Miller Vs. Sherry

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SooperKanoon Citation : sooperkanoon.com/81240

Court : US Supreme Court

Decided On : 1864

Appeal No. : 69 U.S. 237

Appellant : Miller

Respondent : Sherry

Judgement :

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Miller v. Sherry

69 U.S. (2 Wall.) 237

ERROR TO THE CIRCUIT COURT FOR

THE NORTHERN DISTRICT OF ILLINOIS

SYLLABUS

1. A creditor's bill, to be a *lis pendens* and to operate as a notice against real estate, must be so definite in the description of the estate as that anyone reading it can learn thereby what property is the subject of the litigation. If it is not so, it will

be postponed to a junior bill which is.

2. A party entitled to a homestead reservation under the laws of Illinois --

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whose property in which it is a court of chancery has ordered in general terms to be sold to satisfy a creditor whom he had attempted to defraud by a secret conveyance of it -- must set up his right, if at all, before the property is thus sold. He cannot set it up collaterally after the sale, and so defeat an ejectment brought by a purchaser to put him out of possession.

3. When chancery has full jurisdiction as to both persons and property, and decrees that a *master* of the court sell and convey real estate, the subject of a bill before it, a sale and conveyance in conformity to such decree, is its effectual to convey the title as the deed of a sheriff, made pursuant to execution on a judgment at law. The defendant whose property is sold need not join in the deed.

Sherry had obtained a judgment in ejectment for some lots and a house on them, in Illinois, against Miller, in the circuit court for the Northern District of that state, and this was a writ of error to reverse it.

It appeared, on the trial below, that W. & W. Lyon had obtained a judgment against Miller in October, 1858, and sued out a *fi. fa.,* on which *nulla bona* was returned. In February, 1859, they filed a *creditor's* bill against the same Miller, his wife, and one Williams (son-in-law of Miller), charging that Miller had, on the 6th of April, 1857, conveyed the premises now in controversy -- describing them, and describing them, moreover, as lots, which at the time of the conveyance, and at the time of the bill filed, *Miller occupied, and, with his family, resided* on -- to this Williams, to defraud creditors, and praying that the deed should be set aside, the premises sold, and his debt paid out of the proceeds. Miller and Williams answered the bill. In June, 1860, the cause was heard, the deed set aside as fraudulent, and the *master in chancery* for the court ordered to sell the premises, and to execute to the purchaser *good and sufficient* deeds of conveyance, and that the sale *so* made shall bar and divest *all, and all manner of interest or right,*

which the said Miller or any of the defendants might have in the property or in any part of it. The master accordingly did sell, for $1,867, and by deed convey, in September, 1860, the premises to one Bushnell, who conveyed to Sherry, plaintiff below.

It further appeared that a firm named Mills & Bliss had

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also obtained a judgment against Miller in the same court in October, 1857 -- that is to say, a year before the judgment of W. & W. Lyon -- and that on a *fi. fa.* issued upon it *nulla bona* was also returned. In April, 1858, Mills & Bliss filed a *creditor's bill* against Miller and a certain Richardson, Williams, the son-in-law of Miller, and person to whom, by deed of 6th of April, 1857, he had conveyed the house and lots in controversy, *not* being made a party. This bill -- which, it will be noted, was filed several months before the bill of W. & W. Lyon -- charged a variety of frauds in *general terms,* against Miller, and particularly, that he had "made a sale of his stock of goods and merchandise, notes and accounts, at Ottawa aforesaid, and of great value, to this defendant, Richardson." It also charged that Miller was, at the time when the judgment was obtained,

"and now is, the owner, or in some way or manner beneficially interested *in some real estate in this, or some other state or territory,* or some chattels real of some name or kind, or some contract or agreement relating to *some* real estate, or the rents, issues, and profits of *some* real estate."

But the bill, unlike that of W. & W. Lyon, contained no reference to the specific property, the subject of the ejectment. And there was no *reference to real estate* in the charging part of the bill other than the general one of "some real estate," &c.;, as above given. There was a special prayer that the sale to Richardson should be declared void and that the property or its avails should be applied to the payment of the judgment of Mills & Bliss.

