

NGIRCHONGERUNG, Plaintiff
v.
NGIRTURONG and REKSID, Defendants

Civil Action No. 7
Trial Division of the High Court
Palau District
September 3, 1953

Action to determine ownership of land in Ngaraard Municipality, in which individual having use of land during his lifetime under Palau customary law was listed by Japanese land survey as private owner and attempted to dispose of it upon his death. The Trial Division of the High Court, Chief Justice E. P. Furber, held that under controlling Palau customary law, head of family has no authority to dispose of family land without family's consent.

1. Palau Land Law—Family Ownership

Under Palau custom, assignment of family land to individual to use during his lifetime raises no presumption of ownership of anything more than use rights assigned, no matter how long individual lives and enjoys use of land.

2. Palau Land Law—Family Ownership

Under Palau custom, fact that person holds title as head of family for many years and enjoys use of lands going with title does not give him power to dispose of land, regardless of how he acquired title.

3. Palau Land Law—Family Ownership

Under Palau custom, chief of clan has no authority to dispose of family land owned by family within clan without consent of family.

4. Palau Land Law—Family Ownership

Under controlling Palau custom, head of family has no authority to dispose of family land without consent of family.

5. Palau Land Law—Japanese Survey—Rebuttal

Recognition by Japanese Government surveyors of purported transfer of land in Palau is at most only some evidence that effective transfer has been made.

6. Palau Land Law—Japanese Survey—Rebuttal

Listing of ownership of land in Palau in report of Japanese survey of 1941 does not prevent court from inquiring into true situation.

7. Palau Land Law—Japanese Survey—Rebuttal

Where land in Palau was listed in Japanese survey as private property of individual in charge of it and who had lawful use of it, and represented it in dealings with outsiders, presumption of private ownership is weakened.

8. Palau Land Law—Japanese Survey—Rebuttal

Where listing of land in individual's name in Japanese survey may easily have occurred because of loose way of referring to title in Palau, and land often was listed in name of head of family without raising any discussion at time, presumption arising from listing of land in individual's name has been effectively rebutted.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Akii, the land in question in this action, was owned for many years by the Tublai clan, represented in this action by the defendant Ngirturong, and was assigned to the Akii family of that clan, normally for the exclusive use of the person holding the title of "Remadelchelid".

2. The Tublai clan in dividing up its clan lands, transferred Akii to the Akii family as family land. The Akii family continued the normal assignment of the land for the exclusive use of the person holding the title of "Remadelchelid".

3. Ngiratred, although he did not hold the title of "Remadelchelid", was permitted by both the Tublai clan and the Akii family to use the land for the remainder of his lifetime, but he was given no other rights in it.

4. Ngirmekur became "Remadelchelid" and as such was entitled to and acquired the use of the land during his life, but he acquired no right to dispose of it without the consent of the Akii family. Shortly before his death he expressed a desire that Melengoes should inherit the land on Ngirmekur's death and the plaintiff Ngirchongerung should have charge of it for her in the Tublai clan. This expressed desire was not agreed to or acted on by the Akii family in any way.

5. The land was listed in the report of the Japanese land survey completed in 1941, as Ngirmekur's private land, but this was not generally known to members of the Akii family until very recently.

6. The defendant Reksid now holds the title of "Remadelchelid".

CONCLUSIONS OF LAW

[1] 1. The assignment of clan or family land to an individual to use, is commonly made under Palau custom for the remainder of that individual's life. Although this assignment is subject to change by the group, such change during the lifetime of the person to whom the use of the land has been assigned, is not the usual practice. Ordinarily the question of reassignment comes up when the former person to whom the land was assigned has died. Consequently, the mere fact that an individual to whom the land has been assigned for use lives a long time and consequently enjoys the use of the land for a long period, raises no presumption of ownership of anything more than the use rights assigned.

[2-4] 2. Similarly, the fact that a person holds a title as the head of a family for many years and as such enjoys the use of the lands going with that title, does not give him any power to dispose of those lands. This is so regardless of whether he has acquired the title in the normal manner of inheritance as the senior member of the family or whether he is an outsider who is invited by the family to hold or "guard" the title, because there is no one in the family at the time considered both eligible by birth and competent or mature enough to perform the duties involved. It was held by this court in Palau District Civil Action No. 11, 1 T.T.R. 66, that the chief of a clan has no authority to dispose of family land owned by a family within the clan without the consent of that particular family. Following the same principle, the court holds that under Palauan customary law controlling in this matter the head of a family has no authority to dispose of family land of that family without the consent of

the family. It is not necessary in this case to determine the exact minimum requirements to show family consent since in this case there has been no showing of any appearance of consent by the family.

