

ALANSO PHILLIP, Plaintiff

v.

MERITE CARL, Defendant

Civil Action No. 273

Trial Division of the High Court

Ponape District

November 7, 1967

*See. also, 3 T.T.R. 97*

Action to determine interests in land in Metalanim Municipality. Plaintiff moves for relief from judgment dismissing action on ground that stipulation reached in former action is bar to present suit. The Trial Division of the High Court, Chief Justice E. P. Furber, held that present suit is one for specific performance of stipulation previously made by parties, and that defendant, daughter of plaintiff, must allow latter to obtain lifetime support from land which he transferred to her under obligation that she support and respect him in accordance with Ponapean custom.

1. Ponape Custom-Family Obligations

Under Ponape custom, there is deep-seated obligation of child to support his or her parent, and obligation of child who is given land by his or her parent to allow parent to use land so long as he lives.

2. Ponape Land Law-Obligation to Support

Under Ponape custom, where father gives land to daughter under obligation to support him for his lifetime, daughter acts contrary to customary obligation when she attempts to control when, where and how she will render support and to withhold support when she deems father does not exhibit enough consideration and love for her.

3. Ponape Land Law-Obligation to Support

Where daughter is given land by father under customary Ponapean obligation to support and respect parents for their lifetime, and she grossly fails in such customary obligations, she thereby loses any right she may have had to control division of use of such land during their lifetime, or to substitute other support in place of allowing parents to obtain their needs from the land.

4. Ponape Land Law-Obligation to Support

Where daughter is given land by father under customary Ponapean obligation to support and respect parents for their lifetime, and she grossly fails in such customary obligations, father will be allowed to control division of use of land provided he is reasonable about it.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. In connection with the written "Stipulation for Dismissal of Action" in Civil Action No. 261 (between the same parties, but in which they were reversed, Merite Carl being the plaintiff and Alanso Phillip being the defendant), there was an express oral agreement that the stipulation should not affect the use of the lands in question during the lifetimes of the present plaintiff and his wife, and that the present defendant and her husband would support the present plaintiff and his wife (who are the defendant's father and mother) for the rest of their lives' better than they had been supported from the land Wounsapw Mwahu, which under the stipulation was "to be called" Merite's.

2. The present defendant Merite Carl has seriously failed to support the plaintiff and his wife and has taken action which the defendant reasonably construed and which purported to bar him from the land which under the stipulation was "to be called" Merite's, although she claims that was not her actual intention.

3. Although the present plaintiff Alanso Phillip has shown lack of courtesy toward the present defendant Merite Carl, he has not given her any just cause for her refusal to support him and her apparent attempt to bar him from one of the lands in question.

4. Both in omitting from the stipulation referred to in the first finding of fact any mention of the oral argument there found and in affirming before Judge Kinnare in Civil Action No. 261 that Alanso Phillip quitclaimed to Merite Carl, "all of his right, title and interest" in the land known as Wounsapw Mwahu and that Merite Carl quitclaimed to Alanso Phillip "all her right, title and interest" in the land known as Ipwal, both acted under the mutual mistake

of believing that the words used affected only the ownership of the lands and did not affect their agreement as to use of the lands and support during the lifetimes of Alanso Phillip and his wife.

#### OPINION

This action involves a very sad and acrimonious dispute between an elderly father and his grown-up daughter in which the plaintiff's sons have also become involved. All of those concerned are Ponapeans and the dispute is in regard to the use of and the plaintiff's right to support from certain land on Ponape Island.

The matter comes up at this time on a motion for relief from the judgment, entered on motion of the defendant, dismissing the action on the ground that the stipulation reached as to dismissal of Civil Action No. 261 was a bar to subsequent action for the same cause. The complaint in the present action is not too clearly drawn, but in view of the claims of the parties as disclosed by the evidence, the court now believes the complaint should not be considered to be for the same cause of action as Civil Action No. 261, but should be construed to be a complaint for specific performance of the actual terms agreed upon between the parties in connection with the dismissal of Civil Action No. 261.

In view of the foregoing and the findings of fact above, the court believes that justice requires that the judgment dismissing the present action be set aside as itself based upon a mistaken concept of the purpose of this action and that as full effect as practicable should be given to the entire agreement under which Civil Action No. 261 was dismissed, including the oral portions. 24 Am. Jur. 2d, Dismissal, Discontinuance and Nonsuit, §§ 83 and 84. 30 Am. Jur. 2d, Evidence, § 1037.

[1,2] The misunderstandings involved in this action can hardly be fairly comprehended from a purely American point of view, but are the result in part of a deep-seated obligation under Ponapean custom of a child to support his or her parent and the customary obligation of a child who is given land by his or her parent to allow the parent to use and control the use of the land so long as he lives. In this instance the defendant has vociferously alleged that she recognizes her obligation to do her part in support of her father and mother, but at the same time has demonstrated a desire or determination, entirely contrary to usual Ponape custom, to control entirely the situation as to when, where, and how she will render support and to withhold that support when she deems that her father does not exhibit enough consideration and love for her.

[3] The principal dispute in this action relates to the land Wounsapw Mwahu from which the plaintiff formerly obtained a large part of his support and for which he has need to use at least a substantial part for his support, while the defendant has not shown any either need or desire to use the land Ipwal. The defendant Merite Carl has sought to justify her desire to dominate the situation by the claim that Wounsapw Mwahu was really her land and, therefore, the stipulation that it should "be called" hers was merely a recognition of her rights and not a gift from her father. However that may have been, the defendant has so grossly failed in her obligations of support and her obligation of consideration and respect of her father under Ponapean custom that the court considers she has now lost any right she may ever have had to control the division of use of Wounsapw Mwahu during the plaintiff's lifetime and that of his wife or to try to substitute other support from her in place of allowing her father and mother to obtain their needs from this

land. The court has already recognized that gross failure to carry out an agreement for support given as consideration for a transfer of Ponapean land will, in an extreme case, justify revocation of the transfer. *Fridorihj Lusama v. Eunpeseun*, 1 T.T.R. 249, pars. 2 and 3 of Conclusions of Law (1955). Here we have a grown married daughter who has taken action, whether that was her intention or not, which has effectively cut off her father, now in his middle seventies, from support from land from which he and his family have obtained a major part of their support for about thirty years, in spite of the fact that she had expressly agreed, as found in the findings of fact, that their stipulation as to this land was not to affect its use during the lifetime of her father and mother. Although the elderly couple have a number of other children, the court is satisfied from the evidence that the defendant's action has caused the parents real hardship.

[4J The court therefore holds that the defendant's conduct warrants the revocation of any right of immediate control over her father's use of the land that may have been implied from the stipulation construed in the light of Ponapean custom, and that he should now be allowed to control the division of use of both pieces of land in question provided he is reasonable about it.

#### JUDGMENT

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

1. The judgment entered January 14, 1966, dismissing this action is set aside.

2. As between the parties and all persons claiming under them : -

a. The land known as Wounsapw Mwahu, located in the Mesisou Section of Madolenimhw Municipality, Ponape District, is owned by the defendant Merite Carl, who lives in Madolenimhw Municipality, but is subject to the

right of the plaintiff Alanso Phillip, who lives in Sokehs Municipality, Ponape District, to use It during hIS lifetime and thereafter for his wife to use it, if she survives him, so long as she lives and does not remarry, including the right to plant short-term crops, cultivate and harvest them, maintain pigs and chickens on the land, and to harvest from the coconut and breadfruit trees, but in each instance only to the extent necessary to meet the reasonable needs of the plaintiff and his wife. The actual work on the land on behalf of the plaintiff and his wife may be done by them personally or through any agent or agents they desire, provided that all work done on the land on their behalf is done without causing any more damage than reasonably necessary to any improvements already on the land or reasonably placed there by the defendant Merite Carl or by anyone on her behalf, and without interfering any more than reasonably necessary with any activities being carried on there by Merite Carl or at her direction.

b. The plaintiff Alanso Phillip is entitled in the first instance to determine what part of this land he will cultivate, what trees he will harvest from and when, provided he complies with the restrictions in the foregoing subparagraph.

c. The land known as Ipwal, located in the Ipwal Section of Sokehs Municipality, is owned by the plaintiff Alanso Phillip, but is subject to the right of the defendant Merite Carl to use it to the extent, if any, necessary to give her reasonable support during the lifetimes of the plaintiff Alanso Phillip and his wife in the same manner that the plaintiff Alanso Phillip may use Wounsapw Mwahu.

3. Until further order of the court, the defendant Merite Carl is hereby enjoined and prohibited from interfering with the use of the land Wounsapw Mwahu by her father,

Alonso Phillip, and his wife as authorized in subparagraph 1.a. of this judgment so long as they comply with the restrictions set forth in that subparagraph.

4. **If** the defendant Merite Carl believes that the plaintiff or his wife is not complying with the restrictions in subparagraph 1.a. of this judgment, she may, by motion filed in this action, request a determination of just what portions of the land Wounsapw Mwahu and things on it the plaintiff Alonso Phillip may use and how. The court will then appoint a master to go upon the lands and determine, after giving both parties a chance to be heard, what portions of the land Wounsapw Mwahu the plaintiff may use in accordance with the terms of this judgment, including a determination of from what trees he may harvest and how often. **If** the defendant makes what the plaintiff believes are unreasonable demands for the use of the land Ipwal, the plaintiff may similarly, by motion filed in this action, request a determination of just what use the defendant may make of the land Ipwal and the court will then proceed in a similar manner to determine that.

5. The plaintiff is awarded such costs as he may have had which are taxable under the first sentence of Trust Territory Code, Section 265, provided he files a sworn itemized statement of them within thirty days as of the entry of this judgment; otherwise only \$1.00 costs will be allowed to cover the filing fee.

6. Time for appeal from this judgment is extended to and including December 20, 1967.