



Bostic v. Blanton

61 S.E.2d 443 (1950) | Cited 8 times | Supreme Court of North Carolina | October 11, 1950

The decisive question here involved is this: What is the true dividing line between the property of the plaintiffs and the property of the defendants?

It is apparent from the judgment entered the court below concluded that this dividing line as now constituted begins at a stake in the Young line 20 feet south 20 degrees west of the point of intersection of the Young line and the southern line of a public alley (point C on the map) and runs thence south 74 degree east approximately 45 1/2 feet to a point exactly opposite the rear end of the party wall (point F on the map), thence northerly about one foot to the center of the party wall (point G), thence in a southeasterly direction with the center of said wall to a stake on Depot Street (point D), an admitted common corner. We are inclined to the view that this is the correct conclusion and that the judgment based thereon should be sustained.

The parties claim through a common source and the plaintiffs possess the superior record or paper title. These are determinative facts which must be kept in mind in the solution of the question posed.

Resort may not be had to a junior conveyance for the purpose of locating a call in a senior deed. *Cornelison v. Hammond*, 224 N.C. 757, 32 S.E.2d 326; *Thomas v. Hipp*, 223 N.C. 515, 27 S.E.2d 528; *Belhaven v. Hodges*, 226 N.C. 485, 39 S.E.2d 366. We must direct our attention solely to the deeds in the Bostic chain of title to ascertain the lines in his deeds and the property embraced therein.

The description as therein contained does not begin at the common corner. It begins at the intersection of the western line of Depot Street and the southern line of the public alley (point A). It runs thence north 74 west 114 feet to the Young line (point B), thence south 20 degrees west 20 feet to a stake (point C), thence south 74 east. So far there is no call for a natural or artificial object that would alter or vary these calls. They must be accepted as the proper bounds of plaintiffs' property to the point where the last call -- south 74 east -- comes in conflict with the call for the center of the brick wall. The "artificial object" call, the brick wall, is controlling to the extent of its length.

There is no evidence of actual adverse possession by defendants of the disputed land between the points G-1-C-F. Therefore, the plaintiffs and those under whom they claim have in law been in possession of this property since the unity of possession was severed by the Biggerstaffs more than 20 years ago.

Constructive possession follows the superior title. *Ownbey v. Parkway Properties, Inc.*, 222 N.C. 54, 21 S.E.2d 900. He who has the better



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title has constructive possession of all land within the bounds of his deed which is not in the actual adverse possession of another. *Wallin v. Rice*, ante, p. 371. This rule applies even when both parties claim under color of title. *Whiteheart v. Grubbs*, ante, 236.

Defendants contend, however, that their line begins at the common corner on Depot Street, Long's -- now plaintiffs' -- corner (point D) and runs thence with Long's line with the middle of the wall of the first and second buildings 115.5 feet to Margaret Young's line; that under this call, when the rear end of the brick wall is reached, the call should be extended in a direct line to the Young property at point 1 on the map; and that thus the common corner in the Young property is established.

If the calls in the deeds of defendants alone were involved, this might be true. We may, therefore, concede without deciding, that the dividing line call in the defendants' deeds runs from point D on Depot Street to point 1 in the Young line as contended by them. Even so, this merely creates a lappage, and where the title deeds of two rival claimants to land lap upon each other, and neither is in the actual exclusive possession of any of the land covered by both deeds -- that is, the lappage -- the law adjudges the possession of the lappage to be in the one who has the better title. *Whiteheart v. Grubbs*, supra. Furthermore, to follow this procedure would constitute a reversal of the call in plaintiffs' deeds for the purpose of ascertaining their corner in the Young line. The rule prohibits such procedure even when following the lines of the senior title so long as the lines and corners may be ascertained by following the calls in the senior deed in their regular order. *Belhaven v. Hodges*, supra; *Cornelison v. Hammond*, supra.

There is no need to reverse any call in plaintiffs' deeds in order to fix their corner in the Young line. The beginning corner at the intersection of Depot Street and the public alley (point A) and the next corner at the intersection of the alley and the Young line (point B) are not in dispute. They may easily be ascertained by following the calls of the deeds. Then the common corner in the Young line is ascertained and fixed by continuing along the Young line south 20 west 20 feet (point C).

Neither a resort to a reversal of lines nor to a junior conveyance will be permitted to vary this result.

It is asserted, however, that the judgment of the court below breaks the course of the dividing-line call and creates an offset therein, whether the line be run by beginning at point D or point C. This is quite true. But the offset is created by operation of law as a result of the peculiar circumstances of this case. There is no brick wall from C to F. Under the law, plaintiffs have been in possession of the land described in their deeds up to this line since the unity of possession was severed more than

20 years ago. The brick wall is an artificial boundary at all times recognized by plaintiffs. They have never claimed title to and have never possessed the land to the south of this wall. Their right of entry thereon, if any, is forever barred. Thus the line from F to G is closed and the offset is created.

For the reasons stated the judgment below is



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Affirmed.

Disposition

Affirmed.

