

Gage Vs. Pumpelly

Gage Vs. Pumpelly

SooperKanoon Citation : sooperkanoon.com/84974

Court : US Supreme Court

Decided On : Nov-23-1885

Appeal No. : 115 U.S. 454

Appellant : Gage

Respondent : Pumpelly

Judgement :

Gage v. Pumpelly - 115 U.S. 454 (1885)

U.S. Supreme Court Gage v. Pumpelly, 115 U.S. 454 (1885)

Gage v. Pumpelly

Submitted November 2, 1885

Decided November 23, 1885

115 U.S. 454

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF ILLINOIS*

SYLLABUS

In Illinois a judgment by default in a proceeding in a county court under the statutes of that state for the collection of taxes on real estate, by sale of the property, is not conclusive upon the taxpayer, and may be impeached collaterally.

Under the laws of that state as construed by its courts, if any portion of a tax assessed upon real estate and levied and collected by sale of the property is illegal, the sale and the tax deed are void, and may be set aside by bill in equity.

In a proceeding in equity in a court of the United States to set aside a tax sale in Illinois as illegal, the complainant should offer to reimburse to the purchaser all taxes paid by him, both those for which the property might have been legally sold and those paid after the sale.

Appellee's testator, plaintiff below, was in the possession, and claiming to be the owner of a certain lot of ground in Chicago for which the appellant, who was defendant below, held deeds executed by the County Clerk of Cook County, Illinois, on the 6th of September, 1877, and 4th of February, 1880, which deeds were based on sales made October 27, 1874, and October 3, 1877, for the nonpayment of taxes. These sales were in pursuance of judgments of the county court, rendered at the instance of the Treasurer of Cook County, who was, *ex officio*, the collector of its revenue.

To the proceedings in the county court the plaintiff did not appear, nor was he a party thereto otherwise than by publication in a newspaper, giving notice of the application for judgments, and, subsequently, of the order for the sale of the property for nonpayment of the taxes assessed against it.

The present suit was brought for the purpose of removing the cloud on the plaintiff's title arising from the before-mentioned sales and tax deeds and to obtain a decree requiring the defendant to convey to the plaintiff such rights and interests as he had thus acquired.

The plaintiff in the bill avows his readiness and willingness

to pay not only the defendant's disbursements for the legal taxes included in the judgments of the county court, but such additional sum as to the court seemed proper.

It was adjudged by the circuit court that the plaintiff should pay the redemption moneys allowed by statute, had the judgments and sales been only for legal taxes, with six percent interest in each case, from the expiration of two years after the tax sale; also, such other taxes as defendant subsequently paid upon the lot in question, with interest at the like rate on the amount of each payment. The aggregate of such payments was ascertained to be \$1,118 as of May 1, 1882. The defendant having declined to accept that sum with interest, and the same having been paid into court for his use, it was finally adjudged that the title acquired by defendant in virtue of the sales and deeds be set aside and held for naught as against plaintiff, and that the deeds be delivered up and cancelled.

Page 115 U. S. 458

MR. JUSTICE HARLAN, delivered the opinion of the Court. After stating the facts in the language above reported, he continued:

The Constitution of Illinois declares that the right of redemption from sales of real estate for the nonpayment of taxes or special assessments of any character whatever shall exist in favor of owners and persons interested for a period of not less than two years from such sales. And it imposes upon the General Assembly the duty of providing by law

"for reasonable notice to be given to the owners or parties interested, by publication or otherwise, of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire, *provided* that occupants shall in all cases be served with personal notice before the time of redemption expires."

Art. IX, § 5.

By the statutes in force when these sales were had, no purchaser nor the assignee of any purchaser of land, town, or city lot at any sale for taxes or levies authorized by the laws of the state was entitled to a deed for the lands or lots so purchased until he served or caused to be served a written or printed or partly written and partly printed notice of his purchase

"on every person in actual possession or occupancy of such land or

Page 115 U. S. 459

lot, and also the person in whose name the same was taxed or specially assessed if upon diligently inquiring he can be found in the county at least three months before the expiration of the time of redemption on such sale, in which notice he shall state when he purchased the land or lot, in whose name taxed, the description of the land or lot he purchased, for what year taxed or specially assessed, and when the time of redemption will expire. If no person is in actual possession or occupancy of such land or lot, and the person in whose name the same was taxed or specially assessed, upon diligent search and inquiry, cannot be found in the county, then such person or his assignee shall publish such notice in some newspaper printed in such county, . . . which notice shall be inserted three times, the first time not more than five months, and the last time not less than three months, before the time of redemption shall expire."

