

2. Neither the plaintiff If nor any other child of Soris has any rights in this land except to have the benefit of the obligation stated above.

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

4. No costs are assessed against either party.

5. Time for appeal from this judgment is extended to and including January 9, 1962.

POULIS, Plaintiff

v.

MEIPEL, ATINKACHAU, CHENIN, and ANIPIO, Defendants

Civil Action No. 140

Trial Division of the High Court

Truk District

October 9, 1961

Action for determination of title to land located in Uman Municipality. The Trial Division of the High Court, Chief Justice E. P. Furber, held that lineage land sold to party represented by plaintiff cut off all rights of lineage in land thereafter. The Court further held that after 1930, on larger islands of Truk Atoll, honest gift of land to *afokur* cut off all traditional rights in transferor lineage.

1. Truk Land Law—Lineage Ownership—Sales

Under Truk custom, sale of land held by lineage cuts off all rights of lineage and any rights which its *afokur* might reasonably hope to obtain through it in that part of land.

2. Real Property—Sales

Attempted subsequent gift of land by vendor after sale to third party is of no legal effect.

3. Truk Land Law—Lineage Ownership—Transfers

Under Truk custom, transfer of land in Truk Atoll by lineage to *afokur* carried with it implied obligation on part of children's lineage to make return gift of other land or to present first fruits to their father's lineage, which would still retain certain residual rights in land.

4. Truk Land Law—Lineage Ownership—Gifts

On larger islands of Truk Atoll, gifts of land honestly made by lineage to *afokur* after 1930 cut off all rights of lineage other than hope of inheritance, unless specific rights were expressly retained by terms of gift.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Sisar, during his last illness, turned over to Meipel control, as lineage land, over all of the land known as Mesor which had not previously been transferred to persons outside the lineage, and Meipel accepted this as lineage land belonging to the children of Sisar's two sisters and the descendants of those children in the female line. At the same time Sisar requested that Meipel give part of this land to Sisar's son Atinmone.

2. Meipel, with the consent of Kare, who was the only other adult member of the lineage at that time, sold to Dereas for a boat the part of Mesor extending about thirty two and one half (32 1/2) fathoms from the northwesterly boundary of Mesor.

3. At a trial between some of Sisar's children and Meipel in Japanese times, the above-mentioned transfer to Dereas was recognized as valid and the claim of Sisar's children was dropped, without formal action, upon their and Meipel's agreement to a suggestion that they try to love each other and agree on a division of the part of Mesor which had not been transferred out of the lineage.

4. No express agreement was reached as to the division of the remainder of Mesor, but Meipel, in accordance with Sisar's request which had been consented to by Kare, gave Atinmone the part of Mesor extending about thirty two and one half (32 1/2) fathoms to the southeast from the part previously transferred to Dereas, and Atinmone and his sister Echenmoney and brother Atinkachau took pos-

session of it although they claimed they should have a larger and different part of Mesor.

5. Atinkachau and some of his relatives, at various times since Dereas' death, have also used the part of Mesor that was transferred to Dereas, but over the repeated protests of Dereas' sons.

6. Meipel did not make any agreement with Sisar to give up his (Meipel's) rights in Mesor in return for other land.

OPINION

The above findings of fact dispose of most of the issues in this action, which involves the ownership of three different parts of the land known as Mesor located on one of the small islands within the jurisdiction of Uman Municipality in Truk Atoll.

[1, 2] The sale (described in the second finding of fact) to Dereas of the northwesterly part of Mesor clearly cut off all rights of the lineage and any which its "*afokur*" (that is, children of a male member) might reasonably hope to obtain through it in this part of the land. Atinkachau and his relatives starting to use this part after Dereas' death was without any right, even though it is admitted that Atinkachau and Atinmone were "*afokur*" of the lineage. The alleged agreement between Atinkachau and his brother Atinmone that Atinmone should own this northwesterly part and Atinkachau should own the adjoining part given originally to Atinmone, is of no legal effect as against Dereas' successors, and Atinmone's alleged gift of this northwesterly part to his children, represented by Anipio, also had no effect on the legal ownership of Dereas' successors. No attempt is made in this action to decide what effect, if any, this alleged agreement had on the part of Mesor originally given to Atinmone since Atinkachau and Anipio (representing all the children of Atinmone, deceased) acted together through the

same counsel in this action so that the question of rights as between them and of what other agreements Atinkachau and Atinmone may have had bearing on the matter, was not explored. Accordingly no determination is made as to who has succeeded to Atinmone's rights in the part of the land given him.

