Selover, Bates and Co. Vs. Walsh

Selover, Bates and Co. Vs. Walsh

SooperKanoon Citation : sooperkanoon.com/91181

Court : US Supreme Court

Decided On : Dec-02-1912

Appeal No. : 226 U.S. 112

Appellant : Selover, Bates and Co.

Respondent : Walsh

Judgement :

Selover, Bates & Co. v. Walsh - 226 U.S. 112 (1912)
U.S. Supreme Court Selover, Bates & Co. v. Walsh, 226 U.S. 112 (1912)

Selover, Bates & Co. v. Walsh

No. 22

Submitted October 29, 1912

Decided December 2, 1912

226 U.S. 112

ERROR TO THE SUPREME COURT

OF THE STATE OF MINNESOTA

SYLLABUS

With the ruling of the state court as to the applicability of a state statute to a particular contract this Court has nothing to do. It is concerned only with the question of whether, as so applied, the law violated the federal Constitution.

The court may, through action upon or constraint of the person within its jurisdiction, affect property in other states.

The obligation of a contract is the law under which it was made, even though it may affect lands in another state, and, in an action which

Page 226 U. S. 113

does not affect the land itself but which is strictly personal, the law of the state where the contract is made gives the right and measure of recovery.

A contract made in one state for the sale of land in another can be enforced in the former according to the *lex loci contractu,* and not according to the *lex rei sitae. Polson v. Stewart,* 167 Mass. 211, approved.

Where the state court has construed a state law as applied to the case at bar, this Court will presume that the state court will make the statute effective as so construed in other cases. This Court will not anticipate the ruling of the state court.

A state statute providing that the vendor of lands cannot cancel the contract without reasonable written notice with opportunity to the vendee to comply with the terms is within the police power of the state, and so *held* that Chapter 223 of the Laws of 1897 of Minnesota is not unconstitutional under the Fourteenth Amendment as depriving a vendor of his property without due process of law or denying him the equal protection of the law.

The test of equal protection of the law is whether all parties are treated alike in the same situation.

Contentions as to unconstitutionality of a state statute not made in the court below cannot be made in this Court.

A corporation cannot claim the protection of the clause of the Fourteenth Amendment which secures the privileges and immunities of citizens of the United States against abridgment or impairment by the laws of a state. *Western Turf Association v. Greenberg,* 204 U. S. 359 .

109 Minn. 136 affirmed.

The facts, which involve the construction of a contract made in Minnesota for sale of land situated in Colorado, and the application thereto of a statute of Minnesota, are stated in the opinion.

Page 226 U. S. 120

MR. JUSTICE Mc KENNA delivered the opinion of the Court.

Error to the Supreme Court of Minnesota to review a judgment of that court awarding damages to defendant in error for a breach by plaintiff in error of an executory contract for the sale of land situated in the State of Colorado.

The contract was made by one Bates for plaintiff in error at the office of the latter, in the City of Minneapolis, he being one of its officers, with P. D. Walsh, the husband of defendant in error. Walsh, however, actually signed the contract at his residence in South Dakota. He subsequently assigned his interest to her, as Bates did to plaintiff in error.

Plaintiff in error, asserting that Walsh had made default of the terms of the contract, cancelled it and subsequently sold the land to other parties. This action was then brought by defendant in error, resulting in a judgment for her which was affirmed by the supreme court. 109 Minn. 136.

By the contract, Bates, the assignor of plaintiff in error, covenanted to convey the land to Walsh, the assignor of defendant in error, reserving certain mining rights

therein. Payments were to be made in installments at the office of plaintiff in error in Minneapolis, punctually, and it was stipulated "that time and punctuality" were "material and essential ingredients" of the contract. It was convenanted, that in case of failure to make the payments

Page 226 U. S. 121

"punctually and upon the strict terms and times" limited, and upon default thereof or in the strict and literal performance of any other covenant, the contract at the option of the party of the first part (Bates), should become utterly null and void, and the rights of the party of the second part (Walsh) should, "at the option of the party of the first part, utterly cease and determine" as if "the contract had never been made." There was forfeiture of the sums paid and a reversion of all rights conveyed, including the right to take immediate possession of the land "without process of law," and it was covenanted that no court should "relieve the party of the second part upon failure to comply strictly and literally" with the contract.

