

SANTER and CHIAKO, Plaintiffs
v.
ONITA and KEMAR, Defendants
Civil Action No. 72
Trial Division of the High Court
Truk District
June 30, 1958

Action for determination of ownership of land among members of land owner group on Parem Island. The Trial Division of the High Court, Chief Justice E. P. Furber, held that Court will divide land among members of group if they are unable to reach agreement and that no member may be entirely excluded by such agreement. Court allowed parties three months to reach an agreement for use of land and, should no agreement be reached, any party may present motion for division of land.

1. Truk Land Law—Group Ownership

On islands of Truk Atoll, holding of land by family groups of varying degrees of inclusiveness is common practice.

2. Truk Land Law—Group Ownership

Groups holding land on Truk Atoll are usually constituted on matrilineal basis but groups on bilateral and patrilineal basis are also recognized.

3. Truk Land Law—Group Ownership

Under Truk custom, when half-brothers combine their land, effect is to form new, small land-holding group consisting initially just of themselves and, after them, of their children.

4. Truk Land Law—Group Ownership

Under Truk custom, no member of group owning land has right to exclude another member of group from use and benefit of land.

5. Truk Land Law—Group Ownership

Where it becomes clear that members of group of land owners under Truk custom cannot come to practical agreement as to use of land, court, after giving opportunity for further hearing, will order equitable division of land between them.

6. Truk Land Law—Group Ownership

In dividing land where group of Truk land owners cannot agree upon division, court will give due consideration to who bore burden of rehabilitating land after war.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Apuech and Kilion combined the parts of Fanut which had been given to each of them individually, thereby making one tract which they indicated should pass to their children (including Apuech's adopted children.)

2. Apuech, after the death of Kilion, acknowledged that Onita had rights in the land in dispute, but not that she was the exclusive owner.

3. The rehabilitation of the land after World War II, was carried on by Apuech, without any assistance from Onita.

CONCLUSIONS OF LAW

[1, 2] 1. In the islands of the Truk Atoll, holding of land by family groups of varying degrees of inclusiveness is a common practice. While these groups are usually constituted on a matrilineal basis, groups constituted on a bilateral basis, and groups on a patrilineal basis, are also well recognized as proper land holding groups. See "Report: Native Land Tenure in the Truk District", dated 6 June 1950, by John L. Fischer, Anthropological Field Consultant.

[3] 2. In view of the practice as to land holding in the Truk Atoll, the effect of the action of Apuech and Kilion (who were half-brothers) referred to in the first Finding of Fact, was to form a new small land holding group consisting initially just of themselves, and after them, of their respective children, including adopted children. Consequently, the land in question is now owned by the group consisting of the plaintiffs and the defendant Onita. (The defendant Kemar claims no rights in the land in question, except as the husband of Onita.)

[4-6] 3. None of this owning group has a right to absolutely exclude another member of the group from all use and benefit of the land. Ideally, they should come to an agreement on a practical method of dividing the use of the land or the benefits therefrom, or agree upon a division of the land among them. If it becomes clear that even after they all realize they must respect each other's rights, they cannot come to a practical agreement as to the use of the land, the court, after giving opportunity for further hearing, will order an equitable division of the land between them, giving due consideration to the fact that the burden of rehabilitating the land after World War II was born by the plaintiffs' father by adoption. The parties are, however, entitled to a reasonable opportunity to work this matter out themselves.

JUDGMENT

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

1. As between the parties and all parties claiming under them, the parts of the land known as Fanut, located in Peniemwan Village on Parem Island, Truk District, which were formerly owned by either Apuech or Kilion, now constitute one tract which is the property of the group consisting of the plaintiffs Santer and Chiako, who live on Moen Island, Truk District, and the defendant Onita, who lives on Fefan Island, Truk District.

2. If the above mentioned parties are unable, within three months from this date, to come to a practical agreement as to the use of the land or the division of it between them, any of them may present a motion in this action for division of the land between them.

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.