

YOSIRO MITA, Plaintiff
v.
PIRISKA, Defendant
Civil Action No. 223
Trial Division of the High Court
Truk District
May 13,1966

Action to determine ownership of land on Dublon Island, in which former owner gave land to person who had taken care of her in her last illness, after failure of original donees to do so, and second donee subsequently gave land to plaintiff, although defendant had former owner's indefinite permission to use land with others. The Trial Division of the High Court, Chief Justice E. P. Furber, held that plaintiff owns land in question, subject to defendant's right to share in use of land for her lifetime.

1. Truk Land Law-Group Ownership

Under Truk custom, a number of people may share in use of same piece of land and take what they want from it without express arrangement between them as to physical division of land or rotation of harvesting, and matter is controlled by general obligation to cooperate and take reasonable amount of produce.

2. Truk Land Law-Agreement to Support

Where transfer of land in Truk is conditioned on donees staying with donor on land and taking care of her for rest of her life, and donees fail to do this, transfer fails and donor has right under Truk custom to disregard or cancel it.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Neitino, some years before her death, asked Nekon (otherwise known as Neitengeni), to have her husband Nukunukar build a house for Neitino and Nekon and the latter's family on the land in question and come and live there with Neitino and work the land with the expectation that they would take care of Neitino for the rest of her life and would then own the land.

2. Nukunukar did build the house, clear the land, and he and his family and Neitino, and Rekis from time to time, all lived there together for not more than about a year. Then Nukunukar and his family moved away and lived on other land for the rest of Neitino's life and failed to work the land in question except for the initial clearing mentioned above. Neitino remained friendly with Nekon; however, and gave Piriska an indefinite permission to use the land-presumably with others.

3. When Neitino became sick in her last illness, Meireng arranged to have Nepileua go to live with Neitino and take care of her, which Nepileua did faithfully up to the time of Neitino's death.

4. Shortly before Neitino died, she directed, with Rekis' approval, that Nepileua should have the land in question and that Meireng should take care of it for her and Meireng agreed that Rekis might also use the land with them for his lifetime.

5. Nepileua, before her death, gave the land to Yosiro with the approval of Meireng.

6. After Neitino's death, and with the exception of the war years, Meireng, Yosiro, Rekis, and Piriska all used the land occasionally without any trouble up to the deaths of Meireng and Nepileua, and Yosiro; Rekis, and Piriska continued to do so until shortly before the bringing of this action when Piriska for the first time objected to the use of the land by Rekis and Yosiro and claimed to own it alone.

7. Piriska's brother under the custom, Renon, built a house on the land a few years after World War II at the request of Piriska and with Rekis' permission to leave it there at least temporarily and without any objection from Yosiro. When this house became badly deteriorated, Piriska had Enne build a new one on the land in 1956 to replace the one built by Renon, using some of the same

materials, again without any objection from either Re-kis or Yosiro until Piriska objected to their use of the land in response to which they demanded she move her house.

OPINION

This action involves the ownership of a piece of land on Dublon Island in Truk Atoll. All of those concerned are closely related and have or had a strong obligation under Trukese custom to cooperate, which the older generation appears to have done very happily and harmoniously, but which unfortunately appears too irksome for the present generation. Piriska is the daughter (of Nekon and Nukunukar, Re-kis was the son of Neitino and died after bringing this action, but before the trial. Meireng was Neitino's adopted son. Yosiro is the son of Meireng and is considered under Trukese custom as the brother of Nepileua although it would appear they were actually cousins.

[1] The various statements or agreements made concerning the land can only be fairly understood or reconciled in the light of the Trukese practice, at least in former days, of a number of people sharing in the use of the same piece of land and "taking what they want" from it without any express arrangement between them as to either any physical division of the land or rotation of harvesting, the whole matter being controlled just by the general obligation to cooperate and not take so much of the produce that there is not a reasonable amount left for the others.

[2] Neitino's offer or purported transfer of the land in question to Nekon and her husband Nukunukar was clearly conditioned on their staying with her on the land and taking care of her for the rest of her life. Since they did not do this, the transfer failed and she had the right under Trukese custom to disregard or cancel it, just

as the court has already held a person may do under Kusaian custom and under Ponapean custom and as is usual in the United States in the case of conveyance of real estate in consideration of agreements to furnish support, if the support is not provided. *Kun Peter v. Peter Konlulu*, 1 T.T.R. 85. *Fridorihg Lusama and Others v. Eunpeseun*, 1 T.T.R. 249. 50 Am. Jur., Support of Persons, §28.

The court therefore holds that Neitino's transfer to Nepileua and Meireng was valid and passed the ownership in the land, but subject to a somewhat indefinite right in Piriska to share in the use of the land. On all the evidence, considering both the actions and the statements of those concerned, the court holds that this right of Piriska's is limited to her lifetime and to such use as will not preclude similar or comparable use by others having rights in the land.

JUDGMENT

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

1. As between the parties, both of whom live in the Pelior Section of Elin Village mentioned below, and all persons claiming under them, the land known as Meisou, located in the Pelior Section of Elin Village on Dublon Island, Truk District, is owned by the plaintiff Yosiro Mita, subject to the right of the defendant Piriska for her lifetime to share in the use of the land, including maintaining a house thereon not substantially larger than her present one, provided she does so with due regard for Yosiro's rights to also use the land and her obligation under Trukese custom to cooperate with him.

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

3. The plaintiff Yosiro Mita is awarded such costs, if any, 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 thirty (30) days after the entry of this judgment; otherwise no costs will be allowed.

WANTER, Plaintiff

v.

FERTUN, Defendant

Civil Action No. 287

Trial Division of the High Court

Truk District

May 16, 1966

Action to determine right to control and use of land in Lukunor Atoll, Mortlock Islands, in which plaintiff and defendant, brothers under the custom, are members of group holding rights in land and subject to third person as their leader. The Trial Division of the High Court, Chief Justice E. P. Furber, held that plaintiff failed to show he owns any of lands in question independent of defendant and others in group, and that group must share use rights in accordance with Lukunor custom.

1. Truk Land Law-Group Ownership

Where parties in Truk are members of group which is entitled to share fairly in use of properties in accordance with custom, exact method of sharing should be worked out within group and finally stated by group's leader.

2. Truk Land Law-Group Ownership

No attempt should be made by courts to determine division of use of property in Truk where members of group are entitled to share in use rights, unless and until parties have made every reasonable effort to work out determination within group and entire group has had chance to be heard on the matter.