[5-8] 3. This court also held in Palau District Civil Action No. 11, 1 T.T.R. 66, that recognition by the Japanese Government surveyors of a purported transfer of land is at the most only some evidence that an effective transfer has been made. The same is true as to the listing of ownership in the report of the Japanese survey completed in 1941. Such listing does not prevent the court from inquiring into the true situation. In cases such as this one where the land has been listed as the private property of the individual who was admittedly in charge of it, had the lawful use of it, and normally represented it in dealings with outsiders, any presumption of private ownership as distinguished from family ownership, is weakened, since in accordance with usual Palau practice he would be the one who would normally supply the detailed information as to ownership and would be the one the family would naturally rely on to protect its interests in dealings with outsiders. Furthermore, in a loose and popular way, the land might often be described as belonging to the title, so that listing of family land in the name of the holder of the title of the head of the family could easily occur without creating any discussion at the time. Unless some question was raised about the ownership of a particular piece of family land, the exact way in which it was listed was not likely to come to the attention of the ordinary members of the family. In this instance, any presumption arising from the listing of the land in the report of the survey as private land, has been effectively rebutted and shown to be in error.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the parcel of land known as Akii, located in Ngaraard Municipality on Babelthaup Island in the Palau District, and designated in the Japanese land records as No. 1351, is owned by the Akii family of the Tublai clan, and the defendant Reksid, as the holder of the title of "Remadelchelid", is entitled to the exclusive use of this land so long as he continues to hold that title.
2. This judgment shall not affect any rights of way which may exist over or across the land in question.
3. No costs are assessed against either party.

NGIRCHONGERUNG, Plaintiff

v.

NGIRTURONG, Defendant

Civil Action No. 9

Trial Division of the High Court

Palau District

September 3, 1953

Action to determine ownership of land in Ngaraard Municipality, in which plaintiff claims individual and absolute ownership and defendant claims either as private owner or as leading member of clan and family. The Trial Division of the High Court, Chief Justice E. P. Furber, held that land belonged either to defendant or to his family or clan as result of Japanese land survey.

1. Palau Land Law—Japanese Survey—Presumptions

Where party fails to show individual rights in land, presumption arising from listing of land in report of Japanese survey in 1941 as personal land of another must stand as against such party.

2. Palau Land Law—Japanese Survey—Presumptions

Where land in Palau was listed as personal land of individual in Japanese survey of 1941, land belongs either to that individual or to family or clan of which he is one of leading members.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff, Ngirchongerung, has failed to show any individual right to Kесекеи, the land in question in this action, as claimed by him.

2. The land was listed in the report of the Japanese survey completed in 1941, as the private land of the defendant, Ngirturong.

3. The evidence is conflicting as to whether the land is owned by the defendant alone as private land, or is owned by the Tublai clan or the Akii family of that clan and is under the control of the defendant as one of the leading members of both that clan and that family. At the trial the plaintiff individually claimed absolute ownership; both the Tublai clan and the Akii family interests were represented by the defendant and no issue was raised as to ownership as between the defendant personally, the Akii family and the Tublai clan. Therefore no finding is made as between them.

CONCLUSIONS OF LAW

[1, 2] 1. The plaintiff having failed to show any individual rights in this land as claimed, the presumption arising from the listing of the land in the report of the Japanese survey completed in 1941 as the personal land of the defendant, Ngirturong, must stand as against the plaintiff, so far as it is consistent with the evidence, which showed that the land was either Ngirturong's or that of his family or clan.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the land known as Kесекеи, located in the Nga-

raard Municipality on Babelthaup Island in the Palau District, and designated in the Japanese land records as No. 885, is owned by the defendant Ngirturong, or the Tublai clan or the Akii family of that clan, of which clan and family the defendant is one of the leading members.

2. This judgment shall not affect any rights of way which may exist over or across the land in question.

3. No costs are assessed against either party.

JESSE and TULPE, Plaintiffs

v.

DAVID EBREAM and Others, Defendants

Civil Action No. 42

Trial Division of the High Court

Ponape District

December 11, 1953

Action to determine ownership of land on Kusaie Island, in which person in whose name land was registered in Japanese survey of Kusaie in 1932 brought suit to recover land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that any presumption of ownership in person whose name appeared on survey could be overcome by other evidence, including fact that he did not have possession of land ten to fifteen years before survey and has not had possession since then.

1. Ponape Land Law—Kusaie—Japanese Survey

As Japanese survey of Kusaie in 1932 placed primary emphasis on determination of boundaries, there is no assurance that all claims to ownership were considered or that there was any detailed investigation of extent of or basis for any alleged owner's interest in land shown under his name.

2. Ponape Land Law—Kusaie—Japanese Survey

Listing of party's name in Japanese survey of Kusaie in 1932 is at best only some evidence as to ownership or control.

3. Ponape Land Law—Kusaie—Japanese Survey

Where neither the person in whose name land is shown on Japanese survey of land on Kusaie nor person through whom he claims has been in physical control of property for ten to fifteen years before survey, and neither has been in control since, any presumption that owner shown on survey is true owner has been overcome.