

PRATT V. PARKER, 1953-NMSC-005, 57 N.M. 103, 255 P.2d 311 (S. Ct. 1953)

**Pratt et al.
vs.
Parker et al.**

No. 5428

SUPREME COURT OF NEW MEXICO

1953-NMSC-005, 57 N.M. 103, 255 P.2d 311

January 23, 1953

Motion for Rehearing Denied March 26, 1953

Quiet title action. The District Court, Otero County, Scoggin, D.J., entered judgment for defendants and plaintiffs appealed. The Supreme Court, Lujan, J., held that plaintiffs' payment in good faith of taxes, although the assessment on which the payment was made erroneously described the land intended to be assessed, was a defense against the tax sale, based upon a second assessment of the same land with a proper description, and the tax deed issued to defendants' grantor. On motion for rehearing, the Supreme Court, Lujan, J., held, inter alia, that the two year curative, statute of limitations did not apply to preclude recovery of the land by plaintiffs, though the action was brought more than two years after the tax sale.

COUNSEL

Sherman & Hugues, Deming, for appellants.

Shiple & Shiple, Alamogordo, for appellees.

JUDGES

Lujan, Justice. Sadler, C.J., and McGhee, Compton, and Coors, JJ., concur.

AUTHOR: LUJAN

OPINION

{*105} {1} The plaintiffs (appellants) brought this action in the District Court of Otero County to quiet title to Lot 13, Section 5, Township 16 South, Range 10 East, and other land not involved herein, situated about six miles north of the City of Alamogordo, New Mexico, against the defendants (appellees), asserting a fee-simple title based upon an inheritance from their parents. The defendant, C. J. or John Parker claims title under a

deed issued to him by the State Tax Commission. The defendants, L. H. Riddle and J. W. Parker base their titles on warranty deeds given to them by C. J. or John Parker. The defendant Barr Fifer bases his title on a warranty deed given him by J. W. Parker. The case was tried to the court without a jury which resolved the issues in favor of the defendants and plaintiffs appeal.

{2} The record discloses that on October 19, 1925, C. J. Nevell and his wife conveyed the lot in question to A. M. Horne which was described as hereinabove mentioned, also Lot 12, Section 6, Township 16 South, Range 10 East, which is not involved in this suit.

{3} On November 9, 1925, A. M. Horne and his wife, Lou Horne, conveyed a one-half interest in Lot 13, Section 5, Township 16 South, Range 10 East, to W. K. Stalcup. On May 3, 1927, W. A. Stalcup, a single man, conveyed his one-half interest in said lot to A. M. Horne. For the year 1927 W. A. Stalcup rendered for taxation Lot 13, Section 6, Township 16 South, Range 10 East, and Lot 12, Section 5, Township 16 {106} South, Range 10 East. In so doing he designated the section numbers erroneously.

{4} During the year of 1927, C. E. Mitchell, acting as agent for A. M. Horne, rendered this lot for taxation as situated in Section 6 instead of in Section 5, and continued to do so up to and including the year of 1943. From 1927 through 1948, with the exception of 1944, the lot was described in the tax rolls as Lot 13, Section 6, Township 16 South of Range 10 East, and the taxes were regularly paid and receipts issued under this description by A. M. Horne or his predecessor in title. For the year 1944 the lot is described on the tax rolls as Lot 13, Section 5, Township 16 South, Range 10 East, and the taxes were paid by the A. M. Horne Estate and a receipt issued showing that description.

{5} For the years 1927 to 1937, both inclusive, Lot 13, Section 5, Township 16 South, Range 10 East, was assessed to "unknown owners" and no taxes were paid for said years under said rendition and description. On December 7, 1934, this lot was sold to the State of New Mexico, and on March 9, 1935, Tax Sale Certificate No. 341 was issued to the State pursuant to said sale, for the delinquent taxes for the year 1933. On March 18, 1937, the County Treasurer issued Tax Deed No. 206 to the State of New Mexico for the above lot pursuant to the sale of said property held on December 7, 1934

{6} On April 25, 1942, the State Tax Commission executed and delivered to C. J. Parker its deed conveying the lot in question to him. On January 26, 1948, C. J. or John Parker and Josie Parker, his wife, made, executed and delivered to L. H. Riddle a warranty deed conveying a tract of land in the northeast corner of Lot 13, Section 5, Township 16 South, Range 10 East, described as follows:

"Beginning at the northeast corner of said Lot 13, thence west 570 feet, thence south 210 feet, thence east 570, thence north 210 feet, to the place of beginning."