The default of Walsh consisted in the failure to pay taxes, and plaintiff in error elected to terminate the contract, and gave notice of such election to him in writing in the State of North Dakota. Against the effect of such default and notice, defendant in error opposed Chapter 223, Laws of Minnesota, which provides that a vendor in a contract for the sale of land shall have no right to cancel, terminate, or declare a forfeiture of the contract except upon thirty days' written notice to the vendee, and that the latter shall have thirty days after service of such notice in which to perform the conditions or comply with the provisions upon which default shall have occurred.

The trial court and the supreme court held the statute applicable, and judgment went, as we have said, for defendant in error. This ruling is attacked on the ground that, as so applied, the statute offends against the Fourteenth Amendment of the Constitution of the United States in that it deprives plaintiff in error of its property without due process of law and of the equal protection of the laws.

With the ruling of the court as to the applicability of the statute to the contract we have nothing to do. We are

only concerned with the contention that, as so applied, it violates the Fourteenth Amendment. Of this, the supreme court said:

"There can be no serious question as to the constitutionality of the statute. It in effect prescribes a period of redemption in contracts of this character, and was within the power and authority of the legislature. Defendants' principal contention on this branch of the case is not so much that the statute is unconstitutional, as that it should not be construed to apply to contracts made in Minnesota for the sale of land in another state. There is force in this contention, but within the rule of the *Finnes* case, which a majority of the court do not feel disposed to reconsider, the action does not involve the title to the land, is purely personal, and the rights of the parties are controlled by the laws of this state. Under the decision in that case, defendants had no right arbitrarily to declare the contract at an end and refuse to perform it, and are liable for such damages as their refusal caused plaintiff. Following the *Finnes* case, we have no alternative but to affirm the action of the court below."

This excerpt clearly presents the ground of the court's decision, and we may put in contrast to it the contention of plaintiff in error. Its contention is that the contract itself provided for the manner of its termination, and made exact punctuality the essence of its obligation, and that the statute of the state, as it exempts from such obligation, deprives plaintiff in error of its property without due process of law. The argument to support the contention is somewhat confused, as it mingles with the right of contract simply a consideration of the state's jurisdiction over the land which was the subject of the contract. As to the contract simply, we have no doubt of the state's power over it, and the law of the state therefore constituted part of it. It is elementary that the obligation of a contract is the law under which it was made, and we are

not disposed to expend much time to show that the Minnesota statute was a valid exercise of the police power of the state. *C., B. & Q. R. Co. v. McGuire,* 219 U. S. 549 ; *Brodnax v. Missouri,* 219 U. S. 285 . Whether it had extraterritorial effect is another question. The contention is that the statute, as applied, affected the transfer of land situated in another state, and outside of, therefore, the jurisdiction of the State of Minnesota. In other words, it is contended that the law of Colorado, the situs of the property, is the law of the contract. The principle is asserted in many ways and with an affluent citation of cases. The principle cannot be contested, but plaintiff in error pushes it too far. Courts in many ways, through action upon or constraint of the person, affect property in other states (*Fall v. Eastin,* 215 U. S. 1), and in the case at bar, the action is strictly personal. It in no way affects the land or seeks any remedy against it. The land had been conveyed to another by plaintiff in error, and it was secure in the possession of the purchaser. Redress was sought in a Minnesota court for the violation of a Minnesota contract, and, being such, the law of Minnesota gave the right and measure of recovery.

