

PILAR PAMPILONA and BENIDO AMOR, Plaintiffs

v.

ALPERTO PONPEISO, Defendant

Civil Action No. 126

Trial Division of the High Court

Ponape District

June 2, 1959

Action to determine ownership of land in Uh Municipality, in which widow brought action claiming ownership of land left to her by husband and also claiming revocation of gift of other land to son. The Trial Division of the High Court, Chief Justice E. P. Furber, held that under Ponape customary law, gift to widow is considered life estate with remainder in son, and in absence of clear evidence of failure to support, donor cannot revoke gift of land.

1. Ponape Land Law—Obligation to Support

Under Ponape custom, it is usual to give land to someone who is not a blood relative in return for years of support.

2. Ponape Custom—Gifts of Land

Under Ponape custom, gift of land outright to wife in preference to son by previous marriage is unusual.

3. Ponape Land Law—Widow's Rights

Under Ponape custom, it is usual to allow widow to stay on deceased husband's land until she dies or remarries.

4. Ponape Land Law—Widow's Rights

Under Ponape custom, where son has shown some consistent interest in assisting father after latter's remarriage, court will find that grant of land to widow was only life estate.

5. Ponape Land Law—Obligation to Support

Approved transfer of land under Ponape system of land tenure in consideration of agreement to support may be revoked upon gross failure of grantee to comply with agreement.

6. Ponape Land Law—Obligation to Support

Upon agreement to support, grantor of land on Ponape has no right to revoke gift at his pleasure any time during remainder of life without showing cause for revocation beyond his own wish where grantees have been in possession for some years, since attempted revocation is contrary to system of private land ownership in Ponape.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. In connection with the Japanese land survey of about 1941 to 1942 on Ponape Island, Ponpeiso divided the land in question into two approximately equal halves by a boundary line running from the part of the land nearest the water toward the mountain, and had the half on the righthand side of this boundary line, as one faces the mountain, placed in the name of his wife, the plaintiff Pilar, and the other half in the name of the plaintiff Benido, who is really his wife's nephew but is referred to under Ponapean custom as her son, and delivered possession of one half to Pilar and the other half to Benido. The official Japanese Government surveyors surveyed this division and, after discussion with both Ponpeiso and the defendant Alpero, and over the latter's objection, approved the division on behalf of both the Government and the *Namwarki*. In approving this division the official Japanese Government surveyors placed the two halves of the land under the names Ponpeiso had requested, but coupled with this a notation limiting the rights of one or both of them. All record of this notation was destroyed during World War II.

2. At the time of the division and transfer referred to above, Ponpeiso had been living with the plaintiffs Pilar and Benido for twenty odd years, and was greatly dissatisfied with the amount of support which he had received during that time from the defendant Alpero, and made the transfer to Benido expressly in recognition of the support which he had rendered Ponpeiso during this time.

3. During the last few weeks or months before his death, about June 1945, Ponpeiso purported to orally revoke the gifts described above and direct that the land should be inherited by Alpero as his only son, but at the

same time instructed him to care for Pilar until she died. No effort was made by anyone concerned, however, to have this attempted revocation approved by either the *Nanmwarki* or the Government until dispute arose in 1957, when the *Nanmwarki*, in a written statement, approved Alperto's taking his father's place on the alleged ground that his father had died without leaving any instructions or will as to this land. In granting approval with recital of this ground, the *Nanmwarki* made no mention whatever of any previous disposition of the land or of any revocation, or attempted revocation, of such previous disposition.

4. Between the time of the gifts referred to in the first finding of fact above and Ponpeiso's death, neither the plaintiff Pilar nor the plaintiff Benido had failed in any way to fulfill their obligations to Ponpeiso. Pilar and Benido remained in unopposed possession of their respective halves of the land from about 1941 until the dispute in 1957 which brought this action.

CONCLUSIONS OF LAW

1. This action involves ownership of land on Ponape Island held under the standard form of title document issued by the German Administration on Ponape beginning in 1912.

[1-4] 2. Under Ponapean custom, while a gift of land to someone who is not a blood relative in return for years of support and cooperation is not unusual, to give land outright to one's wife in preference to a son by a previous marriage is most unusual. The more usual thing is to allow a widow to stay on her husband's land until she dies or remarries. It furthermore seems most unlikely that the official Japanese Government surveyors charged with the land survey of 1941 to 1942 would have approved such a transfer without qualification over the protest of a son who had at least shown some consistent interest in assist-

ing his father after the latter's remarriage following the death of the son's mother. Construing all the evidence in the light of Ponapean custom and the recognized care taken in the Japanese land survey of 1941 to 1942, the court holds that the plaintiff Pilar has only sustained the burden of showing the grant to her and approval of a life estate in the half of the land placed under her name.

[5,6] 3. This court has already held in the case of *Fridorihg Lusama and Others v. Eunpeseun*, 1 T.T.R. 249, that a duly approved transfer of land under the system of land ownership in effect on Ponape Island, upon agreement for support, may be revoked upon a gross failure of the grantee to comply with the agreement, but no such failure has been shown here. The court feels forced, however, to hold that the right claimed by the defendant in this instance of a grantor to revoke, at his pleasure at any time during the remainder of his life, duly approved gifts of land, without showing any cause for revocation beyond his own wish and where the grantees have been in possession for some years, is contrary to the system of private land ownership introduced on Ponape Island by the German Administration in 1912, as amended by law to date. The court therefore holds that the gifts of one-half the land to Benido, and the life estate in the other as to Pilar, are still in full force and effect.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the land known as Pohngilen, located in the Awak Powe Section of Uh Municipality on Ponape Island, in the Ponape District, is owned as follows:—

(a) The half to the right of the boundary line dividing the whole tract into two equal halves, as one faces the mountain in the rear of the land, is owned by the plaintiff

Pilar for her lifetime, and is owned subject to this life estate, by the defendant Alpero.

(b) The half to the left of said boundary line is owned by the plaintiff Benido Amor.

(c) Each of the parties mentioned above is a resident of Uh Municipality in the Ponape District, and the rights of each in the land are with the benefit of and subject to all the rights and obligations imposed by the system of private land ownership set forth in the standard form of title document issued by the German Government in Ponape in 1912, as heretofore or hereafter modified by law.

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

3. No costs are assessed against any party.

PERNEL MANASA, Plaintiff

v.

WELERI JOHN, Defendant

Civil Action No. 127

Trial Division of the High Court

Ponape District

June 2, 1959

Action to determine ownership of land in Metalanim Municipality, in which plaintiff and his wife, sister of deceased, claim land under oral will and by inheritance, in opposition to defendant to whom *Nanmarki* had transferred title. The Trial Division of the High Court, Chief Justice E. P. Furber, held that land belonged to plaintiff and that *Nanmarki* was without power to order transfer to defendant.

Ponape Land Law—German Land Title

Since German land reform of 1912, *Nanmarki* does not have power to cut off rights of heir of landowner or rights of transferee of landowner and then proceed to give land to another as reward or compensation for care rendered deceased.