Michigan Law Review

Volume 49 | Issue 2

1950

REAL PROPERTY-TAX SALES-TITLE OF PURCHASER OF LAND SUBJECT TO EASEMENT

John J. Gaskell S.Ed.
University of Michigan Law School

REAL PROPERTY—TAX SALES—TITLE OF PURCHASER OF LAND SUBJECT TO EASEMENT—In an action to enforce a lien for taxes on real property, the defendants counterclaimed, asking for a declaratory judgment as to whether a sale of real property for nonpayment of taxes extinguishes an easement with which the property is burdened. The easement was appurtenant to an adjoining parcel of land. *Held,* an easement appurtenant is not extinguished by sale of the servient tenement for nonpayment of taxes. *District of Columbia v. Capital Mortgage & Title Co., Inc.,* (D.C. Cir. 1949) 84 F. Supp. 788.

In determining whether an easement appurtenant[1] is extinguished upon the tax sale of the servient land, the basic premise is that a valid assessment is essential to a tax lien; the property assessed and that conveyed on a tax sale must be the same.[2] Assessment is an equivocal word,[3] encompassing the steps of selecting a parcel of land, estimating its value, and preparing the list of the persons or property[4] to be liable for the tax. Where the servient parcel is valued subject to

[1] No attempt was made in the principal case, nor is one made in this note, to distinguish between cases involving easements and restrictive covenants.

[2] Jackson v. Smith, 153 App. Div. 724 at 727, 138 N.Y.S. 654 (1912); affd. 213 N.Y. 630, 107 N.E. 1079 (1914).

[3] Albertville v. Hooper, 196 Ala. 642, 72 S. 258 (1916); Ryan v. Byram, 4 Cal. (2d) 596, 51 P. (2d) 872 (1935); BLACK, TAX TITLES, 2d ed., §89 (1893).

[4] "There are in the several states . . . two methods of listing land for taxation. One is to list the lands as the 'summation of all interests' and the other is to list the interest of the owners of the land as set out in the assessment role. And much depends on the method of assessment as to the interest that passes to the purchaser at a tax sale." Blevins v. Smith, 104 Mo. 583 at 595, 16 S.W. 213 (1891).

the easement, and the dominant parcel is valued as enhanced by the easement appurtenant, irrespective of whether the utlimate liability is exacted against the owner personally or against the land itself, the easement should survive a tax lien sale. In the case of personal liability, the lien can attach only to property owned by that person, and the purchaser can get only a derivative title;[5] and where the liability is in rem, only the parcel valued and made liable for the tax can be proceeded against and sold.[6] But where a parcel of land is valued as if it existed as an unencumbered fee simple, disregarding any easement that may exist, and the summation of interests therein is made liable for the tax with no personal liability against the owners contemplated, then upon the tax sale, that summation of interests passes to the purchaser.[7] Of course that would include the easement, when the servient estate is sold. In theory the distinctions are clear, but statutes do not spell out clearly the theory of tax liability and valuation for the particular state.[8] Only by judicial construction can it be determined in which category a particular jurisdiction belongs. Heavy reliance has been placed upon the statutory declaration of the title given by a tax deed, but again these must be construed. Where the statute defines the tax title as a fee simple, is the interest any less a fee simple because it is subject to an easement? Where the tax lien is prior to all other claims, liens, or encumbrances on the land, is an easement any of these, or is it an interest in the land not covered by such enumeration?[9] Or where the tax title is not defined, will the section defining valuation procedure be a sufficient basis to determine the tax scheme of the state, and will it be consistent with that defining the collection procedures for the tax? Courts have also displayed an unwillingness to investigate the actual valuation processes of the assessor,[10] preferring to presume the valuation was in accord with the construction placed on the statutes. Thus it would seem the varying holdings

[5] Thompson v. McCorkle, 136 Ind. 484, 34 N.E. 813 (1893); Anderson v. Daugherty, 169 Ky. 308, 183 S.W. 545 (1916). BLACKWELL, TAX TITLES, 3d ed., §548 (1869).

[6] Jackson v. Smith, supra note 2; Ehren Realty Co. v. Magna Charta Bldg. & Loan Assn., 120 N.J. Eq. 136, 184 A. 203 (1936); Northwestern Improvement Co. v. Lowry, 104 Mont. 289, 66 P. (2d) 792 (1937); Alamogordo Improvement Co. v. Prendergast, 43 N.M. 245, 91 P. (2d) 428 (1939); Hayes et al. v. Gibbs, 110 Utah 54, 169 P. (2d) 781 (1946). ". . . that the land itself is taxed . . . is only admissible as a figure of speech inasmuch as it is the owner who is really assessed in respect of his ownership of the landed property, not the soil itself." BLACK, TAX TITLES, 2d ed., §420 (1893).

[7] Nedderman v. City of Des Moines, 221 Iowa 1352, 268 N.W. 36 (1936); Wolfson v. Heins, 149 Fla. 499, 6 S. (2d) 858 (1942); Hill v. Williams, 104 Md. 595, 65 A. 413 (1906); BLACKWELL, TAX TITLES, 3d ed., §548 (1869).

[8] Kloek, "Effect of Tax Deeds on Easements Appurtenant and Rights of Way," 16 CHI.-KENT L. REV. 328 (1938) and cases and statutes discussed therein.

[9] Easements preserved: ". . . a perfect and complete title in fee simple, 'free and clear of all liens and encumbrances except taxes. . . .'" Alamorgordo Improvement Co. v. Prendergast, supra note 6 at 250; ". . . shall vest . . . title in fee . . . superior to any lien, claim or charge whatever against such lands except . . . tax. . . ." Crawford v. Senosky, 128 Ore. 229 at 232, 274 P. 306 (1929). Easement extinguished: "[tax] . . . lien shall have priority to . . . any recognizance, mortgage, judgment, debt, obligation or responsibility. . . ." Hanson v. Carr, 66 Wash. 81 at 83, 118 P. 927 (1911).

[10] Jackson v. Smith, supra note 2; Alamogordo Improvement Co. v. Prendergast, supra note 6; Nedderman v. City of Des Moines, supra note 7.

in these cases stem principally from problems of construction. Once the court has determined the system of valuation and where the liability for taxes falls in their state, the results can be expected to conform to the above theories.[11] There is a natural tendency, as illustrated in the principal case, to analyze the precedents in terms of ultimate effect, rather than the statutory basis for a particular holding. Thus the court points out the seemingly unfair burden on the owner of the easement of having to pay the taxes on the servient tenement to preserve his easement,[12] rejects the argument that the assessor's job will be made more difficult by having to consider the easement in making his valuation,[13] and apparently assumes, without satisfactory analysis of the tax statutes, that the valuation is to be made subject to the easement.

John J. Gaskell, S.Ed.

[11] See particularly the concurring opinion of Wolfe, J., in Hayes v. Gibbs, supra note 6. Some states have by legislation specifically preserved certain enumerated easements from tax sale of the servient parcel. Mass. Ann. Laws (Mitchie, 1945) c. 60, §45; Fla. Stat. Ann. (1943) §192.58; Iowa Code Ann. (1949) §448.3; Wash. Rev. Stat. (Remington, 1933) c. 7, §11189-90.

[12] See also Jackson v. Smith, supra note 2.

[13] See also Hunt v. Boston, 183 Mass. 303, 67 N.E. 244 (1903); Hill v. Williams, supra note 7.