The matter being referred to a master, Miller, was examined before him. *He, Miller, then disclosed* the fact of the conveyance of the house and lots to Williams,

his son-in-law, by the deed of April, 1857. In March, 1860, the master filed his report containing the evidence just stated. Upon this, Mills & Bliss (December, 1860), filed an amendment to their original bill making Williams a party, process being issued against him, but the process not being served. This amendment charged that the deed of Miller to Williams of April, 1857, was fraudulent and void. Williams did not

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answer, and the bill as to him was dismissed. A receiver was appointed July 13, 1861, and *Miller* was ordered to convey *to him,* which he did on the 26th of that same month. The deed embraced, by description, the premises in controversy, but they were conveyed, *subject to the rights which Miller might have in them "under the homestead law of Illinois."*

Pursuant to an order of court, the receiver, on the 23d of August, 1861, sold and conveyed the property for $500 to one Benedict, the deed, like Miller's own to the receiver, being subject to the reservation of the "homestead right."

In reference to this reservation it is necessary here to state that a statute of Illinois enacts that "the lot of ground and the buildings thereon, occupied as a residence, and owned by a debtor being a householder, and having a family," to the value of one thousand dollars, "shall be exempt from levy and forced sale, under any process or *order* from any court of law or *equity* in this state," and it further declares, that

"No release or waiver of such exemption shall be valid, unless the same shall be in writing, subscribed by such householder, and his wife, if he have one, and acknowledged in the same manner as conveyances of real estate are by law required to be acknowledged, it being the object of this act to require, in all cases, the signature and acknowledgment of the wife as conditions to the alienation of the homestead."

At the time of the ejectment below, Miller was living with his wife and children in a house on the premises sold; which were worth about $2,700.

Upon these facts, the counsel of the plaintiff below asked the court to charge the jury:

1. That Mills & Bliss, by filing their bill against Miller, and service of process, obtained a lien upon all the property and effects of Miller, which lien had, by the decree and sale of the receiver, passed into a title in Benedict which title related back to the service of process, and had become paramount to the title of the plaintiff.

2. That the defendant was entitled to a homestead right under the laws of the State of Illinois, in such cases made

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and provided, which he could set up as a defense in this case.

The court gave neither instruction, but gave instructions in substance the reverse of them. Its action herein was the question before this Court.

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MR. JUSTICE SWAYNE delivered the opinion of the Court.

The proceedings under the bill filed by the Lyons appear to have been, in all respects, regular. W. & W. Lyons had obtained a judgment at law and issued an execution, upon which the return of *nulla bona* was made. This laid the foundation for a creditor's bill, and such a bill was filed. The necessary parties were brought before the court and answered.

The court had full jurisdiction, both as to the parties and the property. The decree was regularly entered, and the sale and conveyance by the master to Bushnell were made in pursuance of it. The only objection taken to the proceedings is that Williams, in whom was vested the legal title, was not ordered to convey, and did not convey. A conveyance by him was not necessary.

Where a court of equity has jurisdiction, as in this case, a sale and conveyance in obedience to a decree is as effectual to convey the title as the deed of a sheriff, made pursuant to a sale under an execution issued upon a judgment at law. When the object of the suit is to compel the conveyance of the

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legal title by the defendant, and the decree does not require a sale, the title will not pass until the deed is executed -- unless it be provided, as has been done in some of the states, by statute, that the decree itself shall operate as a conveyance. In all such cases, the court has power to compel the defendant to convey. When the property is beyond the local jurisdiction of the court, and the defendant is before it, the court can compel him to convey, as it may direct, for any purpose within the sphere of its authority. This is an ordinary exercise of the remedial jurisdiction of those courts, and the power is one of the most valuable attributes of the equity system. The principle of those cases has no application here. The title derived by Bushnell from these proceedings must be deemed perfect, unless it be invalidated by that derived to Benedict from the sale and conveyance under the bill of Mills & Bliss.

The judgment obtained by Mills & Bliss, was the elder one, but it was subsequent to the conveyance from Miller to Williams. It is not contended that the judgment was a lien on the premises. The legal title having passed from the judgment debtor before its rendition, by a deed valid as between him and his grantee, it could not have that effect by operation of law. The questions to be considered arise wholly out of the chancery proceedings.