Rev.Stat.III. 1874, c. 120, p. 893.

The bill impeaches the defendant's title in respect of the first deed he received upon the ground that it was acquired in violation of these constitutional and statutory provisions, and in respect of his title under both deeds upon the ground that the assessment of taxes upon the lot in question, for the nonpayment of which the county court ordered the sales included in each instance illegal taxes for which the premises were not liable and which the owner was not bound to pay. The appellant insists that these objections to his title are so far concluded by the judgments of the county court that they cannot be urged in any collateral proceeding or suit, the only remedy of the owner of the property being, it is

contended, by appeal to the supreme court of the state. His argument is that by the constitution and laws of the state, the county court is a court of record, with general original jurisdiction in the matter of the sale of lands for delinquent taxes; that proceedings in such cases are *in rem* against the property assessed, and that judgment therein rendered is conclusive upon the taxpayer so long as it remains unmodified by the court which rendered it or until it is set aside in some direct mode for fraud or collusion or is reversed upon appeal for error. In support of the general rule that forbids collateral attack upon the judgment

Page 115 U. S. 460

or decrees of a court having jurisdiction of the subject matter and of the parties, and where the want of jurisdiction does not appear upon the record, numerous authorities are cited by appellant's counsel. But they have no application to cases like the present one, as the settled course of decision in the highest courts of the state abundantly shows. It will be well to examine a few of the cases determined in that court.

In *McLaughlin v. Thompson*, 55 Ill. 249, which was an action of ejectment in which the plaintiff asserted a tax title the validity of which the defendant disputed upon the ground that the sale was, in part, for taxes levied by a county commissioner's court at a time other than that prescribed by the statute, the court said:

"The evidence shows that this county tax entered into and formed part of the judgment, and the sum for which the land was sold. That tax being illegal, appellant or those under whom be claims were not required to pay it, nor did the law impose the duty of redeeming from the sale. And it has been repeatedly held that if any portion of the tax is illegal or the judgment is too large only to the extent of a few cents, the sale and tax deed will be void. This being so, the tax deed conveyed no title, and hence there could be no recovery under it, as the plaintiff in ejectment must, as in other cases, establish his right to recover."

A case much relied upon by counsel for appellant is *Graceland Cemetery Co. v. People*, 92 Ill. 619. That was an appeal from a judgment rendered by a county court against certain lands belonging to the cemetery company for the taxes of 1871 to 1874, inclusive. It appeared that in 1873, application was made to the county court for judgment against the lands for the taxes of 1871. The company resisted judgment upon the ground that the lands were exempted by law from taxation. After trial, the defense was sustained. A similar application was made for judgment for the taxes of 1872, 1873, and 1874. It was again resisted and the exemption again sustained. No appeal or writ of error was prosecuted from either of those judgments. Nevertheless, in 1879, another application was made for judgment against the same lands for the taxes for 1871 to 1874 inclusive, and judgment was then rendered by

Page 115 U. S. 461

the county court against the company. The Supreme Court of Illinois reversed the latter judgment upon the ground that the former judgments in favor of the company, in respect of its claim of exemption from taxation, having been rendered after a trial on the merits -- the court having jurisdiction of the parties and the subject matter -- were, even if erroneous, conclusive so long as they were not reversed or modified in some legal proceeding instituted for that purpose. The court observed in that case, that it was

"clear upon principle and authority there is no difference between a judgment rendered in a proceeding to collect taxes and any other judgment so far as being binding on the parties is concerned."

That case is cited by counsel in support of the proposition that the judgment of the county court in respect of the premises here in question is conclusive against the owner although he did not appear and resist the application for judgment. But that the court did not intend so to decide is clear from its language in *Belleville Nail Co. v. People*, , 98 Ill. 399, where it was said:

"In *Graceland Cemetery Co. v. People*, 92 Ill. 619, we held, where the owner of the land appeared in such a proceeding, filed objections and contested the liability of his land for the tax claimed, that the judgment against the land for the tax was conclusive against him of the liability of the land for the tax, in a collateral proceeding. But it is only in the case of such appearance and defense that we regard the judgment as conclusive."

