

REKEWIS and NGIRAKESAU, Plaintiffs

v.

NGIRASEWEI, Defendant

Civil Action No. 269

Trial Division of the High Court

Palau District

February 5, 1964

Action to determine ownership of land in Ngaraard Municipality which was listed in Japanese survey of 1938-1941 as party's individual land by agreement of clan leaders and which was subsequently cleared and planted by that party. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where clan acquiesced in land becoming individual land of party, presumption arising from listing in survey report is controlling.

1. Palau Land Law—Clan Ownership

Regardless of whether Palauan clan or one of groups within it formerly owned land, or whether it was abandoned by former owners, development of land by individual member gives him strong claim to it in any division of land clan might make.

2. Palau Land Law—Japanese Survey—Presumptions

Where Palauan clan acquiesced in listing of land in Japanese survey as member's individual land, presumption arising from survey report is controlling.

FURBER, Chief Justice

FINDINGS OF FACT

1. The Ongolakel Clan is composed of two groups which are not actually related to each other by blood; the plaintiffs Rekewis and Ngirakesau are members of one of these groups and the defendant Ngirasewei is a member of the other.

2. The members of both of these groups left the matter of the listing of the land in question in the official Japanese land survey of about 1938 to 1941 to Belesam and Bachal, each of whom was the head of one of these two groups at the time.

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3. Belesam and Bachal talked the matter of the listing of this land over with the Palauan appointed by the survey authorities to consider such matters and agreed that it should be listed as the defendant Ngirasewei's individual land; all three of them then reported to the Japanese official in charge of such matters that the land might be so listed without any dispute.

4. It came to the attention of the Japanese land office in Ngarhelong that there might be some question about the listing, or listings, of land in the name of the defendant Ngirasewei; an investigation was therefore made and it was determined that the listing, or listings were all right.

5. The plaintiffs have failed to sustain the burden of showing that the listing of the land in question in the report of the Japanese land survey referred to above was wrong.

OPINION

This is an action in which the plaintiffs Rekewis and Ngirakesau seek to establish clan ownership of certain land in Ngaraard Municipality, Palau District, which was planted with coconuts in response to an order of the German Administration under an administrator named Winkler, requiring that every male paying a tax of so many marks a year plant one hundred (100) coconut trees on unused land. It is admitted that part of the land in question was cleared and planted with coconuts in German times by the defendant's uncle and more of it was cleared, planted, and cultivated by the defendant Ngirasewei in Japanese and American times. The plaintiffs acknowledge the defendant's right to use the land, but claim this right should be exercised only under the clan.

While there is conflict in the testimony as to whether the land was originally owned by the Ongolakel Clan or by one of the two groups within it referred to in the first

finding of fact, it is very clear that the land had been allowed to go wild and was only very inactively used by any of the clan before the planting of the coconut trees by the defendant's uncle. There is also great conflict in the evidence as to whether the German order did or did not include a provision that a person planting on unused land that did not belong to anyone would thereby acquire ownership of the land, as claimed by the defendant.

[1, 2] Regardless of whether the land was owned before the coconut planting by the clan as a whole or by one of the groups in it, or whether it should be considered to have been abandoned by the former owners, it is clear that the development of the land by the defendant and his uncle before him gave the defendant a strong claim to this land in any division of lands which the clan or one of its groups might make. On the basis of the facts found above and all the evidence, the court considers that both the clan as a whole and each of the two groups within it must be held to have acquiesced in this land becoming clearly the individual land of the defendant Ngirasewei at the time of the Japanese land survey of about 1938-1941 and that the presumption arising from the listing of the land in the report of that survey as his individual land is controlling. *Basehelai Baab v. Klerang*, 1 T.T.R. 284. *Osima v. Rengiil*, 2 T.T.R. 151.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the land constituting one tract, divided by a river, and known as Lot No. 242, containing thirteen thousand four hundred seventy-five (13,475) tsubo more or less, located in Ngaraard Municipality, Palau District, part of which is known as Dort, part as Oriokel, and part as Olebelblai, the whole being bounded as follows:—

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On the north by Madraisau's taro patch and Ringang's land,

On the east by Maui's land,

On the south by Ngiraidong's land, and

On the west by Ngirakeseres' taro patch and Tem's taro patch,

is owned by the defendant Ngirasewei, who lives in Acholl Village, Ngaraard Municipality, as his individual land.

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

3. The defendant Ngirasewei is awarded such costs, if any, of this action as he may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided he files a sworn itemized statement of them within ten (10) days after the entry of this judgment. Otherwise no costs will be allowed.