

2357

MAGGIE DEYAMPERT, et al.,
COMPLAINANTS

VS.

CARRIE NATHAN, et al.,
RESPONDENTSIN THE CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA,
IN EQUITY

CASE NO. 4199

This cause coming on to be heard on the 19th day of April, 1958, and was submitted for final decree upon the complainants's verified bill of complaint; upon the answer and waiver of Rufus Paschel; upon the answer of Carrie Nathan; upon the decree pro confesso on publication against the following Respondents: Jim Nathan, and his heirs or devisees, if deceased; Addison Harwell, and his heirs or devisees, if deceased; the following described real property located in Shelby County, Alabama: The East 990 feet of the E $\frac{1}{2}$ of SW $\frac{1}{4}$, lying North of Shelby Iron Works Road in Section 13, Township 22, Range 2 West, containing 40 acres, more or less, and any and all persons or corporations claiming any title to, interest in, lien or encumbrance on said real property or any part thereof, and upon the testimony of Maggie Deyampert and Bulah Deyampert Woods, and the certificate of the Register; and upon the other pleadings and proof as noted by the Register, and the Court having considered and understood the same, it appears to the satisfaction of the Court:

(1) That the Complainants Maggie Deyampert, Bulah Deyampert Woods, and George Deyampert each claimed, at the time of the filing of the bill of complaint heretofore filed in this cause, in his own right, a fee simple title in and to an undivided one-sixth interest in the property hereinafter described; that the Complainant Violene Grant Lilly claimed, at the time of the filing of the bill of complaint heretofore filed in this cause, in her own right, a fee simple title in and to an undivided one-sixth interest in the said property hereinafter described, subject however to the curtesy interest of her grandfather, the Respondent Rufus Paschel, and that the Respondent Rufus Paschel claimed, at the time of the filing of the bill of complaint heretofore filed in this cause, in his own right, a curtesy interest in and to the said undivided one-sixth interest of the Complainant Violene Grant Lilly; that the Respondent Carrie Nathan claimed, at the time of the filing of the bill of complaint heretofore filed in this cause, in her own right, a fee simple title in and to an undivided one-sixth interest in the said property hereinafter described, subject however to the curtesy interest of her father, ^{the Respondent Jim Nathan,} ~~if alive,~~ and that the Respondent Jim Nathan, ^{if alive,} ~~claimed,~~ at the time of the filing of the bill of complaint heretofore filed in this cause, in his own right, a curtesy interest in and to the said undivided one-sixth interest of the Respondent Carrie Nathan; that the Complainants Albert Pope, Robert Pope Jr., Earnest

E. Pope, Eliza Pope Inabinett, and Artherine Pope Woods each claimed, at the time of the filing of the bill of complaint heretofore filed in this cause, in his own right, a fee simple title in and to an undivided one-thirtieth interest in the property hereinafter described:

The East 990 feet of the E $\frac{1}{2}$ of SW $\frac{1}{4}$, lying North of Shelby Iron Works Road in Section 13, Township 22, Range 2 West, containing 40 acres, more or less, situated in Shelby County, Alabama.

That the said above named joint owners and tenants in common in and to the said property, all being parties to this said cause and claiming to own the total interests in and to the said property, are, and were at the time of the filing of the bill of complaint heretofore filed in this cause, in the actual, peaceable possession of the said property.

That said above named joint owners and tenants in common in and to the said property now hold, and they and those through whom they claim, have held, color of title to the said property for a period of ten or more consecutive years next preceding the filing of the bill of complaint heretofore filed in this cause and have regularly assessed and paid taxes on the said property during the whole of such period of time, and that no other person or corporation has paid taxes thereon during any part of said period.

(2) That at the time of the filing of said bill of complaint no suit was pending to test the title to, interest in, or right to possession of said property of the said above named joint owners and tenants in common.

(3) That the said bill of complaint was and is duly verified and was filed against said property and against any and all persons or corporations claiming any title to, interest in, lien or encumbrance on said real property of any part thereof and was to establish the right or title to such real property, or interest, and to clear up all doubts or disputes concerning the same, and that said bill of complaint did in all respects comply with the provisions of Code 1940, Title 7, Section 1117.

(4) That the complainants have exercised due diligence in trying to locate any other parties claiming any interest in the said property and that the interests of all the parties owning any interest in the said property are before the Court, said parties all being brought before the Court in strict accord and compliance with Code of 1940, Title 7,

(5) That notice of the pendency of the said bill of complaint was drawn and Sec. 1118. signed by the Register of this Court and that said Register did have said notice published once a week for four consecutive weeks in the Shelby County Reporter, a newspaper having general circulation and published in the County of Shelby, Alabama, and authorized by law to receive and publish legal advertisements, where the said real property described in the bill of complaint lies and also by posting a copy of said notice at the Courthouse of Shelby County, Alabama, immediately after drawing and signing the same, and by filing a copy of said notice certified by the Register as being correct in the office of the Judge of Probate of Shelby County, Alabama, immediately after drawing and signing the same, and having said filed copy of said notice recorded as a lis pendens in said Office of the Judge of Probate of

Shelby County, Alabama, said notice being in strict accord and compliance with Code of 1940, Title 7, Section 1121, and recorded in strict accord and compliance with Code of 1940, Title 7, Section 1120.

