

The Court is most sympathetic with both of the parties and their family and hopes that they will be able to amiably abide by the agreement which they entered in good faith in 1965. The Court has an obligation to assist in terminating disputes rather than prolonging them, and it is believed that the rule followed by the majority of American courts is well suited for the Trust Territory.

RULING

The motion of the Defendant is granted and Case No. 273 is dismissed.

In re Petition for Distribution of the Estate of
JUAN B. BLAS, deceased
By GUADALUPE C. BLAS, Widow and Petitioner
Civil Action No. 123
Trial Division of the High Court
Mariana Islands District
January 28, 1966

Petition for distribution of land of deceased owner, located in Saipan Island. Petitioner, second wife of deceased, claims land by virtue of statement by deceased to petitioner that land would go to her; respondent, -daughter of deceased by his first wife, claims land under previous designation of lands by deceased among his children. The Trial Division of the High Court, Chief Justice E. P. Furber, held that original designation by deceased constituted *partida* and though formal ownership of land was never transferred to daughter during deceased's lifetime, she had beneficial interest in it from time of designation, and deceased's informal efforts to give it to petitioner were of no legal force and effect.

1. Marianas Land Law-Generally

Action as to rights in land and transfer thereof under Chamorro custom on Saipan must be decided primarily on basis of local customary law.

2. Marianas Land Law-Generally

Many uncertainties as to rights under Chamorro customary law arise from tendency to impose on or read into Chamorro concepts other foreign concepts and to try to explain Chamorro concepts by terms taken from other systems which do not exactly fit them.

3. Marianas Land Law-"Community Property"
Although term "community property" is used in connection with land in question, Chamorro concept of community property does not fit exactly with Spanish or French concept or with variations of these in any American jurisdiction.
4. Marianas Land Law-"Community Property"
Chamorro concept of community property has some aspects of community property as generally understood in United States and term may come nearer than any other term commonly used in United States.
5. Marianas Land Law-"Community Property"
There are at least two categories of ownership included in so-called community property under Chamorro custom, and one carries with it much greater restriction on its disposition than the other.
6. Marianas Land Law-Family Lands
Chamorros have little concept of absolute right to inherit specific fraction of a deceased's property under Chamorro customary law.
7. Marianas Land Law-Family Lands
Matter of inheritance among Chamorros is obscured by thought of what person should be given on principle of fair disposition according to need, by either head of family before his death or agreement among remainder of family after his death.
8. Marianas Land Law-Exchange of Land
Chamorro custom clearly recognizes, at least in case of land exchanges made with government where there is express or implied threat of taking, that land acquired in exchange takes place of that given up and carries with it all incidents attached to land given up.
9. Marianas Land Law-Exchange of Land
As between Chamorro parties, rights in land are determined under Chamorro custom just as if there had been no exchange of land with government and land now in question were lot originally acquired by deceased.
10. Marianas Land Law-Exchange of Land
Local custom and not American practice controls situation where Chamorro land is exchanged for government land.
11. Marianas Land Law-Family Lands
Under Chamorro custom, land which is *iyon manaina* ("ancestor's land") has special status in Chamorro society and is more respected than land simply bought by individual from outside his family.
12. Marianas Land Law-Family Lands
Under Chamorro custom, "ancestor's land" is for children of one who receives it and is not allowed to go out of line of descendants of ancestor.

13. Marianas Land Law-Family Lands-Children's Rights
Under Chamorro custom, "ancestor's land" is not to be sold unless absolutely necessary for subsistence of those entitled to it and even then not without consent of all adult children.
14. Marianas Land Law-Family Lands-Children's Rights
Under Chamorro custom, any adult child of person who receives "ancestor's land" has first chance to purchase it at whatever price sale to outsider is being considered.
15. Marianas Land Law-Family Lands
Under Chamorro custom, "ancestor's land", whether acquired before or after marriage, comes into Chamorro type of community property and as soon as child is born, husband, wife and children are all considered to have interests in it.
16. Marianas Land Law-Family Lands
Under Chamorro custom, "ancestor's land" is best described as "family property" in which children, as contrasted with wife or widow, have much greater interest than is usual in case of community property in United States.
17. Marianas Land Law-Family Lands-Widow's Rights
Under Chamorro custom, there is no thought of wife acquiring automatically on marriage anything like inchoate right of dower by common law, or idea of widow as statutory heir having right to minimum share of property left by husband on his death which cannot be taken away by will.
18. Marianas Land Law-Family Lands-Children's Rights
Under Chamorro custom, children have something more like inchoate right in father's "ancestor's land" than their mother does since such land can in case of need be sold by father with consent of children while wife's consent is not needed.
19. Marianas Land Law-Family Lands-"Partida"
Under Chamorro custom, father should, before his death, designate division of all family lands, including those brought in by his wife.
20. Marianas Land Law-Family Lands-"Partida"
Under Chamorro custom, designation of division of family properties (*partida*) is serious and important matter of which all concerned are expected to take careful note.
21. Marianas Land Law-Family Lands-"Partida"
Under Chamorro custom, division of family lands by father is not to be disputed although he is expected to act fairly by Chamorro standards.
22. Marianas Land Law-Family Lands-"Partida"
Under Chamorro custom, *partida* is usually oral, and father may turn over formal ownership at once or retain control and formal ownership of all or part of land either until some later date or until he dies.

