

MAKDALENA and DERESIA, Plaintiffs

v.

ALUIS LIGOR and Others, Defendants

Civil Action No. 182-A

Trial Division of the High Court

Ponape District

May 8, 1964

Action to determine ownership of land in Net Municipality, in which daughters of deceased land holder claim land of deceased father, which is presently in possession of one whom they claim is holding land in trust for them and their sons. The Trial Division of the High Court, Chief Justice E. P. Furber, held that trust for benefit of a woman was contrary to German land policy, and since no attempt was made to transfer land to son after birth in 1927, plaintiffs must be denied relief.

1. Ponape Land Law—German Land Title—Succession

Under German land law in effect on Ponape Island, eldest brother of land holder was entitled to succeed to German title where deceased left no sons.

2. Ponape Land Law—German Land Title—Women's Rights

Under German land law in effect in 1948, women could neither inherit nor hold land in Ponape.

3. Ponape Land Law—German Land Title—Women's Rights

Trust in land for benefit of a woman was against clear policy of German land law in effect on Ponape Island.

4. Ponape Land Law—Transfers to Women

Although Japanese changed Ponape land law by permitting transfers to women, with proper consents, law of succession to land was not changed until 1951 when provision was made for inheritance by women. (Ponape District Order No. 8-57)

5. Ponape Land Law—Inheritance

Inheritance laws enacted by Ponape District Legislature in 1957 and 1959 are not retroactive. (Ponape District Order No. 8-57; Ponape District Law 3-17-59)

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiffs Makdalena and Deresia have failed to sustain the burden of proving that Marsiano agreed to hold

the land in trust for their benefit or for the benefit of a son either of them might have.

2. The plaintiff Deresia was adopted by Marsiano.

3. About 1941 the official Japanese surveyors, on behalf of the *Nanmarki* and the Governor, consented to and confirmed the division of the land which Marsiano had previously purported to make, including the transfer of ownership of part of the land to Prikida, part to Etuis, and two parts to Fretrigo; and these surveyors also, on behalf of the *Nanmarki* and the Governor, consented to the transfer at that time of ownership of a part to Makdalena (not in dispute in this action) and of the remainder to Kilemente.

OPINION

This action involves the ownership of land on Ponape Island covered by the standard form of title document issued by the German Administration on Ponape beginning in 1912. The plaintiffs Makdalena and Deresia are the daughters of the man in whose name the title document was issued and who died in 1913. They now seek to establish ownership of all the land in excess of the part transferred to Makdalena as set out in the third finding of fact above.

[1-3] It is clear from the factual situation that Marsiano as the eldest living brother was the one entitled to succeed the plaintiffs' father under the terms of the German title document, in preference to the plaintiffs. Under the law in effect on Ponape at the time of their father's death, women could not even own land, much less inherit it. The plaintiffs have sought to counteract this by claiming a trust either for themselves or for a son one of them might have after their father's death. A bare trust for them would have been against the clear policy of the law at that time and after Makdalena did have a son in 1927,

no effort to have the land transferred to him appears to have been made.

[4, 5] The plaintiffs further claim that Marsiano's division of the land was only for purposes of use and not ownership, that he only purported to manage it, and that they didn't know until recently that any of the defendants claimed ownership. Since he clearly inherited title to the land, it is hard to see how it would help the plaintiffs any if he retained title until he died in 1948 for while the Japanese had changed the Ponape land law by permitting transfers to women, with proper consents, the law of succession to land there was not changed until the enactment of Ponape District Order No. 8-57 on February 1, 1957, which made provision for inheritance by women. That District Order has now been superseded and slightly changed by Ponape District Law 3-17-59 approved by the High Commissioner November 24, 1959, which states the law of succession as counsel for the plaintiffs admits he would like to see it. Neither of these laws, however, purports to affect things that happened before it was adopted and to try to apply either to inheritances that had taken place years before would be most improper and would clearly cause great confusion.

The first and third findings of fact above therefore effectively dispose of the plaintiffs' claims. Each defendant or he for whom he is acting claims under one of the transfers referred to in the third finding of fact. No issue has been raised in this action as to their chains of title from that point on.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the parts in dispute in this action of the land known as Nanpei No. 58, located in the Meitik Section of Net Municipality, Ponape District, are owned as follows:—

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a. The two parts formerly used by Fretrigo Pelep and shown in the name of "Federigo" on the sketch attached to the pre-trial order in this action, are owned by Fretrigo's first born son Seperiano, represented in this action by the defendant Francisco Alempi.

b. The part used by the defendant Etuis Henry and shown in the name of "Etuis" on said sketch, is owned by her.

c. The part formerly used by Prikida, which is the smaller of the two parts shown in the name of "Aluis" on said sketch, is owned by her adopted son Estanislaus, represented in this action by the defendant Aluis Ligor.

d. The part used by the defendant Aleko Pelep and shown on said sketch in the name of "Aleko", is owned by him.

e. The large part shown on said sketch in the name of "Aluis", is owned by the defendant Aluis Ligor.

f. Neither the plaintiff Makdalena nor the plaintiff Deresia has any rights of ownership in any of the parts mentioned above in this judgment. (It should be noted, however, that the part shown on said sketch in the name of "Makdalena" was not in dispute in this action and all the defendants have admitted that the plaintiff Makdalena owns that part.)

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

3. The defendants are awarded such costs as any of them may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided they file a sworn itemized statement of them within thirty (30) days after the entry of this judgment. Otherwise no costs will be allowed.