UNION DIME SAVINGS BANK

Map 77
Par 18 Jd

DECREE ENTERED NOVEMBER 13, 1978, TAX M.B. 14, PAGE 300

IN THE CHANCERY COURT, PART I, AT NASHVILLE, TENNESSEE

BOOK 5376 PAGE 204

STATE OF TENNESSEE IN ITS OWN BEHALF, AND FOR THE USE AND BENEFIT OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE

Plaintiff

VS.

DELINQUENT TAX PAYERS AS SHOWN ON 1972 REAL RPOPERTY DELINQUENT TAX RECORDS OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, AND MORE SPECIFICALLY DESCRIBED IN EXHIBIT A.

UNKNOWN OWNER

Defendant (s)

Control Number 2904-4700

FILE - TAX CIVIL ACTION

NUMBER A-3479

DEC 18 MISC

B* 10.00 * 10.00

AGREED ORDER

It appearing to the satisfaction of the Court that subsequent to the final decree confirming sale in this cause there was instituted an action by Joe Newsom Dozier and Walter Lee Dozier to set aside the tax sale of a portion of property which they owned on Cub Creek Road which had been sold to J. W. Mitchell under Rule No. 77-608-I. Upon a full hearing the Court took the matter under advisement and on October 27, 1978, issued a written memorandum which should be filed and become an order in this cause, all of which is evidenced by signature of counsel for The Metropolitan Government of Nashville and Davidson County, Tennessee, and Joe Newsom Dozier, et al, subscribed hereto.

From all of which the Court finds said agreement is proper and should be ratified, confirmed and made an order of this Court.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the memorandum dated October 27, 1978, in case

number 77-608-I of Part One Chancery Court for Davidson County, Tennessee, be and hereby is made an order in this cause, said memorandum is in words and figures as follows:

MEMORANDUM

This action is to remove a cloud on plaintiffs' title to 40.77 acres of land which the individual defendant acquired at a tax sale.

The parcel acquired by the defendant, Mitchell, at the tax sale was part of a larger parcel owned by the plaintiffs and their ancestors for many years. For many years the taxes for the larger parcel and even other parcels in that civil district had been billed in one statement and described as "340-1/4 A.--River Road." There were no maps showing property to be taxed by parcel number prior to 1963. The 1962 tax bill shows 340.25 A. assessed to David T. Dozier, valued at $13,000.00. With the advent of the Metropolitan form of government and the use of maps and parcel numbers, the 1964 tax bill shows map 67, parcel No. 63 assessed to David T. Dozier at $13,000.00. In fact, parcel 63 on Map 67 included only approximately 200 acres on River Road, but the assessed value had not changed. The plaintiffs continued to pay the tax bills they received unaware that the two farms had been separated on the tax rolls.

Beginning in 1964 the parcel in question, map 77, parcel 18, began to be listed as belonging to "unknown owner" and showed up as 40.77 acres. The rest of the 129.88 acres was shown as parcel 56 on map No. 77 and was thought to be assessed in Cheatham County. Representatives of the Metropolitan Government admit that the way the property shown on the records was a mistake and it should have been listed at all times to Mr. Dozier.

The first suit to collect the taxes was brought under Rule Docket No. 88633 and dealt with the 1964 taxes. A new suit was brought each year to collect the taxes for the subsequent year until the cases were consolidated in 1974 and the property was ordered sold. So far as the records of the court show the subpoenaes to answer in each case were issued for "unknown owner" and were returned "not to be found", or no return was made. The description used in the proceedings in court was:

"Cub Creek Road
S. of Cub Creek Rd.
W. of River Road
40.77
Field Book Number 8D-41345-33400
Map and Parcel Number 77-18"

On March 15, 1973, the proeprty maps were corrected to show the plaintiffs as the owners of the entire 129.88 acres which included the 40.77 acres shown as parcel 18 on map No. 77. The last suit to collect the taxes on this property was filed on March 1, 1974, and the summons again was issued for "unknown owner." The return showed "not to be found in my county." The sale took place on January 23, 1975, and was confirmed on February 18, 1975. The Clerk and Master issued a deed on April 18, 1977.

