

Alice ALLEN et al v. Louise SMITH

84-7

669 S.W.2d 5

Supreme Court of Arkansas
Opinion delivered May 14, 1984

1. CONSTITUTIONAL LAW — HOMESTEAD RIGHTS TO WIDOWS — PARTITION NOT BARRED WHERE RIGHT IS DERIVATIVE TO ONLY PARTIAL INTEREST IN PROPERTY. — Article 9, § 6 of the Arkansas Constitution, which grants homestead rights to widows, does not bar partition where a husband had only one-third interest in the property since the homestead right of his widow is a derivative one.
2. HOMESTEAD — WIDOW'S RIGHT TO HOMESTEAD DETERMINED BY EXTENT OF HUSBAND'S INTEREST IN PROPERTY. — Where a man is a cotenant of property when he dies, then the other cotenants may seek partition after his death, even if the property is claimed by his widow as her homestead.

Appeal from Monroe Chancery Court; *Bentley E. Story*, Chancellor; affirmed.

L. T. Simes, II, for appellant.

Carl J. Madsen, P.A., for appellee.

DARRELL HICKMAN, Justice. The appellee, Louise Smith, owns an interest in a lot in Clarendon, Arkansas, that Alice Allen, the appellant, claims as her homestead. Allen's husband, who is deceased, was a tenant in common with two others, one of whom was Smith's predecessor in interest. After Allen's husband died, Smith filed suit for partition. Allen defended with the argument that the property was her homestead and could not be partitioned. The chancellor was right in holding that Allen could only claim homestead in her husband's one-third interest and we affirm.

Article 9§ 6 of the Arkansas Constitution, which grants homestead rights to widows, does not bar partition in this case. The homestead right of a widow is a derivative one and she has only the homestead which the husband could have claimed. Therefore, her homestead right is controlled by

whatever interest her husband had at his death. *Sulcer v. Northwestern National Insurance Co.*, 263 Ark. 583, 566 S.W.2d 397 (1978); *Stuckey v. Horn*, 132 Ark. 357, 200 S.W. 1025 (1918). Where a man is a cotenant of property when he dies, then the other cotenants may seek partition after his death, even if the property is claimed by his widow as her homestead. See *Best v. Williams*, 260 Ark. 30, 537 S.W.2d 793 (1976). Since Allen's husband was a cotenant at his death, only owning one-third interest, Allen's homestead interest is in only one-third of the lot and the other cotenants have the right to seek partition of their interest.

This situation is distinguishable from that where the widow has an exclusive possessory interest because her husband died as the sole owner of the property in question. There partition is barred. *Gibson v. Gibson*, 264 Ark. 420, 572 S.W.2d 148 (1978); *Henderson v. Henderson*, 212 Ark. 31, 204 S.W.2d 911 (1947); *Nichols v. Shearon*, 49 Ark. 75, 4 S.W. 167 (1886); *Harbour v. Sheffield*, 269 Ark. 932, 601 S.W.2d 595 (Ark. App. 1980).

Since Alice Allen had no exclusive possessory right to the land, the cotenants of the property may seek partition.

Affirmed.