Michigan Law Review

Volume 54 | Issue 1

1955

Real Property - Recording - Sufficiency of Description for Notice

Elliott H. Levitas
University of Michigan Law School

REAL PROPERTY—RECORDING—SUFFICIENCY OF DESCRIPTION FOR NOTICE —The grantor owned the disputed property in Scurry County, Texas, when he purported to convey to *A*, by quit-claim deed, properties described as "all the oil, gas and mining leases . . . located anywhere within the United States, most of which are located within the states of New Mexico, Kansas, Oklahoma, Louisiana and Texas." This instrument was recorded in Scurry County. Subsequently, the grantor executed a conveyance to *B* covering the Scurry County interests, and *B*, in turn, conveyed them to *C*. *C's* search of the record did not disclose the prior conveyance to *A*. In an action by *A* against *C* for trespass to try title the trial court held that the description was insufficient as notice to the subsequent purchaser. On appeal, *held*, reversed. The description was sufficient to reasonably identify the land and to constitute a conveyance. Consequently, the recording was valid notice to the subsequent purchaser. *Texas Consolidated Oils v. Bartels*, (Tex. Civ. App. 1954) 270 S.W. (2d) 708.

With this decision, Texas joins the majority of courts[1] in holding that an instrument containing a general description, when properly recorded, is sufficient notice to third parties.[2] Only a few jurisdictions have held or suggested that a description of property as "all" that owned by the grantor may be good between grantor and grantee and yet insufficient notice as to third parties.[3] Articulately or otherwise, the prevailing position rests on the geometer's axiom that the whole is the sum of its parts. This idea translated into law is that one who has notice that all of a grantor's property has been disposed of is notified that every part of it has been disposed of.[4] General descriptions had been held adequate for conveyancing purposes in Texas prior to the instant decision. However, this case is the first ruling that they are also sufficient to give notice. Since the instrument was duly recorded, if it had been seen by the searcher it would surely have been actual notice of the prior conveyance,[5] on the basis of either of two theories. The general description could be particularized, if necessary, by relying on the law involved in the maxim "that is certain which can be made certain."[6] In addition, the searcher would surely be put on inquiry[7] by the wording of the conveyance and would quickly be led to a particular description in an earlier conveyance to the present grantor.[8] This being true with respect to actual notice, any argu-

1 Higgins v. Higgins, 121 Cal. 487, 53 P. 1081 (1898); Peninsular Naval Stores v. Tomlinson, (D.C. Fla. 1917) 244 F. 598; In re Delaney, (D.C. N.Y. 1928) 26 F. (2d) 937; Roberts v. Roberts, 102 Md. 131, 62 A. 161 (1905); Warren v. Syme, 7 W. Va. 474 (1874); 3 AMERICAN LAW OF PROPERTY §12.104 (1952).

2 19 Tex. Rev. Stat. (Vernon, 1948) art. 6637 provides that a deed recorded in the county where the property is located is valid as to subsequent purchasers for value without notice.

Article 6646 provides: "The record of any grant, deed or instrument of writing authorized . . . to be recorded . . . and duly recorded in the proper county, shall be taken and held as notice to all persons of the existence of such grant, deed or instrument."

3 Pargoud v. Pace, 10 La. Ann. 613 (1855); George v. Manhattan Land and Fruit Co., (5th Cir. 1931) 51 F. (2d) 28; Herman v. Deming, 44 Conn. 124 (1876); Mundy v. Vawter, 44 Va. 494 (1847). But see Florance v. Morien, 98 Va. 26, 34 S.E. 890 (1900); National Cash Register Co. v. Burrow, 110 Va. 785, 67 S.E. 370 (1910).

4 Warren v. Syme, note 1 supra; Roberts v. Roberts, note 1 supra; 5 DUKE B. J. 113 (1937).

5 Florance v. Morien, note 3 supra; Merritt v. Bunting, 107 Va. 174, 57 S.E. 567 (1907).

6 Harvey v. Edens, 69 Tex. 420, 6 S.W. 306 (1888); Walker v. Maynard, (Tex. Civ. App. 1930) 31 S.W. (2d) 168; Brusseau v. Hill, 201 Cal. 225, 256 P. 419 (1927); Huron Land Co. v. Robarge, 128 Mich. 686, 87 N.W. 1032 (1901); Austin v. Dolbee, 101 Mich. 292, 59 N.W. 608 (1894); Florance v. Morien, note 3 supra. *Contra,* Herman v. Deming, note 3 supra.

7 Loomis v. Cobb, (Tex. Civ. App. 1913) 159 S.W. 305; Dorman v. Goodman, 213 N.C. 406, 196 S.E. 352 (1938); Peninsular Naval Stores v. Tomlinson, note 1 supra.

8 One aspect of both these approaches to particularity is embodied in the comment that "the same search [that] will lead to a deed which merely mentions all the alienor's estate would lead to one which specially describes the property in question. . . ." Warren v. Syme, note 1 supra, at 491; Loomis v. Cobb, note 7 supra; Dallas v. Rutledge, (Tex. Civ. App. 1924) 258 S.W. 534. The court in the instant case must have decided either that a general description does describe the particular property or that it is not essential to a good description that it do so on the face of the recorded

ment against the result reached in the principal case must be based on the theory that stricter requirements are necessary to give constructive notice. Such a position is untenable. No amount of particularity in description would aid a subsequent purchaser charged with constructive notice, for, *ex hypothesei,* he has not seen the deed in question. Since constructive notice is the operation of a rule of law under certain conditions and is not notice in any subjective sense, it appears illogical to impose more stringent standards than are needed to notify a person who in fact views the document. Moreover, such a position would defeat the policy of the recording acts to encourage reliance on the record. He who searches negligently or not at all would find haven in the less precise description which would have bound the purchaser who searched and found the deed. The Texas court states that to satisfy notice requirements the description must reasonably identify the land and, if the instrument is a deed, it must also convey the land. There is no suggestion that the requirement "to reasonably identify" entails more than the description needed to convey land. Indeed, there is authority that reasonable identification is that which is required to make a conveyance.[9] Thus, the Texas court has impliedly reached the following position: the description in a properly recorded deed is sufficient for notice, actual or constructive, if the deed is valid as a conveyance.[10]

Elliott H. Levitas

instrument itself. Other instruments properly in the record may supply the requisite particularity. See Loomis v. Cobb, note 7 supra. Cf. Wiseman v. Watters, 107 Tex. 96, 174 S.W. 815 (1915); Taylor v. Harrison, 47 Tex. 454 (1877).

[9] Norris v. Hunt, 51 Tex. 609 (1879); Lewis v. Kinnaird, 104 Md. 653, 65 A. 365 (1906).

[10] This result supports the theory that the recording acts operate to protect a priority in one performing certain required acts. The Texas statute, note 2 supra, expressly speaks of notice as the basis for protecting this priority. In the instant case, however, the act of recording a valid deed precludes further inquiries into the question of adequacy of description for notice. See also Aigler, "The Operation of the Recording Acts," 22 MICH. L. REV. 405 (1924).