

Lanahan Vs. Sears

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Court : US Supreme Court

Decided On : 1880

Appeal No. : 102 U.S. 318

Appellant : Lanahan

Respondent : Sears

Judgement :

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102 U.S. 318

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE WESTERN DISTRICT OF TEXAS

SYLLABUS

1. Where a party, on receiving an absolute deed, covenants with his grantor to reconvey the lands when the money which it was given to secure shall be paid, both instruments must be taken together as constituting a mortgage.

2. The mortgagee of a homestead in Texas cannot maintain ejectment therefor if the "forced sale" thereof be prohibited by the constitution of the state which was in force at the date of the mortgage.

APPEAL from the Circuit Court of the United States for the Western District of Texas.

This was a suit in equity by James E. Sears and Clara Sears, against Samuel J. Lanahan.

The case made by the bill is, in substance:

The complainants were married in November, 1869, and thereafter lived, and still live, in Texas, said James since his marriage having been, under the constitution and laws of that state, the head a family. In May, 1870, they purchased certain improved lots in Waco, Texas, and he thereupon took possession of them, and has, as the head of a family, and with his wife, ever since occupied them as their homestead. He was engaged in business, and became indebted to the firm of Lanahan & Son, of Baltimore, to whom he gave his promissory notes, aggregating \$7,858.19. They were not paid, and the firm pressing for payment or security, he and wife, to obtain time and to prevent legal proceedings, made, May 2, 1873, an absolute deed -- which was duly acknowledged and recorded -- of the lots to one Robertson, agent of the firm. Though made to him, it was really for the benefit of the firm, and there was executed and delivered contemporaneously therewith a writing by him, which sets forth that the deed was made for the purpose of securing the notes.

Notwithstanding the deed, the complainants continued to occupy the homestead. It was subsequently conveyed, without consideration, by Robertson to one Fort, who conveyed it in the same way to Samuel J. Lanahan, a member of the firm. He holds the same for its benefit, and, the notes being due and unpaid, brought ejectment Dec. 20, 1875, in the court

below to try the title to and recover the possession of the lots, making only said James a party defendant.

The bill avers that the deed of May 2, 1873, and accompanying agreement constitute a mortgage upon the homestead which cannot be judicially enforced, and that if the judgment be recovered, the complainant Clara will be wrongly deprived of her homestead. An injunction is prayed for restraining Lanahan from the further prosecution of his suit.

The defendant's demurrer to the bill having been overruled and he declining to answer, the court decreed in favor of the complainants.

The defendant then appealed here.

Art. 12, sec. 15, of the Constitution of Texas of 1868 is as follows:

"The legislature shall have power, and it shall be their duty, to protect by law from forced sale a certain portion of the property of all heads of families. The homestead of a family not to exceed two hundred acres of land (not included in a city, town, or village), or any city, town, or village lot or lots not to exceed five thousand dollars in value at the time of their destination as a homestead, and without reference to the value of any improvements thereon, shall not be subject to forced sale for debts except they be for the purchase thereof, for the taxes assessed thereon, or for labor and materials expended thereon, nor shall the owner, if a married man, be at liberty to alienate the same unless by the consent of the wife and in such manner as may be prescribed by law. "

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MR. JUSTICE FIELD delivered the opinion of the Court.

The premises described in the complaint are in the City of Waco in the State of Texas. They have been the homestead of the complainants from the time of their purchase, in May, 1870. The conveyance to Robertson in 1873 was accompanied by a defeasance from him, stating that the deed was executed as security for certain promissory notes of the husband. The two documents -- the deed, which

was absolute in form, and the defeasance -- are therefore to be taken together as if forming one instrument. They together constitute a mortgage, and as such would be treated in the courts of Texas.

By the constitution of that state of 1868, which was in force when the notes were given and the mortgage executed, the homestead of a family was not subject to forced sale for debts except for the purchase money or for taxes and for labor and materials expended thereon. The premises in question therefore could not be sold under therefore, could not be sold under any decree in a suit for the foreclosure of the mortgage. The prohibition of the constitution extended to any species of compulsory disposition of the homestead, whether denominated a sale or otherwise. A similar prohibition in the Constitution of 1845 was so construed by the supreme court of the state in *Sampson & Keene v. Williamson*, contained in the 6th of Texas Reports. In that case, Chief Justice Hemphill said that

"The constitution obviously intended that the homestead should be exempted from the operation of any species of execution, or from any forced disposition of the property, whether partial or total, which would disturb the family in the quiet and uninterrupted possession of their home with the property thereto attached. The beneficence of the provision has a much wider range than to protect the family from a sale which would utterly extinguish all right in the property. It shields them also from any extents or deliveries of the property or from any forcible appropriation of its rents, issues, and profits. It protects the domestic

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sanctuary from every species of intrusion which, under color of law, would subject the property, by any disposition whatever, to the payment of debts."

The appellant is the owner of the mortgage in this case, and aware -- so states him counsel -- that he could not enforce it against the homestead in the state courts, as there mortgages can only be enforced by a decree of sale, commenced an action of ejectment for the premises in the circuit court of the United States, contending that the mortgage passed the legal title as against the mortgagors, and

that, as its owner, he had a right to recover the possession of the premises for default in the payment of the notes secured. He sought, in other words, to get around the state constitution by the form of his procedure in the federal court. We do not think that its wise and beneficent purpose of securing a home to the family against the vicissitudes of fortune can be thus easily evaded. A forced dispossession in ejectment is as much within the prohibition as a forced sale under judicial process. We think, therefore, that the decree in the suit, enjoining the action of ejectment, was properly rendered upon the undisputed facts stated in the complaint, and it is accordingly

Affirmed.

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