It was further observed in the same case that the declaration of the statute that the tax deed made upon a sale under a judgment for taxes shall be *prima facie* evidence of certain enumerated things requisite to a correct judgment

"shows the intention of the statute that the judgment was not to have the same effect of conclusiveness which is given collaterally to ordinary judgments rendered by default where personal service has been had. There is in these cases no personal service, but only publication of notice in a newspaper that application will be made for judgment."

These principles were reaffirmed in *Gage v. Bailey*, 102 Ill. 11, which was a suit in equity to set aside the sale and conveyance of lands for taxes, upon several grounds, which, as the owner

Page 115 U. S. 462

did not appear in the county court and contest the application for judgment for the tax assessed against his property, were fully considered and passed upon.

But the latest adjudication by the state court of the question under consideration was *Riverside Co. v. Howell*, 113 Ill. 259. That was ejectment for the recovery of land, the defendant claiming title under a tax deed based upon a judgment of the county court. The validity of the sale was questioned upon the ground, among others, that a part of the taxes for the nonpayment of which the sale was ordered were illegal and void. The argument was made there, as in this case, that the judgment of the county court was conclusive as to all matters that could or ought to have been passed upon in rendering it, and if it included too much taxes or illegal taxes, it was only error to be remedied by appeal. But the court, finding that

certain taxes included in the judgment were invalid, held that no title passed by the sale, observing that "the authorities are to the effect that when a part of the tax for which a sale of real estate is made is illegal, the sale is void," citing *McLaughlin v. Thompson*, 55 Ill. 249; *Kemper v McClelland's Lessee*, 19 Ohio, 308; *Gamble v. Witty*, 55 Miss. 26; Cooley on Taxation 295-296; *Hardenburgh v. Kidd*, 10 Cal. 402. In the same case, the court reaffirmed the doctrine laid down in *Belleville Nail Co. v. People*, 98 Ill. 399; *Gage v. Bailey*, 102 Ill. 12, and other cases to the effect that a judgment by default in a tax sale proceeding was not conclusive upon the taxpayer, but could be impeached collaterally, distinguishing that class of cases from those where sales are made to satisfy special assessments, in respect of which it was said that

"if the property owner fails to make his objections in the proper place, and the assessment is confirmed, then he may well not be permitted to go behind the confirmation"

when steps are taken to enforce payment.

These decisions establish a rule of property which determines the present case, for without reference to other objections urged to the validity of the sales and deeds under which appellant claims title, it satisfactorily appears from the proof: 1. that the taxes for the nonpayment of which the first sale

Page 115 U. S. 463

was had included taxes to meet allowances for the *per diem* and mileage of county commissioners in excess of what the statute authorized; 2. that a large part of the taxes for the nonpayment of which the second sale was had was based upon items in the ordinances of the City of Chicago representing as well indebtedness which that city could not under any circumstances legally contract as indebtedness which was in excess of the limit imposed by the state constitution upon counties, cities, and other municipal corporations. *Law v. People*, 87 Ill. 385.

These grounds of objection to the title of the defendant were, under the settled law of the state, open for consideration in this suit. Being well founded, the conclusion must be that the sales at which the defendant purchased, and consequently the deeds which he received, were ineffectual to defeat the title of the owner of the lot in question. By the decree, the defendant receives all that he is entitled to demand as a condition precedent to his surrender of such title as he acquired by his purchase; indeed, he received more than should have been awarded to him, for while as a condition of granting the relief asked, the taxpayer was bound to do equity, and therefore should reimburse the purchaser to the extent of all taxes paid by him, whether those for which the property was sold or those subsequently levied thereon and paid by him, with interest on each sum, *Gage v. Bailey*, 100 Ill. 535; *Smith v. Hutchinson*, 108 Ill. 662; *Peacock v. Carnes*, 110 Ill. 100, the defendant seems to have been allowed in the present case, among other sums, double the amount of the taxes for which the lot was sold. Of this error in the decree the appellees complain, but it cannot be considered upon this appeal by the purchaser at the tax sale, and perhaps, under the statutes regulating the jurisdiction of this Court, it could not have been the subject of a separate appeal by the owner of the lot.

We perceive no error in the decree, and it is

Affirmed.