Cooper v. Guy, Unpublished (1987)

In the Court of Appeal of the State of California
In and For the Third Appellate District
(El Dorado)

Robert E. Cooper et al., Plaintiffs and Respondents,

v.

George Guy et al., Defendants and Appellants.

3 Civil C000265
(Super.Ct.No. 41989)

Opinion:

Harvey, J.*

This is an appeal from a judgment quieting title to real property in favor of the plaintiffs.

By a deed recorded July 11, 1968, the defendants George Guy and Ann Guy acquired certain real property in El Dorado County located in the southeast and southwest quarters of the northwest quarter of section 9, township 12 north, range 10 east, M.D.B. & M. The deed from the grantor, Recreation Investment Co., a partnership described the property by reference to the government survey.[1] The property consisted of most of the southeast quarter, and a small part of the southwest quarter, of the northwest quarter of section 9.

On October 12, 1968, Jerome Page and Eugenia Page executed a deed conveying the northeast quarter of the northwest quarter of Section 9, township 12 north, range 10 east, M.D.B. & M. to the defendants Guy. As in the previous deed, the description referred only to the government survey, not to any monuments.[2] The deed was not recorded until November 20, 1969.

On October 18, 1969, one Richard H. Jones, a licensed surveyor, recorded in El Dorado County a record of survey map (hereinafter, the Jones survey) that he had prepared. That map depicted a division of a portion of the northwest quarter of section 9, township 12 north, range 10 east, M.D.B. & M., into four parcels varying in size from 10.01 acres to 22.24 acres. The map showed that each corner of the parcels, and each change in direction of the boundary lines of the parcels, was monumented either by an iron pipe that had been set by a previous surveyor and was found by Jones or by an iron pipe that was set by Jones. Of most significance to this case, the map showed a one inch iron pipe with a two inch knob stamped "L.S. 2323 N 1/4" at the northeast corner of parcel 4 (it was also the northeast corner of the entire tract depicted on the Jones survey) which had been set by a previous surveyor.

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* Assigned by the Chief Justice

1 The description was: "PARCEL NO. 1: The Southeast quarter of the Northwest quarter of Section 9, Township 12 North, Range 10 East, M.D.B. & M. "EXCEPTING THEREFROM the West 191.33 feet of the North 638.32 feet of the Southeast quarter of the Northwest quarter of Section 9, Township 12 North, Range 10 East, M.D.B. & M.
"PARCEL NO. 2: The East 197.33 feet of the South 597.07 feet of the Southwest quarter of the Northwest quarter of Section 9, Township 12 North, Range 10 East, Range 10 East, M.D.B. & M."

2 The description was:
"The Northeast quarter of the Northwest quarter of Section 9, Township 12 North, Range 10 East, M.D.B. & M."

On September 26, 1970, Carla Groom executed her deed to Billy Chism and Barbara Chism, which deed was recorded on November 4, 1970. That deed described the property conveyed to the Chisms as , "All of that portion of Parcel 4, as shown on the [Jones] Survey..." described thereafter in the deed.[3]

The beginning and each corner of the boundary, and each turn in the boundary, was described by reference to an iron pipe monument except for the portion of the description that lay within roads. In the case of roads, where the boundary entered and left the road, the point was marked with an iron pipe.

On February 1, 1973, a record of survey map prepared by John P. Sanders was recorded in El Dorado County (hereinafter referred to as the Sanders survey). The Sanders survey depicted portions of sections 4 and 5 of township 12 north, range 10 east, M.D.B. & M. Section 4 lies immediately north of section 9, portions of which were shown on the Jones survey. The Sanders survey showed the same iron pipes that were shown at the northeast and northwest corners of the Jones survey, but the Sanders survey also showed the southern line of section 4 (also the northern line of the adjacent section 9) to be approximately 62' south of the line between the two northern corner pipes of the Jones survey. In addition, the Sanders survey reported and showed that John P. Sanders set a pipe at the actual northeast corner of the northwest quarter of section 9, and that pipe was approximately 183 feet in a southeasterly direction from the pipe at the northeastern corner of the Jones survey. Using the quarter corner set by Sanders and shown on the Sanders survey to determine the eastern line of the northwestern quarter of section 9, that line is about 169 feet east of the easterly line of the parcels shown on the Jones survey.

Sometime before the end of 1976, the owners of the properties lying in section 4, immediately north of section 9, began an action against the owners of the properties lying immediately south of the section line, claiming that the southern line of section 4 was that line as shown by the Sanders survey and that any claim to property north of that line by owners of property described in the Jones survey was without right because their predecessor in title owned no property north of section 9 and, therefore, could not convey any interest in property north of section 9.

