

A dairy farmer and his cousin owned a large farm in fee simple as tenants in common, each owning an undivided one-half interest. For five years, the farmer occupied the farm and conducted farming operations. The farmer never accounted to his cousin for any income but did pay all real estate taxes when they were due and kept the buildings on the farm insured against loss from fire, storm, and flood. The cousin lived in a distant city and was interested only in realizing a profit from the sale of the land when market conditions produced the price he wanted.

The farmer died intestate survived by his daughter, who was his sole heir. Thereafter, the daughter occupied the farm but was inexperienced in farming operations. The result was a financial disaster. The daughter failed to pay real estate taxes for two years. The appropriate governmental authority held a tax sale to recover the taxes due. At the sale, the cousin was the only bidder and obtained a conveyance from the appropriate governmental authority upon payment of an amount sufficient to discharge the amounts due for taxes, plus interest and penalties, and the costs of holding the tax sale. The amount paid was one-third of the reasonable market value of the farm.

Thereafter, the cousin instituted an appropriate action against the daughter to quiet title in and recover possession of the farm. The daughter asserted all defenses available to her.

Except for the statutes related to real estate taxes and tax sales, there is no applicable statute.

In this lawsuit, is the cousin entitled to a decree quieting title so that he is the sole owner in fee simple of the farm?

- A. No, if the daughter pays the cousin one-half of the amount he paid for the tax deed.
- B. No, if the daughter pays the cousin one-half of the reasonable market value of the farm.
- C. Yes, because the cousin survived the farmer.
- D. Yes, because the daughter defaulted in the obligations undertaken by the farmer.

Explanation:

A tenant who **buys back** co-owned property at a **tax sale or foreclosure sale** takes the property **subject to the other co-tenants' interests**. The nonpaying co-tenants then have a **reasonable time to contribute** their share of the purchase price (as determined by their proportionate ownership interests). A co-tenant who fails to do so **forfeits his/her interest** in the property to the purchasing co-tenant.

Here, the dairy farmer and his cousin each owned a one-half interest in the farm as tenants in common. When the farmer died, his daughter acquired his one-half interest in the farm. She failed to pay real estate taxes for two years, and a tax sale was held. At that sale, the cousin bought back the farm. But he will only be the *sole* owner of the farm if the daughter fails to contribute her one-half share of the purchase price.

(Choice B) The daughter need only pay the cousin half of the amount he paid at the tax sale to retain her one-half interest in the farm. The farm's reasonable market value is irrelevant.

(Choice C) The fact that the cousin survived the farmer would have entitled him to sole ownership of the farm had they been joint tenants. That is because a joint tenant's interest disappears upon death and the remaining tenants' interests automatically expand to absorb it (ie, right of survivorship). But tenants in common have no such right.

(Choice D) The daughter's default on tax obligations did not terminate her interest in the farm. Instead, her interest in the farm (or forfeiture thereof) depends on whether she pays the cousin her due contribution—half of the purchase price.

Educational objective:

A tenant who buys back co-owned property at a tax or foreclosure sale takes the property subject to the other co-tenants' interests. But the other co-tenants must contribute their proportionate share of the purchase price within a reasonable time to avoid forfeiting their interests to the purchasing co-tenant.

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