

INDALECIO RUDIMCH, Plaintiff

v.

TAKTAI CHIN and RDIALUL T. RENGIL, Defendants

Civil Action No. 333

Trial Division of the High Court

Palau District

November 6, 1967

Action to determine title to land in Korol' Municipality, in which defendant Chin moved for relief from previous summary judgment for plaintiff. The Trial Division of the High Court, Associate Justice D. Kelly Turner, denied the motion and held that defendant Chin had no claim to land under Palauan custom, nor by virtue of his purchase agreement with former owner's stepson as he had failed to obtain written deed and record it with Clerk of Courts, thereby leaving his interests without protection as against plaintiff, subsequent good-faith buyer without notice who recorded his deed.

Motion denied.

1. Palau Land Law-Individual Ownership-Transfer

Under Palau custom, stepson of landowner is authorized to negotiate sale of land in behalf of stepfather and prospective buyer is justified in dealing with stepson.

2. Palau Land Law-Individual Ownership-Transfer

. Although under Palau custom stepson is authorized to negotiate sale of stepfather's land, owner has right to sell if stepson's prior attempt to sell is not completed for failure to settle on terms.

3. Palau Land Law—Recording

Where purchaser of property in Palau fails to obtain written deed and record it with Clerk of Courts, his interests are unprotected as against subsequent good faith buyer, without notice, who records his deed.

4. Palau Land Law-Recording

Party's occupancy of land in Palau since 1946 does not, as matter of law, give notice of claim of ownership as against recorded title determination of 1957, and subsequent purchaser has right to rely on record title and obligation under law requiring recordation of subsequent interests. (T.T.C., Sec. 1023)

5. Palau Land Law-Individual Ownership-Transfer

Under Palau custom, party having interest in land cannot transfer it without obtaining consent from her children and other relatives, and her promise to give it to third party has no effect without such consent.

6. Trust Territory-Land Law

Land law custom, as it existed in 1941, remains operative and in effect in Trust Territory except when changed by express written enactment, (T.T.C., Sec. 24)

7. Trust Territory-Land Law-Effect of Title Determination

When title determination has become final, it prevails over any claims or interests thereafter asserted which are founded upon land custom existing prior to the determination. (Office of Land Management Regulation No.1)

<i>Assessor:</i>	JUNGE PABLO RINGANG
<i>Interpreter:</i>	HARUO I. REMELIHK
<i>Counsel for Plaintiff:</i>	ITELBANG LUIH
<i>Counsel for Defendant Chin:</i>	WILLIAM O. WALLY
<i>Counsel for Defendant Rengiil:</i>	FRANCISCO ARMALUUK

TURNER, Associate Justice

The Chief Justice held the pre-trial conference at Korol', Palau District, September 20, 1967, and at the conclusion thereof granted summary judgment for the plaintiff, holding that plaintiff owns as his individual land the parcel of land known as Keklau, containing 113.5 tsubo, located in Korol', and further identified as Lot No. 1043 in a Japanese land surveyor's document made between the years 1938-1941. The judgment further ordered the defendant Taktai Chin to remove all his property from the land by midnight, October 12, 1967.

Thereafter, in response to defendant Chin's motion, the court entered an order staying execution of the judgment until further order of the court. As a condition of the order staying judgment, defendant Chin deposited with the Clerk of Courts one hundred dollars (\$100.00) "to be applied upon any judgment which plaintiff might obtain in this action".

Defendant Chin's motion for relief from the summary judgment was based upon the assertion, by affidavit, that he had failed to inform his counsel during the pre-trial

conference that he had purchased the land in question from the defendant Rdialul T. Rengiil prior to the defendant Rengiil's sale to plaintiff Indalecio Rudimch and had paid the sum of two hundred forty dollars (\$240.00) to the defendant Rengiil's then stepson, John Ngiraked.

OPINION OF THE COURT

Information developed at the pre-trial conference upon which the summary judgment was granted was briefly as follows:-

Defendant Rdialul T. Rengiil was held to be the owner of the land in question as a result of Determination of Ownership and Release No. 52 made by the Palau District Land Title Officer and recorded with the Clerk of Courts, January 30, 1957.

Defendant Rengiil transferred the land by written deed dated January 12, 1962, to the plaintiff Rudimch who paid defendant Rengiil the full purchase price of seven hundred thirty-seven dollars and seventy-five cents (\$737.75).

Plaintiff purchased the land and obtained the deed from the owner without fraud or misconduct on his part.

"The defendant Taktai Chin had been in possession of the land since 1946 and has a machine shop and equipment on the land.

Plaintiff Rudimch asked defendant Chin for possession and when Chin refused, the action was brought.

Information developed at the hearing on defendant Chin's motion for relief from the summary judgment was briefly as follows : -

John Ngiraked; stepson of defendant Rengiil, negotiated an agreement of sale of the land with the defendant Chin who was occupying the land and has been since 1946. Defendant Chin first went on the land when he and others were told to move there after World War II. The area

was believed to be government land. After occupying the land, Chin and the government entered into a lease.

Subsequently, the land was posted for filing claims for title determination. With the help of his stepson, Ngiraked, the defendant Rengiil claimed the land in the title proceedings and in 1957 it was determined to be his property.

