Gray Vs. Brignardello

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Decided On : 1863

Appeal No. : 68 U.S. 627

Appellant : Gray

Respondent : Brignardello

Judgement :

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Gray v. Brignardello

68 U.S. (1 Wall.) 627

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

SYLLABUS

1. The ancient doctrine that all rights acquired under a judicial sale made while a decree is in force and unreversed will be protected is a doctrine of extensive application. It prevails in California as elsewhere, and neither there nor elsewhere

is it open to a distinction between a reversal on appeal, where the suit in the higher court may be said to be a continuation of the original suit, and a reversal on a bill of review, where, in some senses, it may be contended to be a different one. But purchasers at such sale are protected by this doctrine only when the power to make the sale is clearly given. It does not apply to a sale made under an interlocutory decree only, or under a conditional order, the condition not yet having been fulfilled.

2. A decree *nunc pro tunc* is always admissible where a decree was ordered or intended to be entered, and was omitted to be entered only by the inadvertence of the court; but a decree which was not actually meant to be made in a final form cannot be entered in that shape *nunc pro tunc* in order to give validity to an act done by a judicial officer under a supposition that the decree was final, instead of interlocutory.

In July, 1853, Franklin C. Gray of California died in the State of New York, leaving there a widow, Matilda, and an infant daughter, Franklina, and property held in *his* name,

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in California, appraised at $237,000. In January, 1854, administration was granted to J. C. Palmer and C. J. Eaton. In February, 1854, William H. Gray a brother of deceased, filed a bill in chancery in one of the state courts of California, to-wit, the District Court of the Fourth Judicial District, against Palmer, Eaton, the widow, and infant daughter (*service on the infant, then residing with her mother in Brooklyn, New York, being made by advertisement in a California newspaper,* and one H. S. Foote being appointed by the court her guardian *ad litem*), alleging a partnership between him and the deceased in his lifetime. In April, 1855, *Eaton, who had now resigned his administratorship,* commenced a similar suit against his late co-administrator Palmer, *but not at this time making William H. Gray a party.* In October, 1855, these two suits were consolidated by *consent of parties,* and on the *27th October, 1855,* a decree was entered by *consent, the fact of consent, however, not being stated in the decree itself.* The decree adjudged that a

partnership existed between Eaton and the deceased, and a different partnership between William H. Gray and the deceased, each partnership embracing *all business and all property, real and personal, of the parties,* and decided that the partnership of William H. Gray was subject to that of Eaton; it further settled the proportionate interest of each partner and directed an account of the partnership transactions to be taken by a certain James D. Thornton, who was appointed a commissioner for that purpose, and that he should make a report of his actings and doings. The decree proceeded further in these words:

"And the court doth further decree, that the commissioner, *after he shall have made such reports as aforesaid, and the same shall have been passed upon by the court, and in accordance with such further directions in this behalf, if any, which the court may give him, do proceed to sell,* as in sales under execution, all the property, real and personal of the said *partnerships,* both or either of them, of whatever name or nature, for cash."

In pursuance of the directions of this decree, the commissioner made a report on the 25th of March, 1856, and *this*

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report being still unconfirmed, he proceeded to sell the decedent's property, and, on the 3d May, 1856, sold a lot in San Francisco to a certain Brignardello for $19,040. The sale was public; every way fair, apparently, so far as concerned Brignardello. The price was a very good one, and it had been paid. The commissioner subsequently, May 14, 1856, made a report to the court of his sale, stating that he had "sold the real estate *ordered to be sold by the decree pronounced on the 27th October, 1855.* " The whole proceeds amounted to about $70,000.

It will be observed that the decree above set forth contemplated, apparently, a sale only after the commissioner should have made a report, and the same had been passed on by the court. This circumstance appeared to have struck some of the parties concerned, and the record brought up to this Court disclosed the following

further proceedings in court, *dated eleven days after the sale, and the only further proceedings which it did disclose.* They read thus:

" *DECREE AMENDING INTERLOCUTORY DECREE"*

" *W. H. Gray* "

" *v.* "

" *J. C. Palmer, adm'r of F. C. Gray dec'd, et als., and* "

" *C.J. Eaton* "

" *v.* "

" *J. C. Palmer, adm'r of F. C. Gray dec'd, et al.* "

"On this day came the several parties, Palmer and defendant, by their respective attorneys, and it appearing to the court that copies of the rule to show cause made on the 10th day of May, 1856, and of the affidavit on which said rule was founded, have been duly served on the respective attorneys of the several defendants, and on H. S. Foote, guardian *ad litem* for the infant defendant, and the said defendants having shown no cause why the motion of said W. H. Gray *to amend the interlocutory decree entered in the above causes on the 7th day of April, 1856,* should not be granted, *and the court being satisfied that said interlocutory decree and that said error was the result of a mistake and inadvertence on the part of the attorney who drew up the same,* it is ordered

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that the motion of the said W. H. Gray to amend said interlocutory decree so as to make the same conform to the original decree and to the commissioner's report filed herein on the 25th day of March, 1856, be and the same is hereby granted."

