

NGIRUDELSANG v. ITOL

the taro patch consisting of eight rows and known as Ahluhllocated on the main Island of Pingelap Atoll, Ponape District. Said taro patch is supplementary to the land Sakarakapw.

2. This judgment shall not affect any rights of way there may be over the property.
 3. No costs are assessed against either party.
 4. Time for appeal from this judgment is extended to and including February 15, 1968.
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KELTNGUUL NGIRUDELSANG, Plaintiff
v.

PIUS ITOL, Defendant

Civil Action No. 357

Trial Division of the High Court
Palau District

November 16, 1967

Action to determine title to land in Koror Municipality, which plaintiff claims on behalf of his clan, and defendant claims as heir of individual who once owned it as his individual land. The Trial Division of the High Court, Associate Justice D. Kelly Turner, granted defendant's motion for judgment based on plaintiff's failure to establish definite location of land and to rebut Japanese survey listing which lists land as individually owned by defendant's predecessor.

1. Palau Land Law-Clan Ownership

Purported descent of house site in male line, either to male's heirs or to his clan, is most unlikely under generally recognized Palau custom of descent through female line.

2. Real Property-Boundaries

When definite boundaries are either uncertain or in dispute, lines agreed upon or generally recognized and accepted, even though erroneous, are accepted by courts.

3. Palau Land Law-Japanese Survey-Presumptions

Japanese survey and Tocho Daicho ownership listing of land in Palau are presumed to be correct.

4. Palau Land Law-Japanese Survey-Presumptions

Presumption that determinations made in official Japanese land survey in Palau Islands are correct is strong in case of issues which were matter of controversy at the time, and there must be strong showing that determination in question is wrong to overcome such presumption.

5. Palau Land Law-Japanese Survey-Presumptions

Presumption that determinations made in official Japanese land survey in Palau Islands are correct is especially strong where listing made in survey was not in individual name of one who was head of group which he would ordinarily represent in dealing with outsiders and which now claims interest in the land.

6. Palau Land Law-Japanese Survey-Presumptions

Presumption that determinations made in official Japanese land survey in Palau Islands are correct covers situation where issues were not in controversy at time survey was made.

7. Equity-Laches

Where party who claims title to land in Palau Islands on behalf of clan had opportunity to raise claim in Japanese courts in 1942, and again at hearing of title determination and subsequent civil action, party has delayed too long in asserting clan's interests.

Assessor:

JUDGE PABLO RINGANG

Interpreter:

SINGICRI IKESAKES

Reporter:

NANCY K. HATTORI

Counsel for Plaintiff:

GILBERT TULOP

Counsel for Defendant:

ITELBANG LUII

TURNER, *Associate Justice*

OPINION

Plaintiff, the principal title bearer of the Techemding Clan, claimed in behalf of the clan a parcel of land called Hulk, located in Koror, Palau District. In the complaint and at the pre-trial, the plaintiff described the land as Lot 1018 shown in the Japanese land survey records of 1938-1941 as the individual property of Ngiraibiochel, the defendant's older brother and predecessor in individual ownership to defendant.

Plaintiff conceded that defendant's predecessor was individual owner of land called Omis and that defendant was owner of Omis, except for certain parcels transferred to other individuals. The basis of plaintiff's action against defendant was that defendant occupied and was attempting to sell Hulk, which belonged to the Techemding Clan, instead of the land Omis, admittedly belonging to defendant.

In presenting his case, plaintiff was confronted with two problems : -

1. The location of the parcels called Hulk and Omis, and
2. If, as he asserted in his complaint Lot 1018 was Hulk and not Omis, the necessity of overcoming the presumption arising from the Japanese land survey records showing Lot 1018 to be the individual property of Ngiraibiochel and that the boundaries of the lot were as depicted in the Japanese survey map of "Private" lots in Koror.

The proof relating to plaintiff's first obligation-'establishing the location of the land claimed-showed only that in the "general area" of Omis there was a parcel, indefinite as to size and boundary, called Ilulk. It either adjoined Omis on the north or according to the plaintiff, was an unsurveyed portion of Lot 1018. As a witness in behalf of the Techemding Clan, plaintiff disclaimed the assertion in his complaint that Hulk and Lot 1018 were the same. Ilulk, the plaintiff said, was an area within Omis.

[1] Although claimed as clan land, Ilulk,' wherever it was, admittedly had not been lived on by any member of the clan. The only house asserted to have been built on the land (except defendant's which was first built during early Japanese times by defendant's older brother) was one constructed in olden times-prior to this century. That house, from which Techemding Clan derived its claim, was built on a parcel furnished by a clan other

than Techemding to a woman not a member of the clan, although her husband may have been. It is here noted that the purported descent of a house site in the male line, either to his heirs or his clan, is most unlikely under generally recognized Palauan custom of descent through the female line.

None of plaintiff's witnesses undertook to describe the boundaries of Ilulk except in the most general terms. The plaintiff offered something on the point, saying that a few years prior to 1927 (identified as the year of a devastating typhoon), the land Omis had been divided into individually owned parcels, and at that time, the boundaries of Ilulk had been pointed out as a separate parcel from Gmis.

