

Unpublished Disposition
55 Mass.App.Ct. 1108
NOTICE: THIS IS AN
UNPUBLISHED OPINION.
Appeals Court of Massachusetts.

Geraldine D. MASSARI¹ & another,²
v.

Todd E. MINDREBO & others.³

No. 00-P-1332. | July 10, 2002.

Opinion

**MEMORANDUM AND ORDER
PURSUANT TO RULE 1:28**

*1 Summary judgment dismissing the plaintiffs' claims for relief is affirmed for substantially the reasons stated in the motion judge's memorandum (A.303-307) and in the defendants' briefs. The plaintiffs' claims were premised upon their demonstrating that they hold title to the disputed tidal area, which they failed to do.

The 1957 decree of the Land Court⁴ (A.215-216) and quitclaim deed (A.255-257), and the 1978 quitclaim deed to the plaintiffs (A.217-218) for the relevant parcel did not include title to the intertidal area below the mean high tide line. Compare *Sheftel v. Lebel*, 44 Mass.App.Ct. 175, 179-180, 689 N.E.2d 500 (1998) (terminus of easement described as "to mean high water" did not include easement right to tidal flats below that line).

In support of their position, the plaintiffs cite *Pazolt v. Director of the Div. of Marine*

Fisheries, 417 Mass. 565, 570-571, 631 N.E.2d 547 (1994) (ambiguities in property's deed history resolved in favor of grant that included the tidal flats, based upon presumption in common law that title to flats follows that of adjoining upland, absent proof of intent to separate title). *Pazolt*, however, involved land of ambiguous description, i.e., the boundary was described in conflicting terms. *Id.* at 570, 631 N.E.2d 547. Here, there is no ambiguity in the 1957 Land Court registration decree plan, in the decree description of the property, or in the quitclaim deeds. The descriptions, with excluding words, are therefore conclusive. See *Commonwealth v. Roxbury*, 75 Mass. 451, 9 Gray 451, 524 (1857) (since passage of Colonial Ordinance of 1641-1647, grant of land bounding on the sea shore carries flats in absence of excluding words).

Furthermore, we reject the defendants' contentions that the Superior Court lacked subject matter jurisdiction to rule on the plaintiffs' various claims, including their claim for declaratory relief. At bottom, the questions here concern property rights for which declaratory judgment is an appropriate remedy. See *Pazolt*, 417 Mass. at 569, 631 N.E.2d 547, citing G.L. c. 231A, § 2. The Superior Court judge did not determine a question of title to registered land, place an encumbrance on registered land, or determine the boundaries of the tidal flats adjacent to the plaintiffs' property. As such, the decision and judgment therefore did not intrude upon the exclusive original jurisdiction of the Land Court under G.L. c. 185, §§ 1 (a 1/2) or 1 (h).

Judgment affirmed.

Parallel Citations

770 N.E.2d 1003 (Table), 2002 WL 1477637
(Mass.App.Ct.)

Footnotes

- 1 Individually and as trustee of the Geraldine D. Massari Trust.
- 2 Anthony T. Massari.
- 3 Carole A. Parlante, Tobin A. Storer, Barbara Austin, Jerre Austin, Alfred Benton III, Susan Benton, Robert Morse, Richard Blakley, Todd Lebart, Shawn Rose, Randy Williams, and Board of Selectmen of Wellfleet. The individual defendants are persons who have been granted shellfish aquaculture licenses pursuant to G.L. c. 130, § 57, by the town selectmen to grow or harvest shellfish upon tidal flats to which the plaintiffs claim title.
- 4 The 1957 decree states that the parcel is bounded “Southerly and Southwesterly by mean high water mark in Wellfleet Harbor[.]”