

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

ADA P. MURPHY, et al.,
Plaintiffs,
vs.
HARBERT CONSTRUCTION
CORPORATION, et al.,
Defendants.

-79-
CIVIL ACTION NO. CV 81-060 (E)

FINAL ORDER

This cause coming to be heard before the Court and the jury, the Court has determined that the following facts have been established and that no issue for the jury is presented:

1. The Plaintiffs were not in peaceable possession of the mineral interests made the basis of this action, on the date of the commencement of said action, to-wit, February 28, 1979; and
2. The Plaintiffs had received notice of Defendants' claim of ownership of said mineral interest in, to-wit, December, 1975; and
3. The Defendants, or their predecessors in title, have, since 1975, engaged in such acts evidencing their claim of ownership of said mineral interest and/or intent to possess same, as to bring them within the course of conduct contemplated by Nelson v. Teal, 293 Ala. 113, 301 So. 2d 51 (1974); and
4. The Defendants are in actual or constructive, peaceable possession of the mineral interest described in

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the Complaint and were so on the date this action was commenced, to-wit, February 28, 1979.

On the basis of the foregoing, undisputed facts, it is therefore ORDERED, ADJUDGED, CONSIDERED and DECREED as follows:

1. The Plaintiffs, having failed to make out a prima facie case, should not have and recover of Defendants. The Motion for a Directed Verdict filed by Defendants is hereby granted.

2. The Plaintiffs' action is barred by the statute of limitations contained in § 40-10-82, Code of Alabama (1975) and Defendants are, therefore, entitled to a directed verdict in their favor.

It further coming before the Court that Defendants have, with leave of court, amended their answer at the close of the evidence to state a counterclaim seeking to have title to the Thompson Seam of Coal, as described in Plaintiffs' Complaint, quieted in them as sole partners in the Harbert-Equitable Joint Venture, in accordance with that certain Quitclaim Deed from Bill L. Harbert and Edwin M. Dixon, as Trustees, filed for record in the Office of the Judge of Probate of Shelby County, Alabama, in Deed Book 297, Page 367, and admitted into evidence in the trial of this action; and Defendants having moved for a directed verdict in their favor on said Counterclaim, it is further ORDERED, ADJUDGED, CONSIDERED and DECREED as follows:

1. That Defendants, Harbert Construction Corporation and The Equitable Life Assurance Society of the United States, as sole partners in the Harbert-Equitable Joint Venture, are hereby entitled to have title to the following property quieted in them:

The Thompson Seam of Coal in part of Sec. 26 and 35, Township 19, Range 3 West, briefly described as: Bounded E by Down fault running NW and SE in SE-1/4 of SE-1/4 of Sec. 26 and in NE-1/4 of NE-1/4 of Sec. 35 bounded on S by vertical fault running NE and SW thru NE-1/4 of NE-1/4, NW-1/4 of NE-1/4, SW-1/4 of NE-1/4 and possibly thru SE-1/4 of NW-1/4 all Sec. 35 bounded W and NW by outcrop said Thompson Seam running in a general NE and SW direction thru parts SW-1/4 of SE-1/4 of Sec. 26 and thru NW-1/4 of NE-1/4, NE-1/4 and SE-1/4 of NW-1/4 of Sec. 35.

2. That Defendants' Motion for a Directed Verdict on the aforesaid Counterclaim be, and the same is hereby granted.

3. To the extent that the Court's initial ruling concerning the validity of the tax sale of the above-described property and the Tax Deed filed for record in the Office of the Judge of Probate of Shelby County, Alabama, in Deed Book 236, Page 603, is inconsistent with this Order, such ruling is hereby corrected and amended to establish good, legal title to said property in Defendants.

DONE this 16th day of December, 1981.

FILED IN OFFICE THIS THE 16th DAY
OF December, 1981

Kyle Lunsford

Clerk of Circuit Court
Shelby County, Alabama

Kenneth F. Ingram
Kenneth F. Ingram
Circuit Judge

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Rec'd 4.50
Jud 1.00
5.50

Thomas A. Shumaker, Jr.
JUDGE OF PROBATE

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