{7} On February 2, 1948, C. J. or John Parker and Josie Parker, his wife, made, executed and delivered to J. W. Parker a warranty deed conveying all of Lot 13, Section

5, Township 16 South, Range 10 East, save and except the land above described in the conveyance to L. H. Riddle. On November 22, 1948, J. W. Parker and Maud M. Parker, his wife, made, executed and delivered to Barr Fifer a warranty deed conveying to him all of Lot 13, Section 5, Township 16 South Range 10 East, except the land previously conveyed to L. H. Riddle as described above.

{8} It is plaintiffs' contention that since they and their predecessors in title in good faith paid taxes under an assessment on Lot 13, Section 6 in Township 16 South, {107} "Range 10 East, thinking and intending the payment to cover taxes on Lot 13, Section 5 in said Township and Range, such payment under the facts shown constitutes a good defense against the sale and tax deed based upon a second assessment of the same land with a proper description. We think this contention is well taken.

{9} The appeal in this case presents the identical question urged in the case of Shackelford v. McGlashan, 27 N.M. 454, 202 P. 690, 691, 23 A.L.R. 75. In that case John Schroeder owned a tract of land in Bernalillo County. He described that tract of land incorrectly in his rendition as Precinct 1, Section SW 1/4 Tp. 17, Tp. 7, Range 5 E, 160 acres. The assessor did not copy the description in Schroeder's rendition exactly, but entered an assessment against him for SW 1/4 Sec. -, Tp. 17, R. 5 E, on which he paid, intending to pay the taxes on the tract of land he owned. The land described in the assessment under which Schroeder paid would be located in Sandoval County and not in Bernalillo County. For the same year the assessor made an additional assessment under "unknown owners" in which he correctly described the land owned by Schroeder as SW 1/4 Section 17, Tp. 9, R. 3 E. Schroeder had no actual notice or knowledge of this assessment. After Schroeder had paid the taxes under the assessment above set out, containing the incorrect description of his lands, the land was sold under the assessment to "unknown owners," and such proceedings were had that the tax title thus instituted became vested in A. E. McGlashan under a tax deed from the county. Later McGlashan and his wife conveyed the land by warranty deed to D. V. Wardall, who, with his wife, and likewise by warranty deed, conveyed the premises to J. J. Weisendanger. On this state of facts the court said:

"The question in this case is whether payment of the tax has in fact been shown, or, in other words, whether payment under this assessment which improperly described the land was good payment on the land he owned. It is conceded that appellant intended by this payment to pay the tax on his land and believed that he was doing so."

{10} (In the case at bar the plaintiff, Yukola Horne Pratt, testified that she intended to pay the taxes on the land previously owned by her father and believed that she was doing so.)

{11} In the Shackelford case, the court continued:

"Since the treasurer of the county accepted the money, it must be assumed that he understood it was payment on the same land, for he certainly would not knowingly accept the payment of taxes upon land not within his county. We have, therefore, a

case where the owner has paid money to the county as {**108*} taxes on a certain piece of land, and the county has accepted it as payment on that land, although in fact the land was not properly described on the tax roll and can only be identified by proof of circumstances wholly apart from the roll itself.

* * * * *

"Payment in good faith of taxes, although the assessment on which the payment is made erroneously describes the land intended to be assessed, is a defense against a sale and tax deed based upon a second assessment of the same land with a proper description."

{**12**} The conclusions announced in *Shackelford v. McGlashan*, supra, find support in still later cases of *Mutual Investment & Agency Co. v. Albuquerque, Etc., Co.*, 34 N.M. 10, 275 P. 92, *N. H. Ranch Co. v. Gann*, 42 N.M. 530, 82 P.2d 632, on rehearing, pages 542 and 639 respectively, and *Lawson v. Serna*, 48 N.M. 299, 150 P.2d 122.

{**13**} The lot in question was unfenced, unimproved and unoccupied prairie land at the time it was purchased from the State by J. C. or John Parker. Several valuable improvements have been erected thereon since the defendants purchased it. The plaintiffs recognize it is a cardinal rule of equity that "he who seeks equity must do equity," and, ordinarily, this would consist of an offer to allow the defendants, who own the improvements on the land, to remove them. Under the facts in this case, however we do not feel that this would be sufficient.

{**14**} Following the cases hereinabove referred to, the judgment is reversed and the cause remanded to the district court with directions to it to ascertain the present value of the improvements placed on the lot by the respective defendants and, thereupon, to enter judgment quieting title of the plaintiffs to the lot in question as against each of said defendants, subject to a lien in favor of each of them on said lot for the value of the improvements found to have been placed there by him, as such value is ascertained by the trial court pursuant to the directions aforesaid; the liens mentioned to have equal priority.

{**15**} Authority supporting by analogy the disposition we are making of this case as to provision for reimbursing the value of improvements is to be found in *Shaw v. Board of Education*, 38 N.M. 298, 31 P.2d 993, 93 A.L.R. 432, and cases there cited.

{**16**} It is so ordered.