

BERT WHEELER ET AL v. FRED D. AYERS

5-6062

486 S.W. 2d 527

Opinion delivered November 13, 1972

1. ADVERSE POSSESSION—PAYMENT OF TAXES—PRESUMPTION OF COLOR OF TITLE.—Under provisions of Ark. Stat. Ann. § 37-103 (Repl. 1962), payment of taxes for 15 consecutive years creates a legal presumption that the taxpayer had color of title prior to the first payment of taxes.
2. QUIETING TITLE—PAYMENT OF TAXES—PRESUMPTION UNDER STATUTE.—Under stipulated facts that appellee had paid taxes under a good description continuously since 1951, and that the tract is wild, unimproved and unenclosed, the 15-year statute served to vest title in appellee.
3. APPEAL & ERROR—CHANCELLOR'S FINDINGS—REVIEW.—While the chancellor did not invoke the 15-year statute, it is the policy of the appellate court to affirm the chancellor if his conclusion is correct on other grounds and supported by the record.

Appeal from Newton Chancery Court, *Ernie E. Wright*, Chancellor; affirmed.

John B. Driver, for appellants.

Laverty & Fancher, for appellee.

LYLE BROWN, Justice. Appellee Fred D. Ayers brought this suit against Bert Wheeler and others to quiet title to several acres of wild and unimproved land in Newton County. The appeal is from the confirmation by the court of one, forty acre tract. For reversal it is alleged that appellee had no color of title.

The facts are undisputed. Appellee acquired a state deed to the disputed forty acres. That deed was dated in 1950 and purported to be based on a forfeiture for nonpayment of the taxes for 1942. Four years after appellee recorded his state deed, the county clerk of Newton County prepared and recorded a certificate which reflected in substance that the forty acres should not have been sold for the 1942 taxes because those taxes had in fact been paid. The following month the state land com-

missioner executed a document cancelling the state deed. That cancellation was not made a matter of record in Newton County. The trial court found that appellee had no notice, actual or constructive, of the cancellation.

The crucial facts were stipulated, namely, (1) that appellee has paid the taxes under a good description continuously since 1951, and (2) that the tract is wild, unimproved and unenclosed. Payment of taxes for fifteen consecutive years creates a legal presumption that the taxpayer had color of title prior to the first payment of taxes. Ark. Stat. Anno. § 37-103 (Repl. 1962). Under the stipulated facts that statute served to vest title in appellee. *Coulter v. O'Kelley*, 226 Ark. 836, 295 S.W. 2d 753; *Schmeltzer v. Scheid*, 203 Ark. 274, 157 S.W. 2d 193; *Greif Bros. v. United States Gypsum Co.*, 341 F. 2d 167 (1965); Jones' Arkansas Titles (Varn's Supp. 1959) § 1528.

It is true that the trial court did not invoke the fifteen year statute; however, it is our policy to affirm the chancellor if the chancellor's conclusion is correct on other grounds and is supported by the record.

Affirmed.
