

New Jersey Court of Errors and Appeals 10

CLARA L. SANDS, a Lunatic, by
ELIZABETH R. SANDS, Guardian,
Complainant-Respondent,

vs.

FRANK RUDDICK,
Defendant-Appellant.

On Appeal.

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PETITION FOR LEAVE FOR RE-ARGUMENT.

The defendant-appellant respectfully petitions that the Court may grant him a rule for re-argument of the above entitled case for the following reasons :

1. The opinion of this Court, read by Mr. Justice Trenchard and filed June 18th, 1917, holds that the defendant-appellant will be directed, upon payment to him of the money expended for the property, with lawful interest, to reconvey to the complainant-respondent her real estate which he purchased at an execution sale, because first, the complainant-respondent was of unsound mind ; and second, appellant purchased her property at a price which was so inadequate as to shock the conscience. 30

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2. It appears by competent evidence adduced in the Court Chancery,

10 FIRST.—That upon an application by the owner of the property to the Bergen Common Pleas to set aside the sale in question, one of the issues was “that the sum of Five hundred Dollars for which the said equity of redemption was sold to said Frank Ruddick is grossly inadequate” (Defendant’s Exhibit D-2, State of Case, pages 169 et seq., particularly petition for order to show cause why sale should not be set aside, pages 178 et seq., from which the foregoing is quoted, page 183, lines 16-18).

20 SECOND.—That this issue was tried by the Common Pleas and adjudicated against the owner of the property (Defendant’s Exhibit D-2, State of Case, pages 169 et seq., particularly page 177, lines 16-18: “I found from the above testimony no cause for setting aside the sheriff’s sale in this matter,” and order denying application to set aside sale, page 188, lines 1-40; page 189, lines 1-10).

30 THIRD.—That the adjudication of the Bergen Common Pleas upon this issue was reviewed by certiorari (Defendant’s Exhibit D-2, Writ of Certiorari, State of Case, page 169, lines 20-40; page 170, lines 1-40).

FOURTH.—That this issue was adjudicated against the owner of the premises by the Supreme Court (Defendant’s Exhibit D-2, Rule dismissing Writ of Certiorari, State of Case, page 190, lines 1-40).

40 FIFTH.—That the real party in interest as respondent in this court, and as complainant in the

Court of Chancery, is the same as the party in interest as landowner in the Bergen Common Pleas and Supreme Court, in the prior litigation in which the aforesaid adjudications were made against her. The complainant-respondent is this landowner, now acting by her guardian (Complainant's Exhibit C-1, State of Case, pages 123 et seq.).

3. The Court of Chancery did not find that the price paid by defendant-appellant for the property was grossly inadequate.

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"All questions suggested by the complainant's bill, other than the one of lunacy, appear to have been litigated in the law courts, and little, if any, testimony was offered on these points before me" (State of Case, page 192, lines 35-38).

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"I may say, however, in passing, that I am inclined to the view that the judgment of the Court of Common Pleas, and the Supreme Court, operated as an estoppel on all these matters which were at issue and disputed, and upon which a finding was rendered in these tribunals; and that the sole question before this Court was the one of the incompetency of the complainant" (State of Case, page 193, lines 13-22).

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4. It is a thoroughly settled principle that where one's rights by his concurrence have been actually submitted to litigation, he may not relitigate those rights in some subsequent cause brought by his representative in his behalf, for the reason that since he was an actual party litigating in the previous adjudication, he cannot although appearing by a representative, relitigate the matter in a subsequent

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proceeding. *Lake vs. Weaver*, 80 N. J. Eq., 395, affirmed by this Court, 80 N. J. Eq., 554.

5. That since the price paid for the property was not grossly inadequate, the decree below should have been reversed, and the Court of Chancery should have been directed to dismiss the complainant's bill.

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And petitioner therefore prays that the Court will grant him a rule for re-argument of this case, and a rule retaining the record and staying the remittitur pending re-argument.

Respectfully submitted,

WM. J. MORRISON, JR.,
Solicitor for and of Counsel with
Defendant-Appellant.

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