"And ordered on motion of said W. H. Gray that the following amended interlocutory decree be entered *nunc pro tunc,* in lieu of the said decree which was entered on the 7th of April, 1856, to-wit:"

" *Same Parties* "

" *v.* "

" *Same Parties* "

"James D. Thornton, the commissioner, appointed &c.;, having filed his report herein on the 25th day of March, 1856, it is hereby ordered, that the said report be, and the same is hereby confirmed, and it is further ordered that said commissioner do proceed to sell all the property, real and personal, of the said partnership, as directed in the former decree of the court, and to receive the proceeds, out of which he *shall pay the costs and expenses of this suit,* and the remainder shall be paid and distributed to the several parties according to their respective rights &c.; But it is ordered that before making said distribution &c.;, commissioner report to this Court his proceedings in the premises and the amount in his hands subject to such distribution, and the several interests of the respective parties therein upon the basis settled in his former report."

" *Endorsed:* Filed May 14, 1856."

The result of all the sales, payments, and other proceedings in the business was that the property, real and personal, of the decedent, was wholly absorbed, and the estate left in debt to the surviving brother, William H. Gray in a sum of $3,533.17, there not having in fact been enough of the estate of $237,000 left to pay for a tombstone that had been erected to the Gray deceased, and $900, or thereabouts, being, by common consent of parties, appropriated to that purpose, and made "a charge upon the estate generally."

The widow now conceiving that the proceedings had been collusive and irregular, took an appeal from the decrees obtained by Eaton, as also by Gray against her husband's estate. This was about six months after the sale. On the

hearing of the appeal, the decree was reversed in the case of Eaton's bill, as to the infant, on the ground that she, being in New York, had not been sufficiently served

by a publication in California, and in the case of W. H. Gray's bill, as to all the defendants, because the proof was not sufficient to establish a partnership. [Footnote 1]

Brignardello and others being in possession, however, under his purchase, the widow and infant daughter, joining in their action, now brought ejectment in the Circuit Court of the United States for the Northern District of California, the suit on which the writs of error now here were taken.

The title of Gray the decedent, being undisputed, and the land having passed by his death intestate under the laws of California, to his widow and child in equal shares, a *prima facie* title was made in favor of the plaintiff. In order to defeat this title, the defendants set up that they were *bona fide* purchasers, at a judicial sale under decree of a court having jurisdiction, putting in evidence the judicial proceedings already mentioned. Various objections, on the other hand, were set up to the validity of the proceedings prior to the rendition of the decree, as *e.g.* that the infant, being in New York, was not properly served with process by a publication made in California. The court below charged that the infant was not served nor brought into court, that the judgment roll in the consolidated action was no record as to her, and that the deed of Thornton the commissioner was void as to her, and this notwithstanding that the purchasers were innocent purchasers, for full price and at a sale fairly conducted; but it charged also -- this instruction being specifically excepted to -- that the decree did operate to divest the title of the widow. Judgment was accordingly entered in favor of the infant for an undivided moiety of the lot and against the widow as to the other half, such several judgment being permitted by the rules and practice of the court. Two writs of error were now sued out, one by Brignardello and others, the defendants

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below (case No. 169 upon the docket), the other by the widow, Matilda C. Gray one of the plaintiffs (case No. 223). The points raised here were the correctness of the judgment, as above stated.

MR. JUSTICE DAVIS delivered the opinion of the Court.

The character of the suits brought in the state court by C.J. Eaton, by W. H. Gray the parties to them, the kind

of evidence on which they were sustained, and their ultimate termination, provoke comments, but we forbear to make them.

The vital question in these cases is this:

"Did the decree of the 27th of October, or any subsequent decree or proceeding in the court, authorize the sale that was made of the real estate of Franklin C. Gray and under which sale the defendants below claimed title?"

Numerous objections have been taken here, and were taken in the court below, to the validity of the proceedings prior to the rendition of the decree, which, although interesting, will not be discussed, and no opinion given, as it is not necessary to decide them.