(6) That on the filing of said bill of complaint heretofore filed in this cause, a guardian ad litem was duly appointed by the Register of this Court to represent and defend the interest of any of the parties who may be infant, lunatic, or who may be unknown in this proceeding in strict accord and compliance with Code of 1940, Title 7, Section 1117(1).

(7) That more than sixty days have expired from the first publication of the said notice and from the filing of the said certified copy of said notice in the Probate Court of Shelby County, Alabama, and that all respondents have answered or have suffered decrees pro confesso to be taken against them and that at least one day has elapsed since the rendition of said decrees pro confesso; that no demurrers have been filed against the said bill of complaint; that the said guardian ad litem has answered the bill of complaint; that no person or corporation has intervened in this said cause.

(8) That said property cannot be equitably divided in kind among the joint owners and that a sale of the same is necessary for an equitable division of the same.

(9) That a private sale of said property ^{to Avice C. Stapp} in accordance with the terms and provisions of the sales contract marked "Exhibit B" attached to and made a part of the bill of complaint heretofore filed in this said cause for the cash price of \$1,600.00 is to the best interest of all the joint owners of said property; that \$1,600.00 is a reasonable price for said property and not greatly less than the full value of the said property.

(10) That the services of Oliver P. Head and Wales W. Wallace, Jr., practicing attorneys, in this cause have inured to the benefit of all the joint owners of the said property.

(11) That all of the allegations of fact contained in complainants' bill of complaint are true; that Maggie Deyampert, Bulah Deyampert Woods, and George Deyampert each own a fee simple title to an undivided one-sixth interest in said property; that Violene Grant Lilly owns a fee simple title to an undivided one-sixth interest in said property, subject, however, to the curtesy interest of Rufus Paschel; that Carrie Nathan owns a fee simple title to an undivided one-sixth interest in said property, subject, however, to the curtesy interest of Jim Nathan, if alive; that Albert Pope, Robert Pope, Jr., Earnest E. Pope, Eliza Pope Inabinett, and Artherine Pope Woods each own a fee simple title to an undivided one-thirtieth interest in said property, all as established or shown by legal evidence presented in this said cause. It is, therefore,

ORDERED, ADJUDGED, AND DECREED by the Court:

One. That the Complainants are entitled to the relief prayed for in their bill of complaint and that the total interests in said property are owned, in undivided shares, as found and determined by the Court in Paragraph (11) above, free of all other titles, liens, interests, or encumbrances, and that title to said property is forever quieted in rem in said joint owners, and their heirs, devisees, or assigns, in undivided shares, as found and determined by the Court in Paragraph (11) above.

Two. That the respondents named in the bill of complaint heretofore filed in this cause, other than said Carrie Nathan, said Jim Nathan, if alive, and said Rufus Paschel, have no title to, interest in, or lien or encumbrance on said property or any part thereof, and they are forever enjoined from claiming any interest whatsoever in or to said property, not acquired hereafter, adverse to the joint owners or to any joint owner as found above by the Court, their heirs, devisees, or assigns.

Three. That this decree or a certified copy thereof be recorded by the Register in the Office of the Judge of Probate of Shelby County, Alabama, and that it be indexed in the names of Maggie Deyampert, Bulah Deyampert Woods, George Deyampert, Volene Grant Lilly, Albert Pope, Robert Pope, Jr., Earnest E. Pope, Eliza Pope Inabinett, Artherine Pope Woods, Carrie Nathan, Rufus Paschel, and Jim Nathan, on both the direct indexes and the indirect indexes.

Four. That said property cannot be equitably divided in kind among the joint owners that a sale of the same is necessary for an equitable division of the same; that said property be sold for division at private sale to Avice C. Stapp for the cash price of \$1,600.00; that \$1,600.00 is a reasonable price for said property and not greatly less than the full value of the said property; that it is to the best interest of all the joint owners to consummate said sale.

Five. That the Register, upon receipt of the total purchase price of \$1,600.00, shall execute and deliver a deed to Avice C. Stapp conveying to her the interest of the joint owners as found above by the Court, and that the Register shall immediately upon making said sale in the manner and form prescribed herein, report his actions herein to the Court.

Six. That the Register conduct a reference for the purpose of ascertaining what would be a reasonable attorney's fee to be paid the complainants' solicitors for their services in this cause, what would be a reasonable fee to be paid to the guardian ad litem for his services in this cause, and report his findings to this Court for further decree.

Done this 19th day of April, 1958.

A. O. Handoghee
Circuit Judge

Filed 4/21/58 LBN

State of Alabama, Shelby County
I, L. C. Walker, Judge of Probate, do hereby certify that the within
day of 19th at 4 o'clock P M, and recorded in Book 192 Page 547
and the Mortgage Tax of \$ 0.00 and the Deed Tax of \$ 0.00 has been paid
Fee \$ 0.00