23. Marianas Land Law-Family Lands

Where deceased Chamorro made statement in land application that he was claiming as "sole owner," this does not deny daughter's possible interest any more than it does wife's and should be taken simply to mean deceased acknowledged no interest in land outside that of his family.

24. Administrative Law-Land Title Determination—Parties

Title determination itself does not bar party's claim to property in question when she was not party to proceedings in which it was made and her rights as against another were not in issue in those proceedings.

25. Marianas Land Law-Family Lands-"Partida"

Where designation of division of family land by deceased Chamorro constituted *partida*, even though formal ownership of land was not transferred to party during deceased's lifetime, party had beneficial interest in it subject to deceased's right to administer it for life or until he turned formal ownership over to her.

26. Marianas Land Law-Exchange of Land

Where party's beneficial interest in land is entitled to protection of law, her interest on exchange of original lot for government land has attached to lot received in that exchange.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The deceased acquired the land for which that now in question had been exchanged from his father either shortly before or shortly after his first marriage (which was to Juana G. Bias, the mother of the respondents).

2. Before World War II, while the first wife was still alive, the deceased, with the agreement of his wife and his three children, designated which of his lands should go to each of his two sons, and that the land for which that now in question was exchanged should go to his daughter, the respondent Regina. At that time, he expressly designated for himself only a portion of his farm lands.

3. At the time of the designation referred to above, the deceased did not turn over formal ownership of any of his lands to any of the children, but after World War

II and the death of his first wife, the deceased turned over formal ownership of the portions of land designated for his two sons, but purported to retain ownership himself of the land designated for the respondent Regina.

4. The respondent Regina knew of and acquiesced in her father's filing in the District Land Office a claim for the land for which that now in question was exchanged, on her father's assurance that she need not worry, that the land was going to be hers. She did nothing about having the ownership transferred to her own name during her father's lifetime.

5. In connection with his application filed in the Land Office, the deceased, under date of March 26, 1954, declared that he was claiming the land for which that now in question was exchanged as "sole owner".

6. Within a year of his death, the deceased sold, with the reluctant acquiescence of his children, a piece of farm land, but the sale was held up until further provision had been made for one of his sons in order to obtain this acquiescence. The petitioner shared in the use of the proceeds of the sale.

7. Shortly before his death, the deceased told his second wife and her sister that the land now in question was his, that he could do what he wanted with it, and that it was for the one who served him, indicating by that that he meant his second wife.

8. During his last illness, the deceased, at the request of his second wife, asked his son Thomas to sell the land now in question, but Thomas refused to do so.

9. The respondent Regina has received no other land from her father than that now in question.

OPINION

This action involves a dispute within a family, all members of which are Chamorro, as to the ownership of an

urban house lot in South Garapan on Saipan Island in the Mariana Islands District, which had been obtained by the deceased from the Government of the Trust Territory in exchange for a house lot in North Garapan (urban), of which it had been determined by title determination of the District Land Title Officer for the then Saipan District that the deceased was the owner. The dispute is between the deceased's widow, who was his second wife, and the deceased's children by his first wife. There were no children born to the deceased by his second wife and all three children by the first wife are in full accord that the land in question should go to the respondent Regina. The widow in this action claims that she should have the land in question, both because it was acquired by the exchange referred to above during the period she was married to the deceased and thereby became community property, which she should now take as the survivor, and because of the services she rendered the deceased plus his direction that the land should be for the one who served him. The respondents, on the other hand, claim that the land now in question acquired by exchange with the government, merely took the place of the land for which it was exchanged, which had been designated for the respondent Regina as set forth in the second finding of fact, and should therefore go to her in accordance with that designation.

[1] This action brings squarely to the front the uncertainties as to rights in land and the transfer thereof under Chamorro custom on Saipan. Both counsel have used citations based on American law. The court is satisfied, however, that this action must be decided primarily on the basis of local customary law, and that American precedents can be of assistance only by way of analogy - some of it quite remote.

