

LINE ANGKEL, Plaintiff
v.
KIOSI MAIPI, Defendant
Civil Action No. 295
Trial Division of the High Court
Truk District
May 4, 1966

Action to determine ownership of land in Lukunor Municipality, Mortlock Islands. Plaintiff's husband gave his individual land to plaintiff, who later sold it to defendant's predecessor in interest, plaintiff assuring purchaser that land was hers to sell. The Trial Division of the High Court, Chief Justice E. P. Furber, held that although, according to custom, plaintiff's husband contemplated retaining some control over the land so long as he lived, where both plaintiff and her husband actively joined in sale and plaintiff received part of purchase money, their actions were sufficient to pass to purchaser whatever interest they or their minor children had in land they purported to sell.

1. Truk Land Law-Individual Ownership--Transfers

Under Truk custom, where man makes gift of his individual land to his wife and her children, he usually contemplates retaining at least a certain amount of control over land so long as he lives.

2. Truk Land Law-Individual Ownership-Transfers

Where husband gives his individual land to his wife and her children, and both husband and wife later actively join in sale of land and wife receives part of purchase money, their actions are sufficient under Truk custom to pass to purchaser whatever interest either of them or their minor children have in land which they purported to sell.

Interpreter: F. SOUKICHI
Counsel for Plaintiff: WANIS SIMINA
Counsel for Defendant: N. S. FILORIAN

FURBER, *Chief Justice*

REPORT OF HEARING

This matter came on for hearing upon the Master's Report. No evidence was presented by either party, beyond the Report and the transcript of testimony attached to it.

Both parties objected to the final sentence of the Master's findings of facts, the defendant claiming that his lineage should have three-quarters of the land known as Lechep instead of one-half, while the plaintiff agreed that Lechep should be divided half and half, but claimed that she and her lineage should have the half next to the lagoon instead of the half on the ocean side as determined by the Master.

The defendant's argument was very briefly that the defendant's predecessor in interest bought on behalf of his lineage from the plaintiff Line and her husband Angkel, first, a half of Lechep, and then an additional part, which their counsel estimated as a quarter.

The argument for the plaintiff was that the half of Lechep nearest the lagoon had been given by Angkel to Line and her lineage long ago and that therefore the sale should be considered to relate only to the half on the oceanside.

OPINION

This action involves the ownership of land in Lukunor Municipality in the Mortlock (otherwise known as Nomoi) Islands, Truk District.

The evidence as to the exact parts of Lechep which the plaintiff and her husband purported to sell the defendant's predecessor in interest is very confusing but the court considers that the finding made by the Master as to the total they purported to sell is warranted by the evidence.

Part of the land in question had clearly been the subject of a gift along lines similar to a gift under common Mortlock practice from one lineage to another to strengthen a marriage. In this instance, however, the plaintiff's husband Angkel claims that the land was his individual land and that he gave it just to his wife Line and her children. Though the plaintiff Line now claims

that this is land of her lineage, she purported to treat it as her own or at least as under her control and assured the purchaser and his wife that there would be no trouble about it raised by Line's lineage. Furthermore, it also appears that part of the occasion for the sale was that she was in need of funds and her lineage either was unable or unwilling to help her. It is clear that no land was given by either Line or her lineage in exchange for Angkel's gift but it also appears that the general practice of giving land in exchange for such gifts has been discontinued in Lukunor since about 1935.

For a description of the general Mortlock practice as to such "Luininfang" exchanges between lineages, see "Social Organization, Land Tenure and Subsistence Economy of Lukunor, Nomoi Islands", by Tolerton and Rauch, p. 71-73-A, and Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 170-171.

For a distinction in the case of a father's individual land given to his children, see Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 172 and 173.

[1,2] It is quite clear that a man in making such a gift of his individual land does usually contemplate and that Angkel did in this instance contemplate, retaining at least a certain amount of control over the land so long as he lived. Whether a father at the present time has a right to "rescind", "recall", or "erase", as it is variously stated, such a gift, where no land has been given in exchange for it, is very doubtful. The court finds that such "rescission", "recall", or "erasing" is now looked on with great disfavor unless there is very clear and strong cause for it, but no determination is made in this action as to whether it can be done at all by a father alone. In the present instance, however, where both the husband and wife actively joined in the sale and the wife received part of the purchase money, the court considers that their

actions were sufficient under the custom to pass to the purchaser whatever interest either of them or their minor children had in the land purported to be sold. There is no evidence that any other part of the lineage is claiming to have been damaged by the sale, and the court considers that the plaintiff Line cannot fairly be allowed to upset the arrangement which she herself helped make whereby the part of Lechep formerly given to her was sold and the other part substituted for this.

JUDGMENT

Upon consideration of the Master's Report, the transcript of evidence attached to it, and the arguments of counsel, the Master's Report is approved, and it is

Ordered, adjudged, and decreed as follows:-

1. As between the parties, both of whom live on Lukunor Island, Truk District, and all persons claiming under them, the land known as Lechep, located on Piafo Island in Lukunor Municipality, Truk District, is owned as follows:-

a. The half on the ocean side of the island is owned by the plaintiff Line and her children.

b. The half next to the lagoon is owned by the Mualo Lineage represented in this action by the defendant, Kiosi Maipi, who is a member of that lineage.

2. The plaintiff Line and her children for whom she is also acting in this action are enjoined and prohibited from interfering with the working of the half of Lechep next to the lagoon.

3. The defendant Kiosi Maipi and the members of his Mualo Lineage for whom he is also acting in this action are enjoined and prohibited from interfering with the working of the half of Lechep on the ocean side.

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

5. No costs are assessed against either party.
6. Time for appeal from this judgment is extended to and including July 29,1966.

PINAR, Plaintiff

v.

KANTENIA, Defendant

Civil Action No. 196

Trial Division of the High Court

Truk District

May 6,1966

Action for determination of rights in land in Polle Municipality. The Trial Division of the High Court, Chief Justice E. P. Furber, held that *afokur* have no rights in lineage land except that granted by permission of lineage; if lineage exchanges land with another lineage, *afokur* have no right to interfere with exchange even though they have been using exchanged land.

1. Truk Land Law-Lineage Ownership-Use Rights

Under Truk custom, use of lineage land by *afokur* with consent of lineage is in accord with custom, but rights of *afokur* depend upon permission, and extended permission gives no right of ownership.

2. Truk Land Law-Lineage Ownership-Transfers

Under Truk custom, *afokur* have no right to interfere with disposition of land by lineage.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Ununong gave the land in question to his daughter Neipurosom, who gave it to her lineage, consisting of the descendants in the female line of her mother's mother and of which her brother Baunus (sometimes written Paulus) was the leader the latter part of his life.