

its being re-introduced, the testimony already on the record, with the exception of the statement by the witness Termeteet, "They said these are same ones", which is hereby excluded from consideration.

(b) After taking such additional testimony, the judge shall finish the trial as if there had been no previous finding and sentence; shall allow the usual opportunity for argument; make a new finding based on all the evidence, except that excluded as indicated above; and, if the finding is guilty, allow the usual opportunity for hearing on the question of sentence, and enter a new sentence.

BASEHELAI BAAB, Plaintiff

v.

KLERANG and RUDIMCH, Defendants

Civil Action No. 23

Trial Division of the High Court

Palau District

June 21, 1955

Action to determine ownership of land in Airai Municipality, in which plaintiff claims on behalf of clan that land in question is clan land, and defendant contends land was individual land of defendant's grantor. The Trial Division of the High Court, Chief Justice E. P. Furber, held that presumption arising from listing of land in Japanese survey as individual land is controlling.

1. Palau Land Law—Japanese Survey—Presumptions

Presumption that determinations made in Japanese land survey of 1941 were correct is strong in case of issues which were matter of controversy at that time.

2. Palau Land Law—Japanese Survey—Presumptions

In order to overcome presumption that determinations made in Japanese land survey are correct, there must be clear showing that determination in question is wrong, especially where listing in survey was not in individual name of one who was head of group which he would ordinarily represent in dealing with outsiders and which now claims interest in the land.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The issue of whether the land in question was clan land or was owned by an individual, was a matter of controversy at the time of the Japanese land survey which was completed in 1941, and the land was listed in the report of that survey as the private or "individual" land of Kitalong.

2. This land was part of a larger tract which Kitalong divided and gave away other parts of without any question being raised by the Iwelenguul Clan (on whose behalf the plaintiff, as its chief, brings this action) as to Kitalong's ownership, until the defendant Klerang attempted to sell the land in question to the defendant Indalecio Rudimch.

3. Kitalong gave whatever rights he had in the land to the defendant Klerang, who would have inherited them under Palauan customary law if Kitalong had made no other disposition of them.

4. The plaintiff has failed to show that the listing of the land in the report of the Japanese land survey completed in 1941 was wrong.

CONCLUSIONS OF LAW

1. This action involves a dispute going back many years. The latest time at which the parties have been able to agree on the ownership is back in Spanish times before the organization of the Iwelenguul Clan. The basic question is whether the land became clan land and was simply administered by various individuals with the permission of the clan, or was owned outright by these individuals.

2. It was agreed that no member of the clan has ever lived there since the period of the Spanish Administration, that Kitalong entered upon the land during the Japa-

nese period, that he lived upon it until his death about twelve years ago, and that Klerang is the only person who remained there after Kitalong's death. It was also admitted by the plaintiff that Klerang remained upon the land without any objection on the part of the Iwelenguul Clan. The evidence with regard to the back title of necessity consists mostly of statements that the witnesses have heard from others and is most inconclusive.

[1, 2] 3. The court takes notice that the official Japanese land survey in the Palau Islands which was completed in 1941 was carried on with considerable care and publicity, and that those engaged in it were given broad powers. The court holds that the presumption determinations made in this survey were correct is strong in the case of issues which were a matter of controversy at the time. To overcome this presumption in the case of such issues, there must be a clear showing that the determination in question is wrong. This is especially true where the listing made in the survey was not in the individual name of one who was the head of a group which he would ordinarily represent in dealing with outsiders and which now claims an interest in the land. Under the circumstances disclosed in the present action, therefore, the presumption arising from the listing of the land in the report of this survey as the private or "individual" land of Kitalong, is controlling. The principle is the same as that involved in the case of *Ngirchongerung v. Ngirturong*, 1 T.T.R. 75. Under the facts agreed upon at the pre-trial conference and those found above, it is clear that Kitalong's rights have now passed through the defendant Klerang to the defendant Rudimch.

4. The classification of land, referred to above as private or "individual" land, is the same as that referred to as private land in Palau District Civil Actions Nos.

7, 8, and 9, 1 T.T.R. 68, 71, 75. It is believed that the designation "individual land" is a more exact translation of the Japanese words used, and gives a clearer idea of what is meant. It is therefore the intention of the court in the future to use the words "individual land" in describing this class of land in the Palau Islands.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties and all persons claiming under them, the land on Ngerduais Island in Airai Municipality in the Palau Islands, shown on the sketch attached to the pre-trial order in this action as that parcel on which the land known as Ngebtuch is located, and being bounded on the north and east by a rock hill, on the northwest by the water, and on the southwest by land formerly of Etbai and land formerly of Pedro and more recently of Tarkong, is the individual land of the defendant Indalecio Rudimch, a resident of Koror Municipality in the Palau Islands.

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.