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Constructive Adverse Possession vs. Constructive Possession Under Paper Title - Goen v. Sansbury

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Comments and Casenotes

Constructive Adverse Possession vs. Constructive Possession Under Paper Title

Goen v. Sansbury[1]

In a proceeding by landowners (appellants) against an adjoining owner (appellee) to remove a cloud on the title to a tract of land claimed by both parties, the appellants showed a clear chain of record title from 1844 to the present, dating back to a common owner, whereas the tract of land owned by the appellee first appeared of record in her chain of title in 1867. In 1924 the appellee recorded a subdivision plat covering part of her land including the area in dispute. In 1938 the appellants sub-divided their land in order to sell lots, at which time their surveyor discovered an overlap in the lines of the two subdivisions which indicated a triangular encroachment into the appellants' property covering some 5 acres. The evidence showed that in 1925 the appellee had made and recorded a plat including the area in dispute, had staked off lots, extensively advertised, and had held an auction sale of lots which apparently covered the area in dispute. The auction, however, was called off because of the low bids. There was no evidence of any acts or conduct in relation to the disputed area from 1925 until 1938, other than the payment of taxes by both parties on the triangle in controversy.[2] Neither the appellants nor the appellee actually occupied the area in controversy nor sold lots out of it, although both were in actual possession of other parts of the adjoining tracts. In 1938 there was some discussion between the appellants and appellee concerning the land boundaries, and the appellants recorded a plat covering their land. The appellants began the instant suit within 20 years of 1938, but the lower court held that appellee had acquired title by adverse possession as a result of opening up the property in 1925, the appellants not having met the burden of proving their continuing title to date of suit.

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[1] 219 Md. 289, 149 A. 2d 17 (1959).

[2] There was some evidence that appellee had maintained a stable on the disputed triangle but the Court found such evidence insufficient.

In reversing, the Court of Appeals held that although appellants, as plaintiffs, had the burden of proof, once they had established their title of record, and possession of part of their land, and encroachment thereon by appellee, the burden of proving title by adverse possession was shifted to the appellee and had not been met. Appellee needed to show open, continuing, and adverse occupancy. Stated otherwise, the Court's decision was that the appellants, having a valid record title to the whole land and being in actual possession of part of it, had constructive possession of the disputed area which was superior to the appellee's claim under color of title, where neither actually occupied the area in dispute.

Generally, actual possession of part under color of title creates constructive adverse possession of all unoccupied land within the boundaries laid down in the instrument giving color of title.[3] However, in the case of an overlap of boundaries, the holder of the junior and inferior title, if he is to acquire good title by adverse possession, must enter and actually hold the disputed area adversely and continuously for the requisite period of time; and it is not enough that he enters into possession of the part of the land within his paper color of title which is outside the lines of the land in dispute.[4] This exception to the rule of constructive adverse possession means that the actual possession by the rightful owner of part of the land embraced in his deed overcomes the constructive adverse possession to that land actually occupied.[5]

This exception to the rule of constructive adverse possession under color of title seems to be well established in Maryland. In the case of *Hines v. Symington*,[6] a railroad set up the defense of constructive adverse possession under color of title, and although the case turned on the finding that there had been no instrument giving color of title, the court stated: ". . . possession of part of a tract of land by the rightful owner is constructive possession of the whole as against one in possession of a part and claiming the whole under color of title, except as to the part actually

[3] Michigan v. Wisconsin, 270 U.S. 295 (1926).

[4] Parrish v. Foreman-Blades Lumber Co., 217 F. 335, 338 (4th Cir. 1914).

[5] Hunnicut v. Peyton, 102 U.S. 333 (1880); Elliott v. Hensley, 184 Ky. 144, 222 S.W. 507 (1920); Benne v. Miller, 149 Mo. 228, 50 S.W. 824 (1899); Schmitt v. Traphagen, et al., 73 N.J. Eq. 399, 69 A. 189 (1908); Patrick v. Goolsby, 158 Tenn. 162, 11 S.W. 2d 677 (1928); Claiborne v. Elkins, et al., 79 Tex. 380, 15 S.W. 395 (1891); Stull v. Rich Patch Iron Co., 92 Va. 253, 23 S.E. 293 (1895).