It should be noted for the benefit of those not familiar with the general situation as to land holdings on Saipan that there are two quite different systems of land tenure in force there—one the Chamorro system, the other the Carolinean. The clearest published description of these systems which has come to the attention of the court will be found in "Saipan-The Ethnology of a War-Devastated Island" by Alexander Spoehr, (published by the Chicago Natural History Museum as "Fieldiana: Anthropology", Vol. 41), in which Chamorro land tenure and inheritance are explained on pages 133 to 144, and Carolinean land tenure is explained on pages 363 to 369. A briefer and less detailed explanation of these systems of tenure may also be found in "Land Tenure Patterns, Trust Territory of the Pacific Islands", Vol. 1, at pages 222 to 225, and 225 to 227, respectively. It is believed, however, that great care must be taken not to place undue emphasis on or draw undue inferences from anyone statement taken alone in either of those explanations. No question is raised in this action about or claim made under the Carolinean system of tenure.

[2] Extensive evidence was taken as to Chamorro custom on Saipan and the court is satisfied that many of the uncertainties as to rights under Chamorro customary law arise from an unintentional tendency to impose on or read into Chamorro concepts other concepts which are foreign to Chamorro ones, because terms taken from other systems, which do not exactly fit the Chamorro concepts, have been used to try to explain them.

[3-5] Several of the witnesses have used the term "community property" in connection with the land in question, but it is very clear that their concept of community property does not fit exactly either with the Spanish or French concept or with any variation of these which has been made by statute in any American jurisdiction that

has come to the attention of the court, although it has some of the aspects of community property as generally understood in the United States, and it may well be that the term comes nearer to describing the Chamorro concept than any other one term commonly used in the United States. It is also apparent that there are at least two classes or categories of ownership included in the so-called community property, one of which (that involved in this action) carries with it much greater restriction on its disposition than the other.

[6, 7] A further difficulty is that the Chamorros appear to have very little concept of anyone having an absolute right to inherit a specific fraction of a deceased's property. In their minds, the matter of inheritance in its strict sense of what a person is absolutely entitled to by descent without any form of gift, will, or agreement about it, appears to be entirely obscured by the thought of what a person should be given, on the principle of fair disposition according to need, by either the head of a family before his death or by agreement among the remainder of the family after his death. What should be as a moral matter is relatively clear, but how much of this must be as a legal matter, and at just what point and to what extent rights arise which the law should recognize, is not nearly so clear.

[8-10] On the question of whether the land involved here is to be considered as acquired during the period of the deceased's marriage to his second wife, the court is satisfied that Chamorro custom clearly recognizes, at least in the case of exchanges made with the government where there is the express or implied threat or possibility of a taking by governmental authority, that the land acquired in the exchange takes the place of that given up and carries with it all the incidents that were attached to the land given up. The court therefore holds that, as be-

tween the parties, the rights in this action are to be determined just as if there had been no exchange and the land now in question were the lot acquired by the deceased from his father. In this particular, Chamorro custom is in accord with American practice, but the court believes it is the local custom and not the American practice which controls the situation. 54 Am. Jur., Trusts, § 251. 15 Am. Jur. 2d, Community Property, §§ 27 and 28. Restatement of the Law of Trusts, 2d, Sec. 202.

[11-18] The land in question should therefore be considered as what is called in Chamorro "*iyon manaina*", probably best translated as "ancestors' land". This term includes land acquired by a person in any manner from one or more of his ancestors-whether by inheritance, gift during the ancestor's lifetime, will, family agreement, or even purchase. Such land has a very special status in Chamorro society. As some Chamorros put it, it will be much more respected than land which has simply been bought by an individual from outside his family. The basic idea of ancestors' land is that it is for the children of the one who receives it and is not to be allowed to go out of the line of descendants of the ancestor or ancestors, is not to be sold unless this becomes absolutely necessary for the subsistence of those entitled to it, and even then, it is not to be sold without the consent of all the adult children and any adult child of the person who received it should have the first chance to purchase it at whatever price sale to any outsider is being considered. Such land whether acquired before or after marriage is considered to come into this peculiar Chamorro type of community property, at least as soon as a child of the marriage is born. From that point on, whatever the situation may be before that, the husband, wife, and child or children are all considered to have interests in it. The exact extent of each of these interests is hard to state in American terms. Perhaps the

land in such a situation could best be described as "family property", rather than "community property". Clearly the children, as contrasted with the wife or widow, have a much greater interest than is usual in the case of community property in the United States. There seems to be no thought at all of a wife acquiring automatically on marriage anything like the inchoate (that is, incomplete, to take effect in possession only if she survives her husband) right of dower by common law under which a widow was entitled to a life estate in a third of all lands which her husband owned at any time during the marriage unless she had specifically released this interest. Nor does there seem to be any widely accepted idea of a widow, as a statutory heir, having a right to any specified minimum share of the property left by her husband on his death, which minimum share cannot be taken away from her by will. In fact it seems that under Chamorro concepts, the children have something more like an inchoate right in their father's ancestors' land than their mother does, since it appears that such land can in the case of need be sold by the father with the consent of the adult children while his wife's consent is not needed. Thus the petitioner in this action denies she took part in the actual sale and transfer of the farm land mentioned in the sixth finding of fact, although it is clear she was agreeable to it, but she seems to have recognized some sort of right of the children in the land now in question when she had her husband ask his son Thomas to sell the land, as set forth in the eighth finding of fact, instead of trying to help him sell it herself.

[19-22] Ideally, a father should at some time before his death call his family together and designate a division of all family lands, including those brought in by the wife, (and sometimes also important pieces of personal property) among the children, or the children and his wife. This is done presumably with the consent of the wife and

children, but the principle of parental respect is traditionally so strong that the father's word is not supposed to be disputed, though he is expected to act fairly by Chamorro standards. This designation of division of family properties is called by Chamorros a "*partida*" (spelt "*partido*" in Spoehr's book and in Land Tenure Patterns cited above), and is a very serious and important matter of which all those concerned are expected to take careful note although it is usually oral. The father usually does this when he feels like retiring from active life, or is about to die, or sometimes when the children start to get married. He may turn over formal ownership at once or retain control and formal ownership of all or part of the land either until some later date or until he dies.

[23, 24] The petitioner has laid stress on the fact that the deceased in connection with his application filed in the Land Office for the original lot claimed as "sole owner", but the present Land Title Officer for the Mariana Islands District testified that to him, under the circumstances known to him, this statement meant that the deceased was claiming this as community property-presumably of the first marriage, according to other testimony of this witness. In view of the uncertainties of land concepts on Saipan when turned into American terms, the court is of the opinion that the deceased's statement that he was claiming as "sole owner" did not deny the daughter Regina's possible interest any more than it did the wife Guadalupe's and should be taken simply to mean that the deceased acknowledged no interest in the land outside that of his family. The Title Determination itself is held not to bar the respondent Regina's claim since she was not a party to the proceedings in which it was made and her rights as against her father were not in issue in those proceedings.

[25, 26] The court therefore holds that the designation of division by the deceased set out in the second finding of fact constituted a "*partida*" and even though the formal ownership of neither the original lot nor the one received in exchange for it was transferred to the respondent Regina during the deceased's lifetime, she had the beneficial interest in it from the time of the *partida*, subject to her father's right to administer it for life or until he turned the formal ownership over to her, that this beneficial interest is entitled to the protection of the law, that this beneficial interest on exchange of the original lot with the government attached to the lot now in question, and that the deceased's informal efforts to give the lot to his wife as the one who served him were of no legal force and effect.

The holdings in the preceding paragraphs are sufficient to dispose of this particular action. The court makes no determination as to just what the legal situation would be as to land on Saipan under any other circumstances than those disclosed here. The aid of the Marianas District Legislature is most earnestly sought in clarifying by legislation the law as to land rights in this district, their transfer, and inheritance. This will be a complicated matter and may have to be done a little at a time, but it is submitted that even legislation covering only the commoner situations, under the Chamorro system of land tenure where no family agreement exists, will be most helpful. From other cases that have come before the court, however, it is respectfully suggested that early consideration be given to specifying by legislation the method, if any, by which land rights may be, or should be presumed to have been, transferred from the Chamorro system to the Carolinian, or the other way around, and when, if at all, partition of land by sale may be ordered to prevent splitting land into such small pieces that no one piece can be used economically.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the formal ownership of the land described below, located on Saipan Island in the Mariana Islands District, is hereby transferred to and confirmed in the respondent Regina B. Cabrera, who lives in Chalan Kanoa Village on Saipan, free and clear of all claims of any of the other parties, viz:-

Lot No. 8, Block No. 40, South Garapan Village, containing an area of 697.0 square meters, more or less, as shown on APWO Drawing No. 11236 on file with the Clerk of Courts of the Mariana Islands District,

being the land granted to Juan Blas, by Grant of Public Domain Lands from the Government of the Trust Territory of the Pacific Islands dated February 5, 1958, filed April 7, 1958, with the Clerk of Courts of the former Saipan District,

and also being the land described in the judgment of this court in favor of said Regina B. Cabrera entered December 31, 1964, in Mariana Islands District Civil Action No. 110.

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.