

McIVER ABSTRACT COMPANY v. SLATON.

Opinion delivered December 10, 1928.

HIGHWAYS—REDEMPTION FROM TAX SALE—EXTENSION OF TIME.—Acts 1925, p. 1033, extending for a period of three years, in addition to the two years previously provided, the time of redemption from sale for nonpayment of highway tax assessments, *held* valid and constitutional as applied to sales to the State or the road improvement district, and one who purchases land from a road improvement district before expiration of the time allowed by law for its redemption acquired such title only as the district had when its conveyance was executed.

Appeal from Sevier Chancery Court; *C. E. Johnson*, Chancellor; reversed.

STATEMENT OF FACTS.

Appellant company brought this suit against appellees, mortgagors, to foreclose its second mortgage against the 40-acre tract of land particularly described, in Sevier County, Arkansas.

It was alleged that defendants had permitted the land to be sold for road improvement taxes in District No. 7, Sevier County, for the years 1921 and 1922; that they were returned delinquent for that year and filed

by the collector with the clerk of the chancery court, and on April 26, 1922, the road district instituted suit to foreclose its lien on the land, and a decree was entered on July 25, 1924, ordering the land sold to satisfy the lien, and same was sold on September 20, 1924, by the commissioner to the Road Improvement District No. 7, and a commissioner's deed executed therefor on October 25, 1926, reciting a consideration of \$18.50, the amount of taxes, penalty and costs paid; that the road district had, on the 25th day of January, 1927, conveyed the land to B. A. Mauldin, one of the commissioners, for a consideration of \$21.85. Mauldin and the road district were made parties defendant.

It was also alleged that the deed executed by the road improvement district was void because of act 346 of 1925, which extended the time of redemption for a period of three years, the deed having been made before the expiration of the time, could not affect plaintiff's right. Alleged tender of taxes to both the road improvement district and Mauldin, its grantee. Prayed the foreclosure of the lien without prejudice to the remaining notes, that the deed held by Mauldin be canceled, and plaintiffs be allowed to redeem the land, etc.

The defendant, Mauldin, first demurred to the complaint, and then, on the 27th day of April, 1928, he and the road improvement district filed separate answers, denying any right or interest in plaintiff in the land and the existence of a first mortgage. Admitted the other allegations of the complaint, the forfeiture, sale and conveyance of the land to the district, and their purchase and conveyance to Mauldin by the district. Denied the invalidity of his deed, and that the time was extended for the redemption by act 346 of 1925, alleging same to be unconstitutional and void.

The court found the facts as alleged, and held act 346 of 1925 unconstitutional and void, and that it did not extend the time for redemption of the land, and that the time for redemption had expired, etc. Dismissed

the complaint for want of equity; and the appeal is prosecuted to reverse this decree.

E. Newt Spivey and *Dulaney & Steel*, for appellant.

KIRBY, J., (after stating the facts). It is insisted that the court erred in holding act 346 of 1925 invalid, and this contention must be sustained.

The land was sold for taxes, under order of the court, on the 20th day of September, 1924, and purchased by the district, and, under the law existing at the time, subject to redemption within two years. Not being redeemed, the commissioner, on October 25, 1926, conveyed it by deed to Road Improvement District No. 7.

Said act 346 of the Acts of 1925 became effective on the 10th day of June, 1925, before the two years allowed by the existing law for redemption of the land had expired, and by § 1 thereof the time for redemption was extended for a period of three years, making a total of five years allowed for redemption from the date of the sale, the land having been purchased by the road improvement district. *Walker v. Ferguson*, 176 Ark. 625, 3 S. W. (2d) 694.

It was held there, *Walker v. Ferguson, supra*, that a different rule of law was applicable in cases of this kind, where the land was purchased by the State or one of its instrumentalities, at the tax sale, from the rule applied where such land was struck off to a private purchaser, and that it was competent for the Legislature to extend the time for redemption of property sold for the non-payment of road taxes so far as the rights of the State or its instrumentalities are concerned.

The purchaser of the land from the road improvement district, before the time allowed by law for its redemption had expired, acquired only such title as the road improvement district had when its deed of conveyance was executed.

The chancellor erred in declaring the statute extending the time of redemption invalid and holding the appellant not entitled to redeem from the district or

its grantee and to a foreclosure of its mortgage against the land.

The decree will accordingly be reversed, and the cause remanded with directions to make all necessary orders for redemption of the land and foreclosure of the mortgage thereon, and all other necessary relief in accordance with the principles of equity and not inconsistent with this opinion. It is so ordered.