The filing of a creditor's bill and the service of process creates a lien in equity upon the effects of the judgment debtor. [Footnote 1] It has been aptly termed an "equitable levy." [Footnote 2]

The original bill was in the form of a creditor's bill, as found in the appendix to Barbour's Chancery Practice. It contained nothing specific, except as to the transactions between Miller and Richardson. There was no other part of the bill

upon which issue could have been taken as to any particular property. It was effectual for the purpose of creating a general lien upon the assets of Miller -- as the

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means of discovery, and as the foundation for an injunction -- and for an order that he should convey to a receiver. If it became necessary to litigate as to any specific claim, other than that against Richardson an amendment to the bill would have been indispensable. It did not create a *lis pendens,* operating as notice, as to any real estate. To have that effect, a bill must be so definite in the description, that anyone reading it can learn thereby what property is intended to be made the subject of litigation. In *Griffith v. Griffith,* [Footnote 3] it is said:

"To have made such a bill constructive notice to a purchaser from the defendant therein, it would have been necessary to allege therein that these particular lots, or that all the real estate of the defendant in the City of New York, had been purchased and paid for, either wholly or in part, with the funds of the infant complainant. Or some other charge of a similar nature should have been inserted in the bill, to enable purchasers, by an examination of the bill itself, to see that the complainant claimed the right to, or some equitable interest in, or lien on, the premises."

It is evident that the premises in controversy were not in the mind of the pleader when this bill was drawn.

There is another reason why the bill could not operate as constructive notice. Williams, who held the legal title, was not a party.

"We apprehend that to affect a party as a purchaser *pendente lite,* it is necessary to show that the holder of the legal title was impleaded before the purchase which is to be set aside. [Footnote 4]"

The principle applies only to those who acquire an interest from a defendant *pendente lite.* [Footnote 5] The title passed from Williams to Bushnell.

The amended bill was undoubtedly sufficient, and it made Williams a party. But he was not served with process, and if he had been, this bill could have operated only from the time of the service. Where the question of *lis pendens* arises

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upon an amended bill, it is regarded as an original bill for that purpose. [Footnote 6] It was a gross irregularity to take a decree against Miller without Williams' being before the court, and if the attention of the court had been called to the subject, the amended bill must have been dismissed. The decree against Miller as to the premises in controversy is a legal anomaly. But it is unnecessary to consider this subject, because before the amended bill was filed, the proceedings under the bill of the Lyons had been brought to a close and the title of Bushnell consummated. His rights could not be affected by anything that occurred subsequently. He had no *constructive notice* of the proceedings in the case of Mills & Bliss. Had he and his alienee actual notice? This also is a material inquiry. [Footnote 7] We have looked carefully through the record and find no evidence on the subject. Had the suit below been in equity, it would have been necessary for the defendant in error to deny notice to himself or to his grantor. The want of notice to either would have been sufficient. The form of the action rendered a denial unnecessary. The plaintiff having exhibited a title, apparently perfect, the burden was cast upon the defendant of proving everything upon which he relied to defeat it. As the case was developed on the trial in the court below, the title of the defendant in error properly prevailed.

2. In regard to the homestead right claimed by the plaintiff in error, there is no difficulty. The decree under which the sale was made to Bushnell expressly divested the defendant of all right and interest in the premises. It cannot be collaterally questioned. Until reversed, it is conclusive upon the parties, and the reversal would not affect a title acquired under it while it was in force.

We think that the learned judge who tried the case below, was correct in refusing to give the instructions submitted by the plaintiff in error, and in giving those to which exception was taken.

Judgment affirmed with costs.

[Footnote 1]

Bayard v. Hoffman, 4 Johnson's Chancery 450; *Beck v. Burdett,* 1 Paige 308; *Slorm v. Waddel,* 2 Johnson's Chancery 494; *Corning v. White,* 2 Paige 567; *Edgell v. Haywood,* 3 Atkyns 352; 1 Kent 263.

[Footnote 2]

Tilford v. Burnham, 7 Dana 110.

[Footnote 3]

9 Paige 317.

[Footnote 4]

Carr v. Callaghan, 3 Littell 371.

[Footnote 5]

Stuyvesant v. Hall, 2 Barbour's Chancery Rep. 151; *Fenwick's Admr. v. Macey,* 2 B.Monroe 470; *Parks v. Jackson,* 11 Wendell 442.

[Footnote 6]

Clarkson v. Morgan's Devisees, 6 B.Monroe 441.

[Footnote 7]

Parks v. Jackson, 11 Wendell 442; *Roberts v. Jackson,* 1 *id.* 478.