Under the circumstances of this case, the Court is of the opinion that the tax sale was void. T.C.A. § 67-2018

requires the notice of sale, which shall set out the names of the owners, to be advertised. There is no question that this code section was not complied with. The notice was run in the name of "unknown owner" as all of the proceedings in the suits to collect taxes had reflected, even though the proper owner was known for a year before the sale.

Even in an in rem proceeding, anyone having an interest in the res is entitled to the best notice possible under the circumstances. Mullane v. Central Hanover Trust Co., 339 U. S. 306; Baggett v. Baggett, 541 S.W. 2d 407 (Tenn. 1976); West v. Jackson, 28 Tenn. App. 102, 186 S.W. 2d 915 (1944). Here the government knew the idenity and address of the property owners but failed to have them served, or otherwise notified.

In addition, the Court is of the opinion that there was no tax due on the parcel in question. Prior to 1963 the two farms were taxed as one. Subsequent to 1963, they were shown as two separate pieces of land on the tax maps but the assessment on one remained the same as it had previously been on both. The taxes billed to the plaintiffs had been paid each year. Not until the re-appraisal and mapping program conducted by Cole-Layer-Trumble in 1972 and 1973 did the Metropolitan Government get its record straight with respect to the true ownership of the land involved. Even then the suit to sell parcel 77-18 proceeded against an "unknown owner" more than a year after the true facts were known to the Metropolitan Government.

For all of these reasons the Court is of the opinion that the plaintiffs are entitled to a decree that the tax deed is void. Mr. Collins will prepare the decree with appropriate provisions for reimbursement of Mr. Mitchell for the purchase price. Tax the costs to the Metropolitan Government.

/s/ Ben H. Cantrell
BEN H. CANTRELL, CHANCELLOR

October 27, 1978

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the tax sale of the property to J. W. Mitchell known as Cub Creek Road; S. of Cub Creek Road; W. of River Road; 40.77 acres; Field Book Number 8D-41345-33400; Map and Parcel Number 77-18", be and hereby is set aside, null and void and for naught held and the property was not subject to sale as no taxes were due or delinquent; that title to the land furnished J. W. Mitchell by Raymond L. Barrett, Clerk & Master, be and hereby is null and void and for naught held.

IT IS FURTHER ORDERED,ADJUDGED AND DECREED by the Court that J. W. Mitchell be reimbursed the purchase price of the land in the amount of $2,150.00 and the Clerk & Master pay $1,396.29, which is the remaining net proceeds of the sale being

held, to J. W. Mitchell, and The Metropolitan Government of Nashville and Davidson County, Tennessee, be and hereby is ordered to pay to J. W. Mitchell the remainder of his purchase price of $753.71.

The costs of this cause is adjudged against The Metropolitan Government of Nashville and Davidson County, Tennessee.

This _____ day of _____, 1978.

APPROVED AND ENTERED BY CONSENT:

James D Luther
Attorney for Metropolitan Government of Nashville and Davidson County, Tennessee

Harold E Collins
Attorney for Joe Newsom Dozier, et al

Ben H. Cantrell
CHANCELLOR

I certify that I mailed a copy of the foregoing to Hon. Richard Manson, 2701 Jefferson Street, Nashville, TN 37208, this 9th day of NOVEMBER, 1978.

Harold E Collins

CERTIFICATE OF THE CLERK AND MASTER

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

BOOK 5376 PAGE 208

I, RAYMOND L. BARRETT, Clerk and Master of the Chancery Court of Davidson County, Tennessee, do hereby certify that the foregoing is a full, true and correct copy of the decree entered the 13th day of November, 1978, in Tax Minute Book 14, Page 300, in the cause wherein the State of Tennessee, etc., is the Plaintiff, Vs. Delinquent Taxpayers, etc. (Unknown Owner), the Defendants, Rule Number A-3479 2904-4700, as the same appears of record and now on file in my office.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the official seal of said Court at my office in the Courthouse at Nashville, Tennessee, this the 18th day of December, 1978, and 203rd year of American Independence.

RAYMOND L. BARRETT, CLERK & MASTER

BY _____
Deputy Clerk and Master

F 056411

IDENTIF. REFERENCE

Dec 18 1 58 PM '78

FELIX A. MASSEY, REGISTER
DAVIDSON COUNTY, TENN.