Billy and Barbara Chism were defendants in that action, but Billy Chism died before the action was completed, and Barbara Chism succeeded to his interest as the surviving joint tenant. On December 21, 1976, a judgment was entered in that action, El Dorado County No. 22685, quieting title against Barbara Chism to the northern 62' of her property described in her deed from Carla Groom and depicted on the Jones survey. Although she lost the northern 62 feet of her property in that action, Barbara Chism still considered her eastern boundary to be the eastern line actually described in her deed.

3 The description was: "BEGINNING at the Northeast corner of the parcel herein described, a 1 inch iron pipe with knob top marked LS 2323 N1/4 at the North quarter corner of said Section 9; thence from said point of beginning, North 84°01' West, 160.29 feet to a ¾ inch capped iron pipe; thence South 32°12'10" West, 555.34 feet to a similar pipe; and continuing South 32°12'10" West, 17.03 feet to a point in the centerline of a 20 foot road; thence along said road centerline, South 63°58' West 227.82 feet to its intersection with the centerline of a road; thence along the latter centerline, South 34°07'30" East, 159.43 feet; thence leaving said centerline, North 65°52' East, 13.20 feet to a ¾" capped iron pipe; and continuing North 65°52' East, 652.69 feet to a similar pipe; thence North 02°09'30" East, 449.60 feet to the point of beginning."

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In 1981, Barbara Chism conveyed her property to the plaintiffs in this action, Robert E. Cooper and Jean L. Cooper. Her deed was executed July 8, 1981, and recorded July 27, 1981. It described the property conveyed in precisely the same way that the property was described in the deed from Carla Groom to the Chisms, but there was added to that description the following language, "EXCEPTING THEREFROM all that portion of said land lying within the portion of the lands as described in that certain Judgment, recorded May 27, 1977, in Book 1505, Page 313, Official Records." That judgment was the judgment that determined that the northern 62 feet of the land as described in the previous deeds from the plaintiffs and Groom was not in fact in section 9, and therefore, the owners of the property in section 9 did not own that 62 feet. Nevertheless, Mrs. Chism testified that all she intended to convey by her deed was the physical property that had been conveyed to her by Carla Groom with the exception of the northern 62 feet. She did not intend to convey any property lying east of the property described in the deed to her from Carla Groom. Plaintiff Robert Cooper testified that he did not believe he was receiving any property east of the boundary described in his deed. The real estate agent who handled the Chism/Cooper sale testifed that Cooper was shown the actual boundaries described by his deed, and she did not represent that he was getting any property except that described in his deed.

Sometime after the Sanders survey was recorded showing the north quarter section corner of Section 9 lay east of the eastern boundary of the properties depicted on the Jones survey, the El Dorado County Assessor began assessing the strip of property lying between the eastern boundary of the Jones survey and the eastern boundary of the northwest quarter of section 9 to the defendants Guy. The defendants Guy first paid taxes upon that strip in the 1975 and continued to pay taxes on that strip thereafter.

James Batten, a licensed surveyor, surveyed the strip of land lying between the quarter section line as established by the Sanders survey and the eastern line of the parcels shown on the Jones survey. The results of his work show that at the northern end of the strip, it is approximately 169 feet wide, at the south end it is approximately 126 feet wide, and it is approximately 1,266 feet long.

In May 1983, plaintiffs began this action to claim title to that portion of the strip lying eeast of their eastern boundary as described in their deed from Barbara Chism. The trial court granted judgment for the plaintiffs, extending the plaintiffs northern boundary an additional 169 feet (approximately) east to the quarter corner post set by the Sanders survey and extending the southeastern boundary of the plaintiffs' property an additional 177 feet (approximately) to the eastern line of the northwestern quarter of sectdion 9. Thus, plaintiffs acquired, in addition to the property actually described in their deed, an additional parcel measuring 169 feet on the north, 387 feet on one side, 310 feet on the other side, and 177 feet on the south that is not described in their deed. Defendants have appealed, claiming there is no evidence to support the judgment.

It is fundamental, in a quiet title action, the plaintiff must recover on the strength of his own title. (Knoke v. Knight (1929) 206 Cal. 225, 231; Hyman v. Haun (1961) 191 Cal.App.2d. 891, 897.) Where, as here, the plaintiffs are not seeking to reform the deed under which they acquired title, they have the burden of proving that their deed included the property in dispute. (Hyman v. Haun, supra, 191 Cal.App.2d at p. 897)

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A recurring problem that crops up in boundary dispute cases is to determine what actual area, as located on the ground, the parties intended to convey at the time the deeds were executed. The principle that has been established in the cases is that, if what the parties actually intended so far as the surface of the ground can be determined, that intention will be given effect despite any mistakes they may have made in the papers describing what they did on the ground. Examples of this principle abound.