[2] It is recognized law that when definite boundaries are either uncertain or in dispute, the lines agreed upon or generally recognized and accepted, even though erroneous, will be accepted by the courts. Here, however, there is no evidence of conflicting or disputed boundary claims subject to any agreement or acceptance by any of the predecessors of the parties. *Kensi Tellei v. Ngodrii*, 2 T.T.R. 450. 12 Am. JUI'. 2d, Boundaries, § 77, et seq.

In short, plaintiff came into court claiming a parcel of land of indefinite size and location, without specific or generally recognized boundaries, in an area admittedly belonging to defendant and his predecessors in title. The proof of such a claim was altogether insufficient to give the court anything upon which it could act in plaintiff's behalf.

[3] The other question raised was even more formidable to the plaintiff in that it obligated him to rebut the recognized presumption that the Japanese survey and Toicho Daichio ownership listing were correct. Plaintiff offered nothing to overcome the accuracy of the Japanese

records. His testimony even tended to support those records.

[4, 5] The Kelnguul of the clan, Berel, who was plaintiff's predecessor in title, was present at the time of the survey and apparently made no protest in behalf of the clan. The legal effect of the Japanese survey of private lands and the Toicho Daichio listing made in accordance with the surveys has been considered many times by this court. An early definitive decision is found in *Basehelai Baab v. Klerang and Rudimch*, 1 T.T.R. 284, in which the Chief Justice said : -

"The court takes notice that the official Japanese land survey in the Palau Islands which was completed in 1941 was carried on with considerable care and publicity, and that those engaged in it were given broad powers. The court holds that the presumption determinations made in this survey were correct is strong in the case of issues which were a matter of controversy at the time. To overcome this presumption in the case of such issues, there must be a clear showing that the determination in question is wrong. This is especially true where the listing made in the survey was not in the individual name of one who was the head of a group which he would ordinarily represent in dealing with outsiders and which now claims an interest in the land."

The court cited *Ngirchongerung v. Ngirturong*, 1 T.T.R. 68, in further support.

[6] In the present case, extension of the presumption to a situation where there apparently was no controversy at the time of the survey is equally compelling.

Illustrative of proof necessary to overcome the presumption are the cases *Lusi Orukem v. Trust Territory*, 1 T.T.R. 356, and *Fritz Rubash v. Trust Territory*, 2 T.T.R. 80. Also see for cases sustaining the presumption:-

Osimav. Rengiil and Rechesengel, 2 T.T.R. 15I.

Ngerdelolek Village v. Ngerchol Village, 2 T.T.R. 395.
(status of Toicho Daichio for Peleliu).

Rekewis and Ngirakesau v. Ngirasewei, 2 T.T.R. 536.

Tabelual v. Magistrate Omelau and Ngirakebou Emeduu, 2 T.T.R. 540.

[7] The determination of the Japanese survey that Ngiraibiochel, defendant's predecessor, was the individual owner of Lot 1018 was directly involved and conceded by the Trust Territory government in *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485, which was an appeal from a determination by the District Land Title Officer, relating to both Lot 1018 and filled land below the high watermark adjoining Lot 1018. It is evident from that decision the plaintiff in the present case had an opportunity to raise his claim of ownership in Japanese courts in 1942, and again at the hearing if title determination by the Land Title Officer on September 18, 1956, and perhaps in Civil Action No. 123, 1 T.T.R. 485 decided in 1958. The plaintiff has delayed too long in asserting his clan's interests, a delay, incidentally, until a time when this same parcel became involved in litigation between defendant and a purported buyer from defendant. This pending litigation is *Pius !tol v. Ronald Sakuma and Ngetuberrai Antol*, Palau District Civil Action No. 340 [3 T.T.R. 351], filed more than nine months prior to the present action. The long delay, the neglected opportunities to assert his clan's rights, and the effect an adverse decision to defendant in the present case would have on the result in Civil Action No. 340, not yet decided, leads to most unfavorable implications as to plaintiff's sincerity in bringing this action.

The clan's purported interests have twice been legally cut off, if there were any to begin with. The first time was the Japanese Toicho Daichio determination of 1941 and the second time by the District Land Title Officer's determination in 1956. Both of these determinations are of record in the office of the Clerk of this court.

Having, in the opinion of the court, failed as a matter of law to produce any or sufficient persuasive evidence to show plaintiff's clan's entitlement to any land called Hulk, even if its location were definitely known and its boundaries describable, the defendant's motion for judgment at the conclusion of plaintiff's case must be granted.

JUDGMENT

It is ordered, adjudged and decreed:-

1. Defendant have and hereby is granted judgment against the plaintiff and all those claiming under him and the plaintiff's claim for relief be and hereby is denied.
2. As between the parties and all those claiming under them, defendant be and hereby is declared to be the owner of Lot No. 1018 (Japanese land records), Koror, Palau District.
3. This judgment shall not affect any rights of way there may be over the land in question.
4. Defendant is awarded costs as he may have had which are taxable under Section 265, Trust Territory Code, provided he files a sworn itemized statement of them within ten (10) days after entry of this judgment.