

PAKUN SEKU, Plaintiff
v.
FREDIE and SRU LIKIAKSA, Defendants
Civil Action No. 51
Trial Division of the High Court
Ponape District
December 11, 1953

Action to determine ownership of land on Kusaie Island, in which adopted son claims ownership of land left by his adopting parents. The Trial Division of the High Court, Chief Justice E. P. Furber, held that land belonged to true daughter of deceased owner since adopted children on Kusaie do not inherit except by express provision, and even then such inheritance would be presumptively a life estate with no right to transfer land.

1. Ponape Land Law—Kusaie—Adoption

Under Kusaie custom, land which adopting parent has not disposed of by testament will not pass to adopted son if parent leaves any true issue by blood.

2. Ponape Land Law—Kusaie—Adoption

Under Kusaie custom, where deceased land owner leaves adopted son and true daughter, land will pass to daughter even though adopted son has assisted in planting land.

3. Ponape Land Law—Kusaie—Adoption

Under Kusaie custom, where adopted son has been given by adopting parents certain plots of land as inheritance, presumption is that permission extends no longer than life of adopted son and is personal to him, unless there is clear evidence to the contrary.

4. Ponape Land Law—Kusaie—Adoption

Kusaie custom does not permit adopted son to transfer to another any rights he may be expressly given in land by adopting parents.

FURBER, Chief Justice

FINDINGS OF FACT

1. Srue T. instructed the plaintiff Pakun to take care of Maal until her sons, the defendants Fredie and Sru, grew old enough to work it, and directed that it should then be their property in equal shares.

2. Sepe Intera gave to Srue T. the piece of land about 50 feet square which is claimed by the plaintiff Pakun in this action, and is considered by the parties to be a part of Mutonsoik but is considered by some to be a part of the land known as Fwinmona. Srue T. has permitted the defendants Freddie and Sru to manage this property for her, with the understanding that it is to be theirs, but that she still retains authority over it during her life.

3. Srue T. and the defendants Freddie and Sru have permitted the plaintiff Pakun to use this piece of land about 50 feet square for many years, with the implied understanding that he may use it for life, so long as he acts properly as a close relative of theirs by adoption, and he has built a house there in reliance upon this understanding. Recently the plaintiff Pakun has claimed ownership of this piece of land.

CONCLUSIONS OF LAW

[1, 2] 1. In Kusaie customary law an adopted son's rights of inheritance are very different from those of a true son by birth. It is often stated that when a person dies owning land on Kusaie which has not been otherwise disposed of, this land will pass to his oldest living son, if any. This rule, however, applies only to a true son by birth. The land on Kusaie which an adopting parent has not disposed of by will or otherwise, will not pass to his adopted son if the adopting parent who owns the land leaves any true issue by blood. Thus, in this case, where Likiaksa left an adopted son, namely the plaintiff Pakun, and a true daughter by blood Srue T., Likiaksa's land on Kusaie which he had not otherwise disposed of, passed on his death to his true daughter Srue T.. The fact that Pakun had assisted his father by adoption in planting a part of the land makes no difference, since an adopted son is expected under Kusaie custom to assist his father.

[3, 4] 2. Where, as in this case, an adopted son has been given by one of his adopting parents certain specific pieces of land as his inheritance, and then members of the family give him permission to use other land in addition, the natural presumption under Kusaien custom is that such permission extends no longer than the adopted son's own life and is a personal privilege to him, unless there is clear evidence to the contrary. The general rule under Kusaien customary law is that where there are true issue by blood, an adopted child will take no land from the family to own except that which is expressly given him to own. No matter what improvements he places on land which members of his family by adoption merely permit him to use, or how long he continues to live and use the land with their permission, he cannot transfer any rights in it.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the whole of the land known as Maal, located on Lele Island, Kusaie, belongs to the defendants Freddie and Sru Likiaksa, subject to their obligation to continue to properly take care of their mother Srue T. . Freddie and Sru Likiaksa and Srue T. all live in Lele, Kusaie.

2. As between the parties and all persons claiming under them, the plaintiff Pakun Seku is entitled to continue to live on and use the piece of land about 50 feet square described below together with the defendants Freddie and Sru Likiaksa, so long as Pakun lives and acts properly as a close relative of theirs by adoption, but he cannot transfer any rights of ownership in the land. Subject to this right of the plaintiff, this piece of land about 50 feet square, belongs to the defendants Freddie and Sru Likiaksa, subject to their obligation to continue to properly

take care of their mother Srue T.. This piece of land about 50 feet square is bounded on the east by land now or formerly of Freddie, on the north by land now or formerly of Makoelun (otherwise known as Ned), on the west by a road separating it from land occupied by Irving, and on the south by land of the plaintiff Pakun Seku. It is considered by some to be the upland portion of the land known as Mutonsoik and by others as part of the land known as Fwinmona.

3. This judgment shall not affect any rights of way there may be over the land in question.

4. No costs are assessed against any party.

KUN PETER, Plaintiff

v.

PETER KONLULU, YAMATO and TILINKEN, Defendants

Civil Action No. 55

Trial Division of the High Court

Ponape District

December 11, 1953

Action to determine ownership of land on Kusaie Island, in which son brings action to obtain from father land which he had previously been given authority to manage in expectation he would inherit it. The Trial Division of the High Court, Chief Justice E. P. Furber, held that son had failed in his obligation to support and respect his father and that consequently father could otherwise dispose of land.

Ponape Land Law—Kusaie—Transfers

Under Kusaie custom, when father gives oldest son authority to manage land, son has strong obligation to obey, support and respect father, and if he fails to fulfill obligations, father may revoke son's authority to manage land and may dispose of land as he wishes.