

WILLIAM P. SURMAN

MARY VAN ANDERSON SURMAN

IBLA 75-16

Decided December 6, 1974

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting color of title application ES 12180.

Affirmed.

1. Color or Claim of Title: Generally

The Department of the Interior cannot grant a color of title application for land that is not public land.

2. Color or Claim of Title: Generally

The Department cannot approve a color of title application for land outside the area described in the deed on which the application is based even though the applicants and their predecessors believed in good faith that the outside land was covered by the deed.

APPEARANCES: Michael Jeffries, Esq., Neill, Griffin, Jeffries & Lloyd, Chartered, Fort Pierce, Florida, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

William P. Surman and Mary Van Anderson Surman have appealed from a decision by the Eastern States Office, Bureau of Land Management (BLM), rejecting their class I color of title application ES 12180 to purchase lots 2, 8 and 9, section 9, T. 31 S., R. 39 E., Tallahassee Meridian, Florida. The BLM rejected the application to purchase lots 2 and 8 because the United States does not own

either of these lots and rejected the application for lot 9 because appellants failed to show that their claim is based on a written conveyance describing lot 9.

Appellants admit that their claim to lots 8 and 9 is not based on a conveyance describing the lots, but they assert that because this case involves a unique surveying problem created by the low flat nature of the land in this case, the Board should grant the application. They also request oral argument.

FACTUAL BACKGROUND

Appellant's color of title claim to lots 2, 8 and 9 is based on a deed from Graves Brothers Company dated September 17, 1936, which conveys to the Surmans, "All of Government Lot number two (2) less 15 acres more or less owned by S. J. Pryor in section 9, township 31 south, range 39 east." The Graves Company interest derives from a patent issued on April 29, 1890, to Robert B. Spratt. In that patent, the United States conveyed to Spratt lots 1 and 2, section 9, T. 31 S., R. 39 E., Tallahassee Meridian, Florida. Both the deed and the patent were based on a survey of the township approved on December 28, 1859. The plat showed that the western and southern boundary of lot 2 fronted on the Indian River. The field notes show that the boundary of lot 2 is a meander line drawn from the meander corner of sections 9 and 10 to the meander corner of sections 4 and 9 (from southeast to northwest). Lots 8 and 9 are not represented on the plat.

In April 1965, the BLM ordered an investigation and survey of sections 4 and 9 of the township involved here to determine if unsurveyed land existed in these sections to the west of the meandered boundary of lot 2. The investigation resulted in a determination that the original surveyor improperly omitted land from the survey. A dependent resurvey established the original meander line as the limiting boundary of lot 2 and a new plat was prepared that showed the existence of the previously omitted land.

In a prior case involving these appellants, the Department rejected their protest that the resurvey was improper and concluded that the omitted land was public land. William P. Surman, A-31010 (December 1, 1969). After the resurvey was approved, the Department issued patent No. 1242149 on September 24, 1970, to the State of Florida for lot 8 under the Act of September 28, 1850, 9 Stat. 519-20, 43 U.S.C. § 983 (1970).

Since the decision in William P. Surman, supra, appellants have unsuccessfully tried to regain the land that prior to 1959 they believed they owned. On May 6, 1971, the BLM rejected appellant William P. Surman's homestead application ES 7578 for lot 9 because the land was not suitable for homestead entry. On July 7, 1971, William P. Surman filed public sale application ES 9348 for lot 9. At present, action on that application has been suspended pending a determination by BLM whether the land should be made a part of the Pelican Island National Wildlife Refuge. Finally, appellants filed the color of title application now being reviewed.

SUMMARY OF THE LAW

The Color of Title Act directs the Secretary of the Interior to issue a patent for up to 160 acres of land to a person who has in good faith peacefully and adversely possessed public land for more than twenty years under color or claim of title, and has placed valuable improvements on the land or has cultivated some part of the land. 43 U.S.C. § 1068 (1970). An applicant cannot base a color of title claim directly on a patent from the United States; the claim must be derived from a source other than the United States. Marcus Rudnick, 8 IBLA 65, 66 (1972); Harold C. Rosenbaum, 5 IBLA 76, 79 I.D. 38 (1972); Nina R. B. Levinson, 1 IBLA 252, 254, 78 I.D. 30, 32 (1971). In addition, the document on which the claim is based must, on its face, purport to have conveyed the land sought by the color of title applicant. James E. Smith, 13 IBLA 306, 312, 80 I.D. 702, 705 (1973); Nina R. B. Levinson, supra at 254, 78 I.D. at 32. The Department cannot, of course, grant a color of title application for land that it no longer owns. Day v. Hicckel, 481 F.2d 473, 475 (9th Cir. 1973).

CONCLUSIONS

[1] We reject the color of title application for lots 2 and 8 because these lands are patented; the United States no longer owns them. The Government conveyed lot 2 to Robert B. Spratt on April 29, 1890, and conveyed lot 8 to the State of Florida on September 24, 1970. Because of these transfers, the Department has no authority to grant patents to the land. James E. Smith, supra at 309-10, 80 I.D. at 704.

Unlike lots 2 and 8, lot 9 is still public land. Appellants' basic argument, that their application should be granted because a unique surveying problem is involved, is an attempt to relitigate issues that already have been decided against them by the Department. William P. Surman, supra.

[2] The prior Surman decision is a final decision for the Department and the issues decided there will not be reconsidered in this case. Eldon L. Smith, 5 IBLA 330, 340, 79 I.D. 149, 153 (1972). In Surman, the Department concluded that the original survey erroneously omitted lots 8 and 9 and the 1965 resurvey corrected this omission. In view of that determination we reject appellants' contention that the 1965 resurvey is wrong. The appellants here are not qualified applicants for a color of title patent. Their admission that they do not base the claim on a conveyance which embraces lot 9 defeats their claim. The Department cannot approve a color of title application for land outside the area described in the deed on which the application is based even though the applicant and his predecessors believed in good faith that the outside land was covered by the conveyance. James E. Smith, *supra*; Nina R. B. Levinson, *supra*; Storm Brothers, A-29023 (October 8, 1962). Appellants' color of title application is not based on a conveyance that describes the applied for lands and we affirm the rejection of their application.

We have fully considered all of appellants' contentions and conclude that an oral argument would not serve any useful purpose. We reject the request for oral argument. 43 CFR 4.25.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge

