Haden v. Eaves

55 N.M. 40 (1951) | Cited 14 times | New Mexico Supreme Court | January 13, 1951

On Motion for Rehearing.

In their motion for rehearing the defendants say our opinion holds, in effect, the owner of an undivided interest in realty may not separately render and pay the taxes due on his interest. It was not our intention the opinion should be so understood, but rather that when a tract is assessed as an entirety in the name of one or more of the owners, a tenant in common may not pay his proportionate share and thus discharge the lien of the state on his undivided interest. The lien of the state on the entire tract continues until all taxes assessed are paid. Baca v. Village of Belen, 30 N.M. 541, 240 P. 803; Toothman v. Courtney, 62 W. Va. 167, 58 S.E. 915; State v. Central Pocahontas Coal Co., 83 W. Va. 230, 98 S.E. 214, 219. There are cases holding this may be done, but they are controlled by statutes providing therefor.

The principal ground relied on by the plaintiffs for a reversal was the claim that an assessment of undivided interest in land

in New Mexico was void, and therefore no valid tax title could be based thereon. The defendants met this contention with the following: "The rendition of the entire East Half of Section 1 was made by Thelma Mangham and appears at page 242 of the transcript."

The record supported the statement and the plaintiffs in their reply brief accepted it as true. Later when the parties were invited to file additional briefs on the question of whether an undivided one-fourth interest in the entire tract was sold or only the Haden interest, the defendants stated that after the rendition by Thelma Mangham, Mrs. Canada had also rendered her one-fourth interest by separate assessment. As the members of the Canada family who owned such one-fourth interest were not parties, we did not consider their assessment. So far as the parties now before the court are concerned, their interests were, according to their own statements, covered by the one assessment. Had the owners of the Canada interests been parties, the effect of their subsequent rendition of their one-fourth interest would have been a matter for determination by the court. They may or may not be able to bring themselves within the provisions of Sec. 76-207, 1941 Compilation, which allows an assessor to assess property against the estate of a named person until it is reduced to the possession of some one under the laws of distribution and descent or by virtue of testamentary disposition.

The defendants also urge upon us their claim that if given the opportunity they can show that the Haden interests were the ones actually sold. It is not clear just how this can be done under the assessment, tax sale certificate and deed with their unambiguous descriptions and the law as

declared in this case; but we are willing for the defendants to have their day in court on the point.

The defendants call our attention to the fact that there are several people whose interests are affected by our decision who are not parties to the suit, and for a determination of all interests the case should be remanded with directions to bring in all such parties. We agree with defendants that the former opinion should be modified so new parties may be added and they have their day in court on all issues. Hugh K. Gale Post No. 2182 v. Norris, 53 N.M. 58, 201 P.2d 777.

The opinion heretofore filed will be modified to the following extent:

The defendants may offer their proof in support of their claim that the Haden interests were the ones actually sold, and if it be admitted, the plaintiffs may offer their proof, if any, in opposition thereto. The assessments as made on the tax rolls may also be proved. All necessary parties may

be made defendants, or cross-defendants, with such amendments of the pleadings as may be deemed proper.

The trial between the plaintiffs and the new defendants will, of course, be conducted as a new case between them; but as to the plaintiffs and the defendants now in the case, the new trial will be limited as above provided and such new issues, if any, as may be raised by amended pleadings.

The other matters urged in the motion for rehearing are deemed to be without merit.

In view of the modification of the opinion as above stated, the motion for rehearing will be denied.

It is so ordered.