

CHAPTER 281.

PROVISIONS RELATING TO LAND.

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281.01 Action to quiet title; practice. (1) Any person having the title to land may institute an action against any person setting up a claim thereto. The defendant may, by answer, disclaim all title to such land and give a release thereof to the plaintiff and shall recover costs unless the court shall otherwise order. The complaint shall allege the nature and extent of the plaintiff's estate in such land and that the defendant makes some claim thereto, and shall demand judgment that the plaintiff's claim be established against any claim of the defendant, and that he be forever barred against having any right or title to the land adverse to the plaintiff.

(2) The introduction in evidence of any recorded instrument or of the record thereof or of a certified copy of such record, purporting to convey to or otherwise in any way to affect in favor of the defendant, or any grantor, devisor, ancestor or assignor of the defendant said land or any interest therein adversely to the plaintiff, under or through which the plaintiff does not trace his claim of title, shall be sufficient proof of claim of title on the part of the defendant; and the court may receive any other competent evidence. The owner of any lien or incumbrance on land has the same right of action as the owner in fee to test the validity of any other claim, lien or incumbrance on such land or any part thereof.

An action to quiet title relying on a reversionary clause in a deed conveying land to a school district to be used for school purposes only was commenced after the district had ceased to conduct school and had been consolidated with another district. Official action of the school board in determining not to sell the schoolhouse but to retain the property for a district park and playground, and ordering trees to be planted, all before a forfeiture was claimed, showed an intention to continue to use the property for "school purposes," and warranted the conclusion that there was no abandonment and that none was contemplated, requiring judgment against the plaintiff. The rule, requiring re-entry or some unequivocal act on the part of the grantor to indicate his intention to reclaim the property because of a breach of a condition subsequent, was satisfied by a letter addressed to the grantee school district, merely protesting against

the right of the district to make a sale of the schoolhouse, and stating that the school buildings formed an integral part of the real estate and "revert back with the property" to the grantor. *Koontz v. Joint School Dist. No. 4, 256 W 456, 41 NW (2d) 616.*

See note to 275.01, citing *Thiel v. Damrau, 268 W 76, 66 NW (2d) 747.*

If a defendant appears in an action to quiet title, the unappealed judgment quieting title would be conclusive as to the title or right of the parties as it then stood. The judgment is not conclusive as to title and rights subsequently acquired. *Weber v. Sunset Ridge, Inc. 269 W 120, 68 NW (2d) 706, 70 NW (2d) 5.*

In an action to quiet title, the plaintiffs must prove that they have title to the tract in suit, and they cannot prevail on the mere weakness of the defendants' title. *Schimmel v. Dundon, 1 W (2d) 98, 33 NW (2d) 143.*

281.02 Action to establish title by adverse possession. (1) Any person who in connection with his predecessor in title has been in the uninterrupted adverse possession of any land for ten years under a conveyance recorded in the office of the register of deeds of the county where land lies, or who has been in such possession for twenty years, otherwise than under such conveyance, may commence and maintain an action to establish his title against any defects claimed to exist. He may make all persons deemed to be connected with or involved in such defects defendants by name if known, and otherwise generally all persons whom it may concern, by that specification.

(2) As to all persons not contesting, judgment may be rendered on application to the court without other proof than the complaint, duly verified, proof of service of the summons and the facts as to possession as alleged. The judgment shall establish the title according to the facts, which judgment, or a certified copy thereof, may be recorded in the office of the register of deeds in the county where the land lies, and, when so recorded shall be conclusive evidence of the status of the title to the lands according to the facts therein adjudged. No costs shall be taxed against a defendant who does not contest the claim of the plaintiff.

281.03 Lis pendens; who may file; effect; when void; discharge. (1) In an action where the complaint contains a legal description of real estate and seeks relief in respect

to the title thereto, after the filing of the complaint the plaintiff shall file in the office of the register of deeds of each county where any part thereof is situated, a lis pendens containing the names of the parties, the object of the action and a description of the land in that county affected thereby. In any action if the defendant asks relief on a counterclaim or cross-complaint, which contains a legal description of real estate and seeks relief in respect to the title thereto, after the filing of the counterclaim or cross complaint he shall file a lis pendens. From the time of such filing every purchaser or encumbrancer whose conveyance or encumbrance is not recorded or filed shall be deemed a subsequent purchaser or encumbrancer and shall be bound by the proceedings in the action to the same extent and in the same manner as if he were a party thereto. In any such action in which a lis pendens has been filed, if the party filing the same shall fail for one year after the filing thereof to serve and file proof of service of the summons or the counterclaim or cross-complaint on one or more of the adverse parties, said notice shall be void, and upon motion and proof the court may order such notice struck from the files. Judgment shall not be entered in favor of the party required to file lis pendens until 20 days after the lis pendens has been filed.

(2) Proceedings for acquiring land by right of eminent domain shall be held to be actions within the provisions of this section and notice of the pendency thereof may be filed at any time.

(3) The lis pendens may be discharged upon the conditions and in the manner provided by section 266.22 for discharging an attachment or by section 270.87 for satisfying a judgment. An instrument filed before the effective date of the amendment (1951) to this subsection but in accordance with its provisions shall be a discharge of the lis pendens described therein.