In *Polson v. Stewart,* 167 Mass. 211, a contract made in North Carolina between a husband and wife, who were domiciled there, by which he covenanted to surrender, convey, and transfer all of his rights to lands owned by her in Massachusetts was declared to be a North Carolina contract and enforceable in Massachusetts notwithstanding that, under the law of the latter state, husband and wife were incapable of contracting with each other. To the objection that the laws of the parties' domicil could not authorize a contract between them as to land in Massachusetts, it was answered:

"Obviously this is not true. It is true that the laws of other states cannot render valid conveyances of property within our borders which our laws say are void, for the

plain reason that we have exclusive power over the *res.* . . . But the same reason inverted establishes that the *lex rei sitae* cannot control personal covenants not purporting to be conveyances between persons outside the jurisdiction, although concerning a thing within it. Whatever the covenant, the law of North Carolina could subject the defendant's property to seizure on execution, and his person to imprisonment, for a failure to perform it. Therefore, on principle, the law of North Carolina determines the validity of the contract."

Precedents against the view were noted and contrasted with those supporting it.

The case at bar is certainly within the principle expressed in *Polson v. Stewart.* The Minnesota Supreme Court followed the prior decision in *Finnes v. Selover, Bates & Co.,* 102 Minn. 334, in which it said that, upon repudiation of a contract by the seller of land, two courses were open to the purchaser:

"He might stand by the contract and seek to recover the land, or he could declare upon a breach of the contract, and recover the amount of his damages."

If he elected the former, it was further said, the courts of Colorado alone could give him relief; if he sought redress in damages, the courts of Minnesota were open to him. And this, it was observed, was in accordance with the principle that the law of the situs governs as to the land, and the law of the contract as to the rights of the parties in the contract.

Plaintiff in error bases a contention upon the difficulty of complying with the provisions of the statute with regard to giving notice. Written notice is, as we have seen, necessary to be given of any default, and the time when the cancellation of the contract shall take effect, which must not be less than thirty days after the service, and it is provided that the notice must be served in the manner provided for service of summons in the district court if the vendee resides in the county where the real estate covered by the contract is situated. If the vendee is not

within the county where the real estate is situated, then notice must be served by publication in a weekly newspaper within the county, or, if there is none in the county, then in a newspaper published at the capital of the state. And it is provided that the vendee shall have thirty days after service to perform the conditions or company with the provisions. The contention is that these provisions cannot be complied with either in Minnesota or Colorado, and that plaintiff in error is brought to the dilemma of not being able to cancel the contract, whatever be the default.

The dilemma was not presented to the supreme court of the state for resolution, as plaintiff in error had made no attempt to comply with the statute in any way. As that court held the statute applicable to contracts such as that under review, it will, no doubt, in a proper case, so construe the statute as to make it effective. We are not called upon to anticipate its ruling.

It is manifest from these views that plaintiff in error was not, by the enforcement of the Minnesota statute, deprived of its property without due process of law.

It is further contended that the Minnesota statute denies plaintiff in error the equal protection of the laws, and is therefore void. In specification of the way in which this is done, plaintiff in error says:

"Insofar as the State of Minnesota penalizes its resident owner because he has obeyed the laws of the state or country wherein the land is situated -- the law which he must be subject to -- just so far does it exceed its powers and deny to its citizens the equal protection of the laws."

This manifestly is but another way of presenting the argument, which we have answered, that the law of Colorado controls the contract, and not the law of Minnesota. Discrimination is not made out by saying that resident owners of Minnesota land are given a right to foreclose their contracts, and that residents of Minnesota owning land in other states are not given the same right, even if this were true. The plaintiff

in error is not treated differently from any other seller of land in his situation. This is the test of the application of the equal protection clause of the Constitution of the United States.

Plaintiff in error further charges that the supreme court of the state refused to give full faith and credit to the acts and records of Colorado. The contention was not made in the court below, and cannot be made here. The same comment is applicable to the contention that privileges and immunities of plaintiff in error as a citizen of the United States are abridged. We may say of the contentions that they are but a repetition of the view that the law of Colorado, and not that of Minnesota, governs the contract. And we may say further, it is well settled that a corporation cannot claim the protection of the clause of the Fourteenth Amendment which secures the privileges and immunities of citizens of the United States against abridgment or impairment by the law of a state. *Western Turf Asso. v. Greenberg,* 204 U. S. 359 .

Judgment affirmed.

THE CHIEF JUSTICE and MR. JUSTICE VAN DEVANTER dissent.