

NO. 23990

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

H.A. HOLDINGS, LTD., a Canadian corporation,
Plaintiff-Appellee, v. HERBERT SILVA, JR.,
Defendant-Appellant
and
HEIRS OF KUHOULUA, et al., Defendants

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV. NO. 99-0311(3))

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe and Foley, JJ.)

Defendant-Appellant Herbert Silva Jr. (Silva), pro se, appeals from the Order Denying Defendant Herbert Silva, Jr. Motion for Declaratory Relief, filed in the Circuit Court of the Second Circuit (circuit court) on December 14, 2000; the Order Denying Motion for Injunctive Relief Pending Appeal, filed in the circuit court on February 7, 2001; and the Final Judgment Quieting, Establishing and Confirming Title to Real Property filed on January 11, 2001.¹ Silva's appeals were consolidated for briefing and disposition by order of the Supreme Court of Hawai'i filed on March 15, 2001.

¹The Honorable Joseph E. Cardoza presided.

Silva claims an interest in certain property as an intestate heir to a Royal Grant patentee² and contends that the 1968 Tax Deed conveying the property to the predecessors of H.A. Holdings, Ltd., is invalid. Silva contends he is entitled to declaratory and injunctive relief in equity.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we affirm the decisions of the circuit court.

The subject property was sold by Tax Deed for the Property (Tax Deed) dated July 5, 1968, under and by virtue of Revised Laws of Hawaii (R.L.H.) §§ 128-38 and 128-39 (1955) to the predecessors of H.A. Holdings, Ltd. The notice requirements of R.L.H. § 128-39 were held to violate due process by the Supreme Court of Hawai'i in Klinger v. Kepano, 64 Haw. 4, 635 P.2d 938 (1981). The Klinger holding, however, was expressly prospective. Id. at 16, 635 P.2d at 946. Therefore, the 1968 Tax Deed is valid and H.A. Holdings, Ltd., by mesne conveyances, holds title to the contested property. Accordingly, the circuit court did not abuse its discretion in denying Silva's motions for declaratory judgment and injunctive relief.

²Silva claims he is an heir to Kuhoulua, who allegedly obtained title to the property by Royal Patent Grant 1286 dated November 2, 1853.

Therefore,

IT IS HEREBY ORDERED that the December 14, 2000 Order Denying Defendant Herbert Silva, Jr. Motion for Declaratory Relief; the February 7, 2001 Order Denying Motion for Injunctive Relief Pending Appeal; and the January 11, 2001 Final Judgment Quieting, Establishing and Confirming Title to Real Property are affirmed.

DATED: Honolulu, Hawai'i, June 25, 2002.

On the briefs:

Herbert Silva, Jr.
defendant-appellant pro se.

Chief Judge

William F. Crockett
for plaintiff-appellee.

Associate Judge

Associate Judge