In the early days of California, the City of Santa Barbara hired a surveyor, Salisbury Haley, to survey the city, lay it out in lots and blocks, and to prepare a map showing his handiwork. He did so, laying out the city in blocks of 450 feet and streets of 60 feet. The property was sold in accordance with his survey. Years later, it developed that in staking the blocks, Haley made numerous errors, and the blocks were not all 450 feet as shown on his map. In Orena v. City of Santa Barbara (1891) 91 Cal. 621, the plaintiff claimed that 16 feet of Gutierrez Street was his, based on a correct survey from the established starting point of the Haley survey. A judgment in his favor by the trial court was reversed by the California Supreme Court, the court holding that the stakes actually set by Haley and the property boundaries as so established defined the property of the plaintiff.

There was a similar result also involving the Haley survey in Penry v. Richards (1877) 52 Cal. 496. The court there said: "Thus, the deed is to be construed as referring to the monuments, and if the evidence established the points where the monuments had been erected by Haley, such points should have controlled in determining the location of Block 6. The Court below ignored the evidence tending to show the location of the Haley stakes, and decided the case on the theory that the demanded premises were to be ascertained by running the courses and distances from the initial point of Haley's survey, without regard to the monuments erected by him. This was a violation of the well-known principles applicable to the mode of ascertaining the true position of lands described in deeds of conveyance." (Id., at p. 499-500.)

In Arnold v. Hanson (1949) 91 Cal.App.2d 15, the court was dealing with a recorded survey map, hired a surveyor, and discovered that the bearings on the original plat were wrong, the original survey was carelessly made, and while the iron stakes at the front of each lot were correctly set, the lines between the lots were incorrectly laid out. So, on the basis of the correct survey, the defendant removed the plaintiffs' fence and began constructing a garage extending over the plaintiffs' former lot line. The trial court quieted the plaintiffs' title as established by the original lot line. In affirming, the appellate court said: "In Kaiser v. Dalto, [1903] 140 Cal. 167, 172, the court said the survey as made in the field, and the lines as actually run on the surface of the earth at the time the blocks were surveyed and the plats filed must control; that the parties who own the property have a right to rely on such lines and monuments, and that, when established, they control courses and distances. And in Burke v. McCowen, [1896] 115 Cal. 481, 486, it was held that where a survey as made and marked upon the ground conflicts with the plat, the survey must prevail. [In that case] Whiting v. Gardner, [1889] 80 Cal. 78, was cited, in which latter case it was said that in the absence of evidence to the contrary it will be presumed that the map correctly represents the survey, and the latter need not be looked to; but that if it be shown that discrepancy exists between the map and the survey upon which it is based, the survey must prevail. A

comparable case from Iowa is Tomlinson v. Golden, 157 Iowa 237, where it was held that where stakes were set in the ground to indicate boundaries of the lots, and a purchaser found the stakes and relied thereon as monuments fixing the boundaries, as did others, such stakes must control though in a later survey the same surveyor found a discrepancy between the stakes and his field notes—that the field notes and paper plat must give way thereto. In support of its ruling that court cited, among other cases, Burke v. McCowen, supra, and O'Farrel v. Harney, [1875] 51 Cal. 125." (91 Cal.App.2d at p. 17; emphasis added.)

In Ramirez v. Mookini (1962) 207 Cal.App.2d 42, 48, the court said, "It is fundamental that where a lot conveyed by deed is described by reference to a map, such map is made part of the deed. (Citations.) In Churchill Co. v. Beal, [1929] 99 Cal.App. 482, it is held that this is true even though the survey is inaccurate." However, in the Ramirez case, there was evidence before the court that the surveyor who set the stakes made a mistake in doing so and ran a boundary line through the corner of a structure. The court permitted an amendment of the complaint to conform to proof, and entered a judgment reforming the plat and the deed to change the line on the ground to where the parties actually thought the boundary line should be. Hence, a modification was granted because the parties actually thought the boundary line on the ground was in a different place than described and shown by the stakes, and the mistaken parties were before the court so that the mistake could be corrected.

Here in contrast to the Ramirez case, there were no mistaken references in the deeds and in the maps that either differed from the monuments on the ground or differed from where the parties believed the physical boundaries were. The deed from the defendants Guy to Carla Groom refers specifically to the map of the Jones survey. The subsequent deeds refer specifically to the stakes shown on the Jones survey and subsequently placed on the boundaries. The deeds did not purport to convey property according to the government survey. They purported to convey property described by certain stakes in the ground, and the evidence before the trial court showed without question that all parties knew where the stakes were that defined the boundaries of the property being conveyed. They did not mistakenly believe that the boundaries were elsewhere.

It is true that the stake at the northeast corner of the Jones survey had stamped upon its head "N ¼". Jones did not set that stake, it was set by a previous surveyor. Jones did not represent that the stake was actually at the north quarter corner of section 9. In preparing his map, he had to state what actually was stamped on the head of the stake to identify the stake he was referring to even though the information stamped was mistaken. When the Guys conveyed parcel 4 by the deed to Carla Groom by referring specifically to the stakes on the Jones survey, they intended to convey a parcel that had a northern line of approximately 1,306 feet. They knew exactly where that line was because it ran between two stakes that could readily be located on the ground. When Carla Groom conveyed a part of parcel 4 to the Chisms she knew the exact boundaries on the ground that she intended to convey, because they were marked with stakes described in the deed. The northern line of that parcel was approximately 162 feet long. The eastern line of that parcel was approximately 450 feet long, and it also ran between two stakes that were identified in the deed. All parties knew exactly where those stakes were.

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In the previous El Dorado County action, Barbara Chism lost the northern 62 feet of that parcel as described in her deed, but when she conveyed that same parcel to the plaintiffs, she again intended to convey the property enclosed within the boundaries running between the stakes described in the deed, except for the northern 62 feet. She knew where those stakes were, and the plaintiffs knew where those stakes were. There was no mistake in the deed and no discrepancy between the deed description and the lines of the property on the ground.

It may be true that someone may have believed that the stake at the northeastern corner of parcel 4 was actually on the north quarter corner of section 9. That mistaken belief might be relevant in an action for reformation of the map and the deed if all parties were before the court. If a judgment granting such reformation were granted the plaintiffs' parcel would be moved 169 feet to the east, but their western lines would also be moved the same distance. But the plaintiffs here, like the plaintiff in Orena v. City of Santa Barbara, do not simply want to have their parcel moved, they want to keep all the property actually described in their deed and gain another 1.28 acres in addition. They are not seeking relief based upon mistake.

Their situation is also much like that of the plaintiff in Orena v. City of Santa Barbara or the defendant in Arnold v. Hanson who discovered, long after the properties had been sold in reliance on the original stakes and in the belief that those stakes defined the boundaries, that a "true survey" showed that one of the stakes defining his property should have been planted in a different location. But, those cases squarely hold that if the original physical locations of those stakes can be determined, mistaken as those locations may be, and if the properties have been sold in reliance upon those stakes and in the belief that those stakes defined the actual boundaries of the properties on the ground, then those stakes actually do define the boundaries on the ground.

The plaintiffs cite Whiting v. Gardner (1889) 80 Cal. 78 in support of the court's judgment, because the Supreme Court there stated, "In the absences of evidence to the contrary, it will be presumed that the map correctly represents the survey, and the latter need not be looked to; but it be shown that a discrepancy exists between the map and the survey upon which it is based, the latter must prevail. (Citations omitted.)" (Id. , at p. 80)

The Supreme Court was there talking about the survey on the ground, not some later "correct survey" made by a different surveyor. There, the field notes of the survey showed that the map based on that survey did not correctly depict the survey as located on the ground. This is made clear by the court's recitation of the facts and its citation of O'Farrel v. Harney (1875) 51 Cal. 125. The O'Farrel case dealt with a boundary dispute arising from a discrepancy between distances stated on the map and the same distances measured between stakes on the ground. The court said, "The question is, where are the boundaries of the lot conveyed by Taylor to Moran? The map was intended as a representation of the survey actually made on the ground—the position of the blocks and lots as indicated by the lines as run and the stakes driven at the corners. A map which, by reference to monuments established, or by some other mode, refers to a survey, is presumed to correctly represent the survey as actually made; but if there is a discrepancy between the map and the survey, the survey must prevail, if the position of the points and lines established by the survey can be proved. It must be so held, upon the principle that

monuments, whether natural or artificial, must prevail over the courses and distances." (Id., at p. 127-128; emphasis added.)

Here, unlike the O'Farrel case, there is no discrepancy between the description in the deeds involved and the stakes located on the ground. If there were, the stakes located on the ground would define the boundaries. But here, the deeds accurately refer to the stakes located on the ground. Hence, all of the authorities hold that the grantee under those deeds takes the property described by the stakes located on the ground, even though someone may have had a mistaken belief concerning those stakes. They were not mistaken about where they were on the ground because they walked the boundaries and knew where the boundaries were.

The only other ground asserted in support of the judgement is the rule stated in Civil Code section 1106: "Where a person purports by proper instrument to grant real property in fee-simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors."

That doctrine does not apply here, for the defendants Guy never executed any deed purporting to grant the strip of land in dispute here. Their deed purported to convey only a tract of land defined by stakes located in the ground. The fact that the boundary defined by those stakes did not encompass all of the property owned by the Guys does not give these plaintiffs any claim to any property not described in their deed.

The judgment is reversed. The court is directed to enter judgment that the plaintiffs take nothing by their complaint.

We concur: Carr, Acting P.J.; Sims, J.