reciting that Rogers had on that day sold to Dickinson a tract of land lying in Kentucky,

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containing about twelve hundred acres, for 120, that if Rogers, his heirs or assigns, shall make or cause to be made to Dickinson or his assigns a good and lawful deed for the land when required, then the obligation to be void. On the same day, Dickinson executed to Rogers a counter-bond in the penal sum of 240 upon condition, after reciting the sale of the same land to Dickinson, and the receipt by Rogers of 45, part of the consideration money,

"that if Rogers shall, on or before 1 January, 1795, make a fair and indisputable title in fee simple to Dickinson, &c.;, of the said tract or parcel of land, and Dickinson, after that conveyance being made, shall pay to Rogers the further sum of 75 lawful money, but if no such conveyance of said land shall be made, then the said Rogers stands indebted to the said Dickinson in the sum of 45 already advanced as mentioned aforesaid, then this obligation to be void, or else to remain in full force and virtue."

At the time of this contract of sale, Rogers had no patent for the land, but only a plat and certificate of survey of it upon a military warrant. Rogers died in April, 1794, without children, unmarried and intestate, leaving his father, George Rogers, his heir at law, who then lived in Virginia, and afterwards died there in March, 1802, having by his last will devised the land in controversy, of which he had obtained a patent in 1799, to his two sons, Edmund Rogers and Thomas Rogers (the defendants), and to his four daughters, to each of them one sixth part, and constituted his said sons trustees for his four daughters during their lives, and afterwards for their children respectively in fee, with power to sell the same, &c.;

He also appointed his two sons executors of his will.

Dickinson continued to reside in Virginia until his death, in 1806, and by his last will he devised his estate to his wife Mary Dickinson, under whom the plaintiff, Ann Holt, claims, as her daughter and sole heiress at law, the land in controversy. The suit is brought against the defendants, Edmund and Thomas Rogers, without making the four daughters or any of them or their representatives parties.

The circuit court dismissed the bill of the complainants, and they prosecuted this appeal.

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MR. JUSTICE STORY delivered the opinion of the Court.

After stating the case, he proceeded:

This is an appeal from a decree of the Circuit Court of Kentucky District dismissing the bill in equity brought by the appellants against the appellees.

Three points have been made at the argument by the appellees, either of which, if established, would be fatal to the bill in its present shape, and two of them would be fatal in any shape. The first is that the contract of sale was not absolute, but terminated by the nonfulfillment of the conditions at the end of the stipulated period; the second is that the lapse of time is a bar to all equity in the plaintiffs, and the third is that the proper parties for a decree are not before the court.

In the first place, then, was the contract such as it is represented to be by the appellees? We are of opinion that taking into view the whole transaction, its proper interpretation is such as their argument supposes. It is true that the bond of Rogers to Dickinson, taken alone, presents only the common case of a contract for a sale of land at a specific price, with an undertaking to make a good and lawful deed of the land when required by the vendee. But the other bond, executed contemporaneously by Dickinson to Rogers, is to be taken into consideration in ascertaining the true nature of the transaction. That bond, however inaccurate in

its phraseology, shows that the real contract between the parties was that Rogers should make a fair and indisputable title to Dickinson of the land on or before 1 January, 1795, and if no conveyance was then made, then Rogers was to stand indebted to Dickinson in the said sum of 45. Now we think that no other just interpretation can under the circumstances be put upon this language than that the parties intended that Rogers should perfect his title to the land by a patent and should make a conveyance of an indisputable title to Dickinson on or before 1 January, 1795, and if not then made, the contract of sale was to be deemed rescinded and the 45 purchase money was to be repaid to Dickinson. What strengthens this interpretation is that the 45 was not at the time actually paid, but was merely the amount of an antecedent debt due from Rogers to Dickinson, and the bond of the latter contains no stipulation of his part to pay

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the balance of the purchase money except upon a conveyance made within the prescribed period. If the parties had intended the sale to be absolute, the bond of Dickinson would have contained an absolute agreement to pay that balance, as the other bond did an absolute agreement to make a conveyance, when required. We think too that the total omission of Dickinson in his lifetime to take any step to enforce the sale furnishes a strong corroboration that he so understood the matter.

But in the next place, if this difficulty could be (as we think it cannot be) surmounted, the objection from the lapse of time is equally decisive. Courts of equity are not in the habit of entertaining bills for a specific performance after a considerable lapse of time unless upon very special circumstances. Even where time is not of the essence of the contract, they will not interfere where there has been long delay and laches on the part of the party seeking a specific performance. And especially will they not interfere, where there has in the meantime been a great change of circumstances and new interests have intervened. In the present case, the bill is brought after a lapse of twenty-nine years. It is true that the vendor died within the year, and that he had not, at the time of the contract, a complete title to the land, but a complete title was afterwards obtained by his father, who was his heir, in the year 1799, and

Dickinson did not die until seven years afterwards. During the period of eleven years after Dickinson had a perfect right (if ever) to demand a strict performance of the contract, he never took a single step to assert his right, or to compel performance. After his death in 1806, no step was taken by his heirs or devisees for the purpose of asserting any claim until 1819, and no suit was commenced until 1823. The manner in which this delay is accounted for in the bill is wholly unsatisfactory. The grounds stated are the distance of the parties from each other, their intervening deaths, the difficulty of ascertaining who were the heirs, and the residence of the latter in a different state. But any reasonable diligence would have enabled Dickinson and his legal representatives to have ascertained who the heirs of Rogers were. His father and their resided in the same state with Dickinson for many years, and the acting executor under the will of the father did not remove into Kentucky until several years after the probate of the

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will. There is therefore no ground, upon which the gross laches or indifference of the parties can be reasonably excused. And such a long silence does, as we have already intimated, justly lead to the conclusion of a consciousness that the right, if any, was exceedingly doubtful. In the meantime, the property has materially risen in value from the general improvement and settlement of the country, and thus furnishes an additional reason for not disturbing the existing rights of property.

This view of the case renders it unnecessary to consider the other point as to the nonjoinder of proper parties.

The bill contains no alternative prayer for a return of the 45 if specific performance should not be decreed, and under the circumstances we are of opinion that it ought not to be decreed under this bill upon the prayer for general relief, it not being a case specially made by the bill. The decree of the court below will therefore be affirmed. As the general dismissal of the bill will not in our judgment, under the circumstances, operate as a bar to future proceedings at law to recover the 45 if an action be otherwise maintainable, we do not think it necessary to dismiss the bill without prejudice, thereby throwing the burden of the costs of the

reversal upon the defendant. The plaintiff may therefore well be left to his legal remedy, such as it is, for any indemnification under the contract.

Decree affirmed.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Kentucky and was argued by counsel, on consideration whereof it is ordered, adjudged, and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.