It is a well settled principle of law that the decree or judgment of a court which has jurisdiction of the person and subject matter is binding until reversed and cannot be collaterally attacked. The court may have mistaken the law or misjudged the facts, but its adjudication, when made, concludes all the world until set aside by the proper appellate tribunal. And although the judgment or decree may be reversed, yet, all rights acquired at a judicial sale, while the decree or judgment were in full force and which they authorized, will be protected. It is sufficient for the buyer to know that the court had jurisdiction and exercised it, and that the order on the faith of which he purchased was made and authorized the sale. With the errors of the court he has no concern. These principles have so often received the sanction of this Court that it would not have been deemed necessary again to reaffirm them had not the extent of the doctrine been questioned at the bar. [

Footnote 2]

But did the decree or decrees relied on to defeat the plaintiffs' title authorize the sale that was made?

The decree of the 27th of October, 1855, found the existence of the partnerships and the interest of each member of the firm, and a commissioner was appointed to take and

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state the accounts, and to ascertain the nature and extent of the partnership property, and to report to the court. The decree proceeds to say that the commissioner,

" *after he shall have made such reports,* and the same *shall have been passed upon by the court,* and in accordance with such further directions in this behalf, if any, which the court may give him, *do proceed to sell* all the real and personal estate of the said partnership, both or either of them."

This decree is manifestly interlocutory. No authority was given to sell until the commissioner had reported the state of the accounts, and what property was owned by the different firms, and the court had passed on the report. The court, properly enough, reserved the right to approve or disapprove the report before the authority to sell was complete. How could the court know until the accounts were stated whether anything was due William H. Gray or Eaton, and consequently whether there was a necessity to sell real estate? It is monstrous to suppose that any court would order a sale to be made, especially where the interests of an infant defendant would be imperiled, until it was judicially ascertained that the rights of other demanded it. In pursuance of the directions given by the decree, the commissioner made his report on the 25th of March, 1856, and without waiting for its confirmation, actually sold, on the 3d day of May following, real estate to the value of nearly $70,000. And, as if to fix beyond question the authority under which he acted, he states to the court in his report of sales, made May 14th, that he sold "the real estate ordered to be sold by the decree pronounced on the 27th day of

October, 1855."

But it is claimed that a *nunc pro tunc* decree, subsequently entered, gave the power to make the sale and rendered valid what, without it, would have had no validity.

The only proceedings which the record discloses are those set out *ante,* p. <68 U.S. 629|>629-630, and under them the claim is made.

The motion there speaks of an interlocutory decree's having been entered on the 7th day of April which it was desired to correct. And the court, in passing on the motion, say that there was an error in the decree, which was the result

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of a mistake, and direct an amended decree to be entered *nunc pro tunc* in lieu of the one which was entered on the 7th of April.

This motion and order are predicated on a state of facts which did not exist. No decree was ever entered on the 7th of April nor on any other day prior to the sale, and we cannot, therefore, even conjecture what the errors and mistakes were which it was desirable to correct. If the court had said that on the 7th of April, the report of the commissioner was approved, and the sale ordered, but through inadvertence or neglect on the part of the court or its officers, the proper entries were not made, then it might well be argued that a *nunc pro tunc* decree could be made. A *nunc pro tunc* order is always admissible, when the delay has arisen from the act of the court. [Footnote 3] But that is not this case. There is nothing to show that the report of the commissioner was approved prior to the sale; no evidence that any decree was entered, or any authority even to make one, on the day stated, nor in fact that the court was in session on that day. By no rule of law can a decree, which was clearly an afterthought and made subsequent to the sale, bolster up the authority to make it. Purchasers at a judicial sale are protected when the power to make the sale is expressly given, not otherwise. It is only when they buy on the faith of an order of the court which clearly authorizes the act to be done that the shield of the law is thrown around them. An officer of the court may

erroneously suppose that the power to sell is given by a decree, yet if he does sell, his act is without authority of law and is void.

The sale made by James D. Thornton, the commissioner appointed by the judge of the District Court of the Fourth Judicial District of California, on the 3d day of May, 1856, was without authority of law and void. The purchasers at that sale acquired no rights against the heirs of Franklin C. Gray and the deeds given by the commissioner conveyed no title. These general views are decisive of this controversy.

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The court below directly charged the jury that it was their duty to find a verdict against the plaintiff, Matilda C. Gray, which instruction was particularly excepted to and was erroneous.

Case No. 169, in which Brignardello and others are plaintiffs in error, is affirmed with costs; and case No. 223, in which Matilda C. Gray is plaintiff in error, is reversed with costs and remanded and a *venire de novo* awarded.

Judgment according.

[Footnote 1]

9 Cal. 616.

[Footnote 2]

Voorhees v. Bank of United States, 10 Pet. 449; *Grignon's Lessee v. Astor,* 2 How. 319.

[Footnote 3]

Fishmongers' Co. v. Robertson, 3 Manning, Granger & Scott 970.