Buchser Vs. Buchser

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Decided On : Nov-17-1913

Appeal No. : 231 U.S. 157

Appellant : Buchser

Respondent : Buchser

Judgement :

Buchser v. Buchser - 231 U.S. 157 (1913)
U.S. Supreme Court Buchser v. Buchser, 231 U.S. 157 (1913)

Buchser v. Buchser

No. 641

Submitted November 3, 1913

Decided November 17, 1913

231 U.S. 157

APPEAL FROM THE CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

SYLLABUS

Unless the statutes of the United States control, this Court follows the state court as to whether real estate is separate or community property.

Until the title of an entryman is completed, the laws of the United States control; but after completion, the land becomes immediately subject to state legislation. *McCune v. Essig,* 199 U. S. 382 .

Even if the United States could impress a peculiar character upon land within a state after parting with it, it would only be by clearly expressing it in a statute, which has not been done. *Wright v. Morgan,* 191 U. S. 55 .

A state law that, after completion of the entryman's title, the property becomes community property is not like a contract for sale to a third party, but is consistent, and not in conflict, with the provisions of the Act of March 3, 1891, prohibiting alienation of homestead entries. The highest court of the State of Washington having held that, immediately on completion of title of an entryman, the property becomes community property, and that, on the death of the wife after such completion, her children have an interest therein, this Court follows that decision.

202 F. 854 affirmed.

The facts, which involve the construction and application of statutes of the Washington relating

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to property acquired by an entryman under the laws of the United States, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a bill to quiet title, alleging that the plaintiff, a married man, made entry and acquired title to the land in question under the homestead laws of the United States by patent issued December 17, 1903; that thereafter his wife died, and that the defendants, the children of the marriage, claim an interest in the land. By the laws of the State of Washington, in which the property is situated, it became community property unless the statutes of the United States Forbid. *Teynor v. Heible,* 74 Wash. 222. On that point, we follow the Washington decisions. There was a demurrer, which was sustained by the district court, *sub nom. Buchser v. Morss,* 196 F. 577, and by the circuit court of appeals, 202 F. 854.

There is no doubt, of course, that, until the title is completed, the laws of the United States control. *Wadkins v. Producers Oil Co.,* 227 U. S. 368 ; *Bernier v. Bernier,* 147 U. S. 242 ; *Hall v. Russell,* 101 U. S. 503 ; *Gibson v. Chouteau,* 13 Wall. 92. But when the title has passed, then the land, "like all other property in the state, is subject to state legislation." *Wilcox v. Jackson,* 13 Pet. 498, 38 U. S. 517 ; *Irvine v. Marshall,* 20 How. 558, 61 U. S. 564 ; *McCune v. Essig,* 199 U. S. 382 , 199 U. S. 390 . If the United States could impress a peculiar character upon land within a state after parting with all title to it, at least the clearest expression would be necessary before such a result could be reached. *Wright v. Morgan,* 191 U. S. 55 , 191 U. S. 58 . But it has not tried to do anything of the sort.

No one would doubt that this title was subject to the same incidents as any other so far as events subsequent to its acquisition were concerned. *See Wright v. Morgan, supra.* It could be lost by adverse occupation for the time prescribed by state law, and in a state that adopted the common law as to dower, it would be subject to dower

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if the settler subsequently married. The only semblance of difficulty is due to the coincidence in time of the acquisition of a separate right by the settler and the beginning of a community right in the wife. But this is by no means an extreme illustration of the division of an indivisible instant that is practiced by the law

whenever it is necessary. A statute may give a man a right of action against another for causing his death, that accrues to him at the instant that he is *vivus et mortuus. Higgins v. Central New England & Western R. Co.,* 155 Mass. 176, 179. In the present case, the acquisition under the United States law is complete, and that law has released its control before the state law lays hold, and, upon grounds in no way connected or interfering with the policy of Congress, brings the community regime into play. The special family relations thus created are not like contracts with third persons impliedly forbidden by the Act of March 3, 1891, c. 561, 5, 26 Stat. 1097, amending Rev.Stat. 2290. They are consistent with the policy of the statute, which is to enable the settler and his family to secure a home. *See* 2291.

Decree affirmed.