Michigan Law Review

Volume 46 | Issue 4

1948

REAL PROPERTY-THE DOCTRINE OF PRESUMPTION OF GRANT AS A SUBSTITUTE FOR THE STATUTE OF LIMITATIONS

Charles B. Blackmar S.Ed.
University of Michigan Law School

REAL PROPERTY—THE DOCTRINE OF PRESUMPTION OF GRANT AS A SUBSTITUTE FOR THE STATUTE OF LIMITATIONS—Defendant claimed ownership of a barren island named Palmyra through a series of conveyances extending back nearly eighty years, but his chain of title was defective in that no grant away from the Hawaiian government was shown. He and his predecessors had paid taxes for many years, but had occupied the island only during occasional visits and had made no sustained efforts at commercial exploitation. The United States brought an action to quiet its title as successor to the Hawaiian government but the district court ordered title quieted in defendant on the basis of a presumed grant,[1] and the Circuit Court of Appeals affirmed.[2] On certiorari,

[1] United States v. Fullard-Leo, (D.C. Hawaii 1944) 66 F. Supp. 782. For an earlier trial of the case see (D.C. Hawaii 1940) 66 F. Supp. 774, reversed (C.C.A. 9th, 1943) 133 F. (2d) 743.

[2] United States v. Fullard-Leo, (C.C.A. 9th, 1946) 156 F. (2d) 756.

held, affirmed. Continuing claim of ownership can raise a presumption of grant. Actual occupancy is not required if the land in question is not suitable for occupancy. *United States v. Fullard-Leo*, 331 U.S. 256, 67 S.Ct. 1287 (1947).

An adverse claimant may sometimes prevail against the stockholder of an apparently unassailable paper title by means of the doctrine of presumption of grant, which is a concept entirely distinct from that of adverse possession under a statute of limitations.[3] In numerous early decisions long-continued possession was said to be actual evidence of a lost grant sufficient to raise a rebuttable presumption.[4] The courts in recent years, however, have come to regard the presumption as fictitious,[5] and the trend is toward making it conclusive.[6] The doctrine of presumption of grant can be used in cases to which the statute of limitations does not apply, as a substitute for ordinary adverse possession rules. The most frequent occasion for its employment arises when one holds land adversely to the government.[7] The doctrine aids in effectuating the recognized

[3] 4 TIFFANY, REAL PROPERTY, § 1136 (1939); 2 C.J.S., Adverse Possession, § 232; Ahart v. Wilson, 211 Ky. 682, 277 S.W. 1007 (1925); University of Vermont v. Carter, 110 Vt. 206, 3 A. (2d) 533 (1939).

[4] Mayor of Kingston upon Hull v. Horner, 1 Cowp. 102, 98 Eng. Rep. 989 (1774); Jackson v. McCall, 10 Johns. (N.Y.) 376 (1813); White v. Loring, 24 Pick. (41 Mass.) 319 (1837); Crane v. Reeder, 21 Mich. 24 (1870), in which the doctrine was held to be inapplicable because the first possessor admitted that he had no grant. A presumption of actual grant is particularly forceful if orderly records do not exist. Carino v. Insular Government of the Philippine Islands, 212 U.S. 449, 29 S.Ct. 334 (1909).

[5] In Oaksmith's Lessee v. Johnston, 92 U.S. 343 (1875), the court cast doubts on the soundness of a presumption of actual grant under modern systems of recording. In Fletcher v. Fuller, 120 U.S. 534, 7 S.Ct. 667 (1887), it was indicated that the presumption could be applied even though the jury did not believe that an actual grant had ever existed. Recent cases are Bucella v. Agrippino, 257 Mass. 483 at 487, 154 N.E. 79 (1926) and Trustees v. Lilly, 373 Ill. 431, 26 N.E. (2d) 489 (1940). Statements that performance of all steps necessary to perfect title will be presumed suggest the fictitious character of the presumption. See United States v. Chavez, 175 U.S. 509, 20 S.Ct. 159 (1899).

[6] The presumption of grant as applied to incorporeal hereditaments came to be held conclusive at an early date. 7 HOLDSWORTH, HISTORY OF THE ENGLISH LAW 343 (1925). Conclusiveness of presumption of title through long possession seems to have been first suggested in United States v. Chaves, 159 U.S. 452 at 464, 16 S.Ct. 57 (1895). See Kidd v. Browne, 200 Ala. 299, 76 S. 65 (1917); United States v. 2, 184.81 Acres of Land, (D.C. Ark. 1942) 45 F. Supp. 681; Board of Education v. Nichol, 70 Ohio App. 467, 46 N.E. (2d) 872 (1942). Some relatively recent cases speak of the presumption as rebuttable, Carter v. Goodson, 114 Ark. 62, 169 S.W. 806 (1914); Trustees v. Lilly, 373 Ill. 431, 26 N.E. (2d) 489 (1940), but cases in which there has been an actual rebuttal are very rare.

[7] State v. Dickinson, 129 Mich. 221, 88 N.W. 621 (1901); Territory of Hawaii v. Hutchinson Sugar Plantation Company, (C.C.A. 9th, 1921) 272 F. 856; Presley v. Haynes, 182 Miss. 44, 180 S. 71 (1938). See also Trustees v. Jennings, 40 S.C. 168, 18 S.E. 257 (1893), involving land excluded from operation of the statute of limitations in express terms; In re Title of Kioloku, 25 Hawaii 357 (1920), in which the jurisdiction had no statute of limitations at the commencement of the

judicial policy of protecting possession and use of land over long periods,[8] but its application to the principal case is questionable inasmuch as defendants showed merely a claim not accompanied by continued use.[9]

Charles B. Blackmar, S.Ed.

possession; Duggan v. Wetmore, (C.C.A. 6th, 1915) 221 F. 916, in which the local statute of limitations called for holding under color of title.

[8] The period of twenty years has been used by some courts to set up an arbitrary standard for application of the presumption. 2 C.J.S., Adverse Possession, § 232; United States v. Chaves, 159 U.S. 452 at 464, 16 S.Ct. 57 (1895); Kidd v. Browne, 200 Ala. 299, 76 S. 65 (1917).

[9] There is some authority supporting the court's decision and indicating that possession of wild land which is not suitable for occupancy is not required to raise a presumption of grant. Farrar v. Merrill, 1 Me. 17 (1820); Arthur v. Ridge, (Tex. 1905) 89 S.W. 15. Compare the dissenting opinion in the circuit court of appeals in the principal case, in which it is suggested that the holding threatens the public domain of the United States. 156 F. (2d) 756 at 760.