[6] 137 Md. 441, 112 A. 814 (1921).

occupied by the claimant."[7] This rule was based on the decision in *Schlossnagle v. Kolb*,[8] where the court held that where the defendant was in constructive adverse possession under color of title of a tract of land owned by plaintiff's predecessor, who had leased part of the tract to others, the leasing stopped the running of the statute as to all of the land not actually possessed by the defendant, so that the sale 12 years later to the plaintiff entitled the plaintiff to maintain an action of trespass q.c.f.[9]

In the instant case, since appellants were in actual possession of part of the tract embraced in their deed, the only way appellee could acquire title to the disputed area would be by actual adverse possession. To establish adverse possession, a claimant must show that the possession was actual, open, notorious, exclusive and continuous or uninterrupted for the statutory period of twenty years.[10] What acts are sufficient to constitute actual adverse possession depends upon the character of the land and the circumstances in each individual case. The general rule is well stated in the case of *Burns v. Curran*,[11] which defines actual adverse possession as:

> ". . . the doing of acts of dominion on the land, sufficiently pronounced and continuous in character to charge the owner with notice that an adverse claim to the land is asserted. Neither actual occupancy, cultivation, nor residence is required to constitute actual possession. Where property is so situated as not to admit of permanent useful improvements, a continued claim of one, evidenced by public acts of ownership such as he would exercise over property which he claimed in his own right and would not exercise over property which he did not claim, may constitute actual possession."[12]

The Court of Appeals, in the instant case, held that the possession asserted by the appellee by having recorded a plat including the disputed land, subdividing and staking

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[7] *Ibid.*, 446.
[8] 97 Md. 285, 54 A. 1006 (1903).
[9] *Ibid.*, 292. The court stated:
> "There would appear to be no clearer principle of reason and justice than this: that if the rightful owner is in the actual occupancy of a part of a tract, by himself or a tenant, he is in the constructive and legal possession and seisin of the whole, unless he is disseised by actual occupation and dispossession."

[10] Bishop v. Stackus, 206 Md. 493, 498, 112 A. 2d 472 (1955).
[11] 282 Ill. 476, 118 N.E. 750 (1918).
[12] *Ibid.*, 752.

off lots within that area, advertising the property for sale by public auction and paying taxes on the land, was divested by the combination of inaction by the appellee from 1925 to 1938 and the constructive possession by the true owner during that time, even though the appellee continued to pay taxes on the land. The Court seemed to assume that the aforementioned acts in 1925 were sufficient to constitute actual adverse possession, and to adopt the rule as to similar acts in the cited case of *Guaranty Title and Trust Corp. v. United States.*[13] However, in this case, the court did not discuss the question of what would constitute abandonment of adverse possession gained by the aforementioned acts.

The courts are in disagreement as to when an abandonment of adverse possession has occurred. Some courts take the view that abandonment is a question of intention and that there can not be an abandonment of adverse possession without an intention to relinquish the claim of ownership.[14] It has been held that fifteen years of inaction did not constitute abandonment as a matter of law.[15] Other courts have gone to the opposite extreme and held that the moment the land becomes vacant the law restores the legal seisin to the holder of the legal title.[16] The predominant view seems to lie between the two extremes and is well stated in Tiffany:[17]

> "Interruption of the continuity of possession may result from the cessation by the person in possession of his exercise of acts of possession or ownership over the land.
>
> But the mere fact that the acts of possession are not continuous, or that the owner does not continue in actual occupancy does not necessarily show an interruption of the possession, this depending on the

[13] 264 U.S. 200 (1923) which held that platting of land, advertising its ownership, opening streets and other improvements is sufficient to acquire title by adverse possession, even without color of title. See also: Ben Joy Inv. Co. et al. v. Stillman, 114 Fla. 703, 154 So. 829 (1934)—platting and laying off into town lots is an act of ownership which constitutes adverse possession; Succo v. Worthington, 104 F. 2d 472 (4th Cir. 1939)—the dividing of land into lots, the marking of the lots, the putting up of advertisements offering them for sale constituted evidence of adverse possession.

[14] Bruch v. Benedict, 62 Wyo. 213, 165 P. 2d 561 (1946); Goodrich v. Mortimer, 44 Cal. App. 576, 186 P. 844 (1919).

[15] Patchin v. Stroud, 28 Vt. 394 (1856); Langdon v. Templeton, 66 Vt. 173, 28 A. 866 (1894).

[16] Philbin v. Carr, 75 Ind. App. 560, 129 N.E. 19 (1920); Wilson v. Braden, 56 W. Va. 372, 49 S.E. 409 (1904).

[17] 4 TIFFANY ON REAL PROPERTY (3rd ed. 1939).

> character of the acts necessary to constitute actual possession, the intention of the possessor, and the circumstances in the case."[18]

Although it did not describe what constitutes abandonment of adverse possession, the Maryland Court of Appeals seems to take a strict view of the rights of the adverse possessor in this respect. Not only must there be sufficient acts to constitute adverse possession ab initio, but there must be ample evidence of the continuation of these acts for the statutory period in order for the adverse claimant to acquire good title. It appears from the holding in this case that Maryland rejects the liberal view that in the absence of any proof to the contrary, when adverse possession is once shown it is generally presumed to continue.

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[18] *Ibid.*, Sec. 1162.