

MOSES v. MOSES

ponape District, and the defendant Kapele, who lives on Pinglapi Island, Ponape District, has no rights in either of these except such as Luisa may permit him to exercise.

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

3. The plaintiff William Net is awarded such costs 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 he will be awarded only three dollars and fifty cents (\$3.50) costs to cover the filing fee and the trial fee.

4. Time for appeal from this judgment is extended to and including August 29, 1966.

JOSEPH MOSES, Plaintiff

v.

JOHNY MOSES, Defendant

Civil Action No. 258

Trial Division of the High Court

Ponape District

June 1, 1966

Action to determine ownership of land in Uh Municipality, in which illegitimate son of deceased landowner under German land title claims land by inheritance. The Trial Division of the High Court, Chief Justice E. P. Furber, held that under Ponape custom, illegitimate child is considered neither child nor heir of father, but that plaintiff should have benefit of short-term plantings on land.

1. Ponape Custom-Illegitimate Child

Under Ponape custom, illegitimate child of man is not to be considered his child or issue, within meaning of inheritance laws, unless child is either adopted or legitimized by being publically acknowledged and accepted into family by man as his child.

2. Ponape Land Law-Crops

As to long term crops which party wrongfully claiming possession has planted, it is considered that past harvesting has sufficiently compensated him.

3. Ponape Land Law-Crops

Party wrongfully claiming possession of land in Ponape who makes plantings should be allowed to obtain benefit of any short-term crops which he has planted.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff Joseph Moses has not sustained the burden of proving that he is either the legitimate son of Ioanes Moses or was publicly acknowledged by Ioanes as the latter's son.

2. The plaintiff Joseph Moses has worked and made plantings on the land in question with the defendant Johny Moses' consent since 1959.

3. It is doubtful if there was ever any true meeting of the minds as to the parties' purported agreement for the division of the land in question, but in view of their dispute as to the terms of such purported agreement, neither party now desires to carry out even his understanding of those terms.

OPINION

[1] This action involves the ownership of a piece of land in Dh Municipality on Ponape Island which was held under the standard form of German title document issued on Ponape beginning in 1912. Both parties claim as the heir of Ioanes Moses. The action is largely controlled by the findings of fact made above, there being no question but what the defendant Johny Moses is the true older brother of Ioanes and therefore entitled to inherit under the inheritance laws of Ponape if Ioanes left no issue. From long established practice on Ponape, the court holds that an illegitimate child of a man is not to be considered

as his child or issue, within the meaning of the inheritance laws there, unless such a child is either adopted or legitimized by being publicly acknowledged and accepted into his family by the man as his child. There has been no claim in this' action that the plaintiff Joseph Moses had been adopted by Ioanes.

[2, 3] As to the long term crops such as coconut and breadfruit trees which the plaintiff Joseph Moses has planted under permission from the defendant Johny Moses, it is considered that the former's harvesting from the land during the period he was permitted to work it has sufficiently compensated him. It is believed, however, that iuall fairness he should be allowed to obtain the benefit of any short-term crops which he has planted during this period with the permission of the defendant, such as yams, kava, and bananas. Apparently, the parties were at one time very friendly until they had the falling out about the terms of their purported agreement for division of the land. It is therefore to be hoped that they will be able to agree on just which plantings of short-term crops were made by the plaintiff.

The actions of the parties are considered to have terminated any rights either may have had under their purported agreement for division of the land.

JUDGMENT

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

1. As between the parties, both of whom live in Uh Municipality on Ponape Island, Ponape District, and all persons claiming under them, the land known as Tipwenkene (sometimes spelt Tipuakanau) covered by German Land Title Document No. 42, said land being located in the Village of Nan Dh in Dh Municipality on Ponape Island, Ponape District, is owned by the defendant Johny Moses, and the plaintiff Joseph Moses has no rights

therein except as set forth in the following paragraph or such other rights as the defendant Johny Moses may permit him to exercise in the land.

2. The defendant Johny Moses is to permit the plaintiff Joseph Moses, for a period of six (6) months from the date of entry of this judgment, to harvest, care for, and remove any short-term crops, such as yams, kava, and bananas, which he and those acting for him have planted on the land, provided he does so without causing any damage beyond that usual for such harvesting, care, and removal in accordance with good Ponapean agricultural practice. **If** the parties are unable to agree on which short-term crops have been planted by the plaintiff Joseph Moses and those acting for him, either party may file a motion in this action to have a Master view the land, hear evidence and make findings as to which short-term crops have been so planted. Upon the filing of such a motion, District Court Judge Carl Kohler is authorized to proceed to hear the matter as Master and report his findings to this court.

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

4. The defendant Johny Moses 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.