

Michael Stebila et al., Respondents, v. Leon D. Mitrany et al., Appellants, et al., Defendants

[NO NUMBER IN ORIGINAL]

Court of Appeals of New York

21 N.Y.2d 930; 237 N.E.2d 80; 289 N.Y.S.2d 762; 1968 N.Y. LEXIS 1497

February 22, 1968, Argued

April 4, 1968, Decided

PRIOR HISTORY: [***1] *Stebila v. Mitrany*, 26 A D 2d 940.

Appeal, on constitutional grounds, from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered November 7, 1966, which unanimously affirmed an order of the Supreme Court at Special Term (David L. Glickman, J.), entered in Suffolk County, denying a motion to dismiss the four causes of action in the amended complaint, granting a cross motion by plaintiffs for summary judgment on the second cause of action therein and directing cancellation of a tax sale of plaintiffs' property and the tax deed issued thereunder. There was evidence that plaintiffs Stebila and O'Hare acquired title to the property under a deed dated February 19, 1958 and, on the same date, executed a mortgage thereon to plaintiff bank; that, prior thereto, on December 1, 1957, the said property had become encumbered by a tax lien for unpaid town property taxes for one half of the year 1957-58; that on November 17, 1958 a tax sale was held and defendants, copartners doing business as Elma Land Co., purchased the property, and that they received a tax deed therefor on January 18, 1962. In their second cause of action plaintiffs alleged [***2] that the tax sale and deed were invalid since the assessment roll for the tax year 1958-59 and the tax bill for said period did not specify "arrear" after the description of the subject property. The Suffolk County Tax Act required the County Treasurer to furnish each Town Supervisor with a complete list of all taxes and assessments in arrears and each such supervisor to "place in a column provided therefor the word 'arrear' after the description of each parcel of land" on said list (§ 70) and provided that "There shall be a ruled column for arrears in every tax bill rendered for taxes for lots on which said arrears or assessments may be due, or may have been sold and are still redeemable, in which shall be written opposite the entry of the description of said lot or parcel of land 'Arrears'" (§ 71). Special Term found that these provisions of the Suffolk County Tax Act were mandatory and that the failure to comply strictly with them was a jurisdictional defect and required cancellation of the tax sale and tax deed even though plaintiffs had been given notice of the arrears on all bills subsequent to the 1958-59 one and an opportunity to make timely payment thereof prior to the [***3] issuance of the tax deed. In the Court of Appeals defendants argued, among other things, that a failure to state arrears on a tax bill was not a jurisdictional defect and could not constitutionally divest a tax sale purchaser of rights which had already vested in him.

DISPOSITION: Affirmed.

HEADNOTES

Taxation -- tax liens, tax sales and tax titles -- in February, 1958 individual plaintiffs acquired property upon which tax lien had attached on December 1, 1957 for unpaid town property taxes -- in November, 1958 tax sale was held and defendants copartners purchased said property, receiving tax deed therefor in January, 1962 -- allegation by plaintiff that tax sale and deed were invalid since assessment roll and tax bill for year 1958-59 did not specify "arrear" after description of property, as provided for in Suffolk County Tax Act (§§ 70, 71) -- Special Term directed cancellation of tax sale and deed, finding that provisions of said act were mandatory and that failure to comply with them was jurisdictional defect and required cancellation even though plaintiffs had been given notice of arrears on all bills subsequent to 1958-59 bill and opportunity to make timely payment thereof prior to issuance [*4] of tax deed -- order of Special Term was properly affirmed.**

COUNSEL: *Samuel Kirschenbaum* and *Leon D. Mitrany*, *pro se*, for Leon D. Mitrany and others, appellants.

Joseph F. O'Neill and *Charles R. Carroll* for respondents.

JUDGES: Concur: Chief Judge Fuld and Judges Burke, Scileppi, Bergan, Keating, Breitel and Jasen.

OPINION

[*932] [**763] Order affirmed, with costs; no opinion.