Chin remained on the property and some time in 1960 or 1961, Ngiraked undertook to sell it in behalf of his stepfather, Rengiil. As a stepson, Ngiraked was permitted, under Palauan custom, to negotiate a sale in behalf of his stepfather and to receive the sale price.

Defendant Chin testified he agreed to pay three hundred dollars (\$300.00) for the property, but Ngiraked testified the agreed sale price was five hundred dollars (500.00) but that defendant Chin attempted to get the price reduced to three hundred dollars (\$300.00). Which-ever version is correct is immaterial because Chin paid Ngiraked one hundred fifty dollars (\$150.00) which Ngiraked used to pay his air fare to Guam to go to work at Trust Territory headquarters either at the close of 1961 or early 1962. Later, in Guam, Ngiraked collected ninety dollars (\$90.00) from a woman who owed that amount to Chin. Thus, Chin paid only two hundred forty dollars (\$240.00) on the purchase price which, both witnesses agreed, was not the full consideration for the sale agreement.

The stepson, Ngiraked, did not know that the land had been sold to plaintiff in January 1962 until he returned to Korol" in 1963 at which time he, his stepfather and defendant Chin met to discuss returning the money paid by Chin to Ngiraked.

Defendant Chin at this meeting asserted he claimed the land was a gift from Mirair, whom he had taken care

of for seven years and who promised the land to him. Mirair was the mother of defendant Rengiil.

Chin wanted his two hundred forty dollars (\$240.00) returned with interest and also insisted he was entitled to keep the land. Ngiraked and Rengiil asserted a right of offset or counterclaim as a rental against the amount collected from Chin. Chin's assertion of his right to the land was not made until the 1963 meeting, more than a year after the sale to the plaintiff and at least two years after the purchase negotiations with Ngiraked. Chin knew title had vested in Rengiil when he negotiated with Ngiraked but he also believed he would acquire some interest in the land because of his relationship to the lineage and his services to Mirair.

CONCLUSIONS OF LAW

[1] Under Palauan custom the stepson, Ngiraked, was authorized to negotiate the sale in behalf of his stepfather and the prospective buyer was justified in dealing with Ngiraked.

[2] The negotiations were not completed, however. The terms were not settled and the full consideration was not paid in any event. Even under the custom the owner had the right to sell if his stepson's prior attempt to sell had not been completed. Chin erred in failing to come to a binding and complete agreement with Ngiraked before Ngiraked left Koror for Guam.

[3] Even if Chin had paid full consideration, his failure to obtain a written deed and to record it with the Clerk of Courts left his interests without protection as against a subsequent good-faith buyer, without notice, who recorded his deed. See Sec. 1023, Trust Territory Code, and *Asao Asanuma v. Pius and Joaquin A. Flores*, 1 T.T.R. 458.

[4] Chin's counsel urged, by citation to American Jurisprudence, that the plaintiff, as subsequent buyer, had constructive notice of Chin's interest because of Chin's use and occupancy of the land. The circumstances of Chin's occupancy from 1946 onward could not, as a matter of law, give notice of any claim of ownership as against the recorded land title determination of 1957. The plaintiff purchaser had a right to rely on the record title and the obligation under Section 1023 of the Code requiring recordation of any subsequent interest.

[5] As a matter of law and under Palauan custom, defendant Chin had no valid claim to the land. Whatever rights Mirair, the mother of Rengiil, had in the land, she could not transfer it without obtaining consent from her children and other relatives. Since she did not obtain this consent, nor discuss it with her children, her promise to give it to Chin for his services was without effect.

[6, 7] Furthermore, Palauan custom in this case no longer was operative when the Land Title Officer determined Rengiil, her son, was the owner. Land law custom, as it existed in 1941, remains operative and in effect in the Trust Territory under Section 24, Trust Territory Code, except when it is changed by express written enactment of law. Office of Land Management Regulation No.1, under which the title determination was made, is "an express written enactment" providing for title determinations under certain circumstances. When such determination has become final, it must prevail over any claims or interests thereafter asserted which are founded upon land custom existing prior to the determination.

Neither Chin nor Mirair asserted any claim, nor were they parties to the title determination proceedings. Whatever rights either may have had under custom were cut off by those proceedings and the determination.

It is abundantly clear defendant Chin has no rights to the land in question either under the custom nor because of part payment in the incomplete sale negotiations with him. Defendant Chin occupies the land by sufferance of the owner. Now that plaintiff is the owner by valid purchase from the prior owner, Chin must comply with the new owner's demand for possession.

We expressly do not pass upon any claim Chin may have against either defendant Rengiil or against Ngiraked for the return of the partial payments.

JUDGMENT ORDER

In view of the foregoing, it is ordered that:-.

1. Defendant Chin's motion for relief from judgment and to revive the action be and hereby is denied.

2. The summary judgment heretofore entered September 20, 1967, be and hereby is reinstated with full force and effect, except that the time granted defendant Chin shall be extended to midnight November 30, 1967, within which to remove his property from the land and any property that remains thereafter shall be considered abandoned to the plaintiff Rudimch.

3. Upon compliance with order and surrender of the land to the plaintiff, evidenced by the plaintiff's written acceptance, the defendant Chin shall have refunded to him the one hundred dollars (\$100.00) deposited as a good-faith bond with the Clerk of Courts.

4. Plaintiff, having failed to file a statement of costs, no costs are awarded.