One of the important disputes in this action, however, was between Meipel on the one hand, and Atinkachau and Anipio on the other, as to the rights alleged to have been retained by Meipel, or his lineage, in this part of the land given to Atinmone. Meipel claimed that, because of the trouble caused him over the lands, he as the head of the lineage was entitled to revoke the gift to Atinmone and demand return of this part of the land.

[3] It is clear that in ancient times a transfer of land in Truk Atoll by a lineage to one or more of its "*afokur*" carried with it an implied obligation on the part of the children's lineage to make a return gift of other land and, if this were not done, the children would have an obligation to present first fruits to their father's lineage which would still retain certain residual or "basic" rights in the land. During the years of the German and Japanese Administration these implied limitations on such transfers have become more and more freely disregarded and sentiment with regard to them has changed markedly—particularly on those lands where the people have been in closer touch with outside influences. See Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 170-174.

[4] The court holds that in those municipalities located primarily on the larger islands of Truk Atoll, such as Uman, gifts of land honestly made by a lineage to its "*afokur*", at least after about 1930, cut off all rights of the lineage in the land (other than the mere hope of in-

heritance if the "*afokur*" to whom the land was given died out entirely in both the female and male lines without having disposed of the land), unless specific rights were expressly retained by the terms of the gift. The rule may well be different as to land in other municipalities within the Truk District; no opinion is implied as to that.

The court therefore holds that neither Meipel nor his lineage now has any right to revoke the gift to Atinmone or control the part of the land given to him.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the parts in question of the land known as Mesor, located on the northeasterly shore of Ocha Island (designated by the United States Board on Geographic Names as Otta Island), which is within the jurisdiction of Uman Municipality and on the southern part of the reef surrounding Truk lagoon, Truk District, are owned as follows:—

a. The northwesternmost part, extending about thirty two and one half ($32\frac{1}{2}$) fathoms southeast from the northwesterly boundary of Mesor is owned by the children of Dereas and their descendents in the female line as a matrilineal family group, represented in this action by the plaintiff Poulis, who lives in Sotou Village on Losap Island, Truk District.

b. The part adjoining that described above and extending about thirty two and one half ($32\frac{1}{2}$) fathoms to the southeast from there is owned by whoever has or have succeeded to the rights of Atinmone, deceased, and is free from any control by Meipel or his lineage.

c. The remainder of so much of Mesor as had not been transferred out of the lineage before the last illness of Sisar is still owned by the lineage consisting of the chil-

dren of Sisar's sisters and the descendants of these children in the female line, represented in this action by the defendant Meipel who is the present senior member of the lineage and lives in Sapou Village on Uman Island, Truk District, but of which lineage the defendant Chenin, who lives in Sapou Village, is also a member.

2. The boundary lines between the various parts of Mesor described above have been indicated by rows of coconut husks and other debris in accordance with local custom. The line between the portion given to Atinmone and that retained by the lineage is indicated by a large hole in the ground made by the Japanese while they occupied the island, and is near where a large "okurang" tree formerly stood.

3. The defendants Atinkachau and Anipio have no rights of ownership in any of the lands in question except such rights, if any, as either or both of them may have acquired as successor to the rights of Atinmone in the part of Mesor described in sub-paragraph b of paragraph numbered one above.

4. The defendants Atinkachau and Anipio and all persons claiming under either or both of them are permanently enjoined and prohibited from planting on, harvesting from, or otherwise using the part of Mesor described in sub-paragraph a of paragraph one of this judgment.

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

6. No costs are assessed against any party.