History: 1951 c. 106; 1955 c. 553.

281.04 Highways; parks; record of order. (1) Every person who makes an application to any court, county board, common council, or village board for laying out, widening, vacating or extending any street, alley, water channel, park, highway or other public place shall, at or prior to the time of filing the same with the proper officer, file a notice of the pendency of such application, containing his name and a brief statement of the object thereof and a map and description of the land to be affected thereby in the office of the register of deeds of each county in which any such land is situated. Neglect to comply with these provisions shall render all proceedings based upon such application void, but no order vacating, or proceedings for the vacation of, any street, alley, water channel, park, highway or other public place, made or had before May 25, 1905, shall be void solely by reason of the failure to file such notice of the pendency of such application, map and description.

(2) No final order, judgment or decree or final resolution or order taking or affecting such land, based upon any application therefor, shall have any effect or be notice to any subsequent purchaser or incumbrancer unless a certified copy thereof, giving a full and accurate description of the land affected thereby, and accompanied with a map showing the location thereof, be recorded in the office of the register of deeds of the county in which the land is situated. A resolution or order made by any such body, whereby any land shall be taken or affected without an application having been made therefor, shall have no effect and shall not be notice to any subsequent purchaser or incumbrancer unless such resolution or order be recorded.

281.06 Land sold, where; effect of deed. Real property adjudged to be sold must be sold in the county where the premises or some part thereof are situated by the sheriff of that county or a referee appointed by the court for that purpose, and deeds executed upon such sales shall be effectual to pass the title, rights and interest of the parties in the premises adjudged to be sold and of all purchasers or incumbrancers thereof whose conveyance or incumbrance is made, executed, recorded, perfected or obtained subsequent to the filing of the notice of the pendency of the action in which such real property is adjudged to be sold unless the judgment shall otherwise direct.

281.07 Report of land sale and deed, who to make; second referee. If the sheriff or referee who made the sale of land dies, departs from the state or becomes otherwise incapacitated to make the report or to execute the deed, such report may be made by the undersheriff, a deputy sheriff, the plaintiff, or any other party to the action interested in having it made, his agent or attorney, upon oath; and such deed may be made by a referee appointed for that purpose and shall have the same effect as if made by such sheriff or original referee. And where a referee appointed by the judgment to make such sale shall die, remove from the state or become incapacitated, the court may, upon petition of any interested party appoint some other referee to make such sale and carry out any other provisions of such judgment.

281.09 Remainderman; fraudulent recoveries void. All recoveries against any tenant for life, or by the curtesy of any lands, shall be void as against all persons to whom any reversion or remainder of such lands shall appertain and as against their heirs, unless the reversioner or remainderman is a party to the action.

281.11 Survey may be ordered. In all actions relating to real property the court may by order give any party thereto leave to make any survey of any premises affected by such action, or of any boundary line of such premises, or between the lands of any of the parties and the lands of other persons, when satisfied that such survey is necessary or expedient to enable either party to prepare his pleadings in the action. The order for such survey shall specify the premises or boundary lines to be surveyed, and a copy thereof shall be served upon the owner or occupant before any entry is made to make such survey. After such service the party obtaining such order may, with the necessary surveyors and assistants, enter the premises specified in such order and make such survey without being liable to any action therefor except for injury or damages unnecessarily caused thereby.

281.12 Effect of conveyance. Whenever any action for the recovery of lands or tenements or for the recovery of the possession thereof shall be commenced against any person in possession of the premises in question or in the receipt of the profits thereof such action shall not be barred or delayed by reason of any alienation or conveyance made by such person to any other, either before or after the commencement of such action.

281.28 Foreclosure of land contract, writ of assistance. In an action to foreclose the rights of the purchaser under a land contract the plaintiff is entitled to a writ of execution or assistance upon application to the clerk in accordance with the provisions of the judgment.

281.30 Removal of restrictions. (1) When all or part of the area of any city block is affected by restrictive deed provisions, restrictive covenants or agreements, and when the first said restriction affecting said property has existed for 30 years or more, and when 75 per cent or more of the area of said city block has not been developed with buildings of the type allowed by said restrictions, the owner of any part of said block may commence an action in the circuit court of the county where said land lies to remove said restrictive deed provisions, restrictive covenants or agreements. All adjacent property owners shall be named as defendants and shall be served with a copy of the complaint.

(2) Notice of the commencement of the action and the area affected shall be published once each week for 3 weeks prior to time of hearing in a newspaper having general circulation within the county. A lis pendens shall be filed in the office of the register of deeds upon commencement of said action.

(3) The court may enter a judgment releasing said area from the effect of any restrictive deed provision, restrictive covenant or agreement contained whether the same appears in the deed to the area or block involved or in the deed to other lands or lots. No costs shall be allowed or taxed against the defendants in such action.

(4) Any property owner affected by the removal of said restrictions may petition in the action, to be allowed actual damages, to compensate him for any actual damages he may sustain by such removal. No damages shall flow automatically from said removal and damages shall be allowed by the court only upon a showing of actual injury. The court in granting or denying same shall take into consideration the development of the surrounding area including the commercial development in the immediate neighborhood.

History: 1953 c. 545; 1955 c. 10.