

INLONG H. RIVERA, Plaintiff
v.
NGCHEED, Defendant
Civil Action No. 173
Trial Division of the High Court
Palau District
November 30, 1961

Action to determine rights in land in Koror Municipality. Plaintiff, widow of lessee of land from Trust Territory, attempted to put defendant off land although deceased had previously given defendant oral permission to build on part of land covered by lease, without express provision as to time defendant might remain. The Trial Division of the High Court, Chief Justice E. P. Furber, held that as against defendant, plaintiff has right to act in deceased's place and terminate permission granted to defendant to use land.

1. Palau Land Law—Clan Ownership—Use Rights

Under Palau custom, clan or lineage is justified in putting party off land belonging to it when party fails to cooperate with or show respect to widow of person formerly in possession of land.

2. Palau Land Law—Use Rights

Under Palau custom, party who has been given permission to use part of land leased by individual from government has no greater right in such land than he would have if it were clan or lineage land.

3. Palau Land Law—Use Rights

Where lease of land in Palau is binding on heirs, legal representatives and assigns of both parties, and deceased lessee's only surviving brother expresses wish that all rights under lease go to lessee's widow, latter has right to act in deceased's place and terminate permission to use part of land which was granted by deceased to third party.

4. Palau Land Law—Use Rights

Six months is sufficient time for removal of substantial buildings of party whose permission to use land has been revoked, in accordance with common practice in Koror.

FURBER, Chief Justice

OPINION

This is a strange case. From an American point of view, it would seem clear that the defendant Ngcheed has no

rights in the land in question except as a tenant at sufferance to have reasonable time to get himself and his property, including a substantial house, off the land.

The plaintiff is the widow of Hosei Rivera, now deceased, who was the lessee of certain land under lease from the Trust Territory Government. Hosei had given the defendant Ngcheed oral permission to build on part of the land covered by the lease, without any express provision as to the time the defendant might stay on the land. This was allegedly done because the defendant's wife's father was a member of Hosei's clan.

The defendant claimed that, under Palau custom, because of the great hardship on him in having to remove a substantial house on which he had spent some seven hundred dollars (\$700.00), he should be allowed to remain on the land and in effect oust the plaintiff from approximately a third of the area covered by the lease.

[1, 2] The defendant and those claiming under him were clearly shown to have been guilty of such disrespect to and lack of cooperation with the plaintiff as would justify the head of a clan or lineage in putting them off the land if the land had been that of the deceased Hosei's clan or lineage. After careful consideration of all aspects of Palau custom which have been advanced in this case, the court cannot see how the defendant can properly claim any greater right in the leased land than he would have had had it been clan or lineage land.

[3, 4] There may be room for doubt in some cases as to just who succeeds to a deceased lessee's rights in a lease of land in the Palau Islands which provides that it shall be binding upon the heirs, legal representatives and assigns of both parties, as the lease here in question did. In this case, however, the deceased's only surviving brother has clearly expressed his wish that all rights under the

lease go to the plaintiff, and she is clearly endeavoring to hold the leased land for the benefit of her and Hosei's children as well as herself. The court therefore considers it clear in this instance that, as against the defendant Ngcheed, the plaintiff has the right to act in Hosei's place and terminate, as she has attempted to do, the permission granted by the deceased Hosei to the defendant. As between them the only question would appear to be how long the defendant reasonably needs to remove a substantial building. In view of the notice the defendant has already had of the plaintiff's desire to have him leave the premises, and the common practice in Koror of allowing six (6) months for such removal, the court considers that six months from this date should be sufficient in this instance.

It should be noted that the Government of the Trust Territory was not a party to this action and that the judgment does not purport to bind it.

JUDGMENT

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

1. As between the parties and all persons claiming under them:—

a. The plaintiff Inglong H. Rivera, who lives in Koror, Palau District, has succeeded to all the rights of her deceased husband Hosei Rivera in the Government Lease No. 79 to him dated at the beginning November 1, 1956, covering certain land in Ngerbeched Village, Koror, including the right to exercise the option of renewal contained therein.

b. The defendant Ngcheed, who also lives in Koror, has no rights in the land described in said lease except the right as a tenant at sufferance to have reasonable time to remove himself and his property and those claiming under him from the land.

2. The defendant Ngcheed is ordered to vacate the land described in said lease within six (6) months from this date and either remove his building by that time, or transfer it to someone whom the plaintiff is willing to allow to keep it there, or abandon it to the plaintiff Inglong H. Rivera, provided she has by that time exercised the option to renew the lease or otherwise arranged with the Government for continued right to possession of the land in question, and the defendant Ngcheed is permanently enjoined and prohibited from interfering, or attempting to interfere, in any way with the plaintiff's exercise of said option.

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.

UCHERBELAU, Plaintiff

v.

NGIRAKERKERIIL, Defendant

Civil Action No. 179

Trial Division of the High Court

Palau District

November 30, 1961

Action to determine ownership of land in Koror Municipality which plaintiff claims is his individual land, and defendant representative of clan, contends is clan land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that plaintiff has not sustained burden of proving determination in Japanese land survey, listing property as that of clan, is erroneous.

1. Palau Land Law—Japanese Survey—Presumptions

Determinations made in official Japanese land survey of 1938-1941 in Palau Islands, while not conclusive, are entitled to great weight.

2. Palau Land Law—Japanese Survey—Presumptions

Burden is on party who disputes determination made in Japanese land survey in Palau to show that it is wrong.