

any issue raised about the warrant of arrest and evidence about it, the court must assume it was properly issued.

The court therefore holds that the appellant has not sustained the burden of showing any error in the admission of the confession. By judgment entered this day the finding and sentence in question are being affirmed:

**In the Matter of the Estate of
VICENTE D. DE CASTRO, Deceased
Civil Action No. 158
Trial Division of the High Court
Mariana Islands District
March 27, 1968**

Petition for distribution of certain land on Saipan by decedent's son which petition was objected to by the Land Title Officer for the District. The Trial Division of the High Court, E. P. Furber, Temporary Judge, held that certain exchange agreements were binding and valid to all heirs even though no guardian had been appointed for them but that heirs were entitled to an equitable adjustment for difference between area actually transferred and that agreed upon by express and clearly discernible boundaries.

1. Marianas Land Law-Exchanges of Land

It has been customary on Saipan in dealing with land trustees concerning exchanges of land not to try to obtain formal appointments of anyone to represent heirs who are minors where they are interested proportionately with the adult heir and there is no conflict of interest between the adults and the minors, and such agreements are binding and valid as to all the heirs involved.

2. Marianas Land Law-Exchanges of Land

Petitioner having expressly consented to exchange agreements and shared in the use of the lands received in exchange therefore, such agreements having contained a provision releasing government for all claims, was estopped to claim, at a later date, any rent for use of lands so conveyed.

3. Marianas Land Law-Exchanges of Land

Petitioner was not estopped from claiming lands abutting on those transferred to government simply because certain of these lands were referred to in exchange agreements as being owned by government,

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i. . since it clearly appeared that the agreements were prepared by the **government and executed at its urgent request, with full knowledge** that petitioner claimed such land.

4. Former Administrations-Recognition of Established Rights

If there was anything wrong about the conveyance of land to Japanese interests for use as a railroad site and buildings connected with it in 1934 or earlier, it is too late now to have the matter corrected by court action.

5. Marianas Land Law-Exchanges of Land

While the failure of the government to completely comply with an exchange agreement was not a sufficient breach to warrant a rescission of that agreement where the petitioner protested promptly against the change he would be entitled to an equitable adjustment for the difference between the area actually transferred and that agreed upon by express and clearly discernible boundaries, even though the area actually transferred slightly exceeded the estimated area stated in the agreement.

6. Trust Territory-Land Law-Determination of Ownership

A determination of ownership under Office of Land Management Regulation No.1, unappealed from, has a standing similar to a judgment between the parties.

FURBER, *Temporary Judge*

This action was commenced by petition for distribution to Gregorio P. Castro (who later by amendment became the Petitioner) of certain lands on Saipan, Mariana Islands District, which it was alleged his father, the deceased Vicente D. de Castro, owned at the time of his death. It would, therefore, seem normally to be primarily against the other heirs of Vicente D. de Castro. Objection to the amended petition for distribution was filed by the Land Title Officer for the Mariana Islands District on the ground that the lands enumerated in the petition and adopted in the amended petition were not owned by the heirs of Vicente D. de Castro. The action, therefore, came to involve first a determination of whether the heirs or any of them were owners.

At the close of the Petitioner's evidence-in-chief, counsel for the objector moved to dismiss the petition on the following grounds : -

1. The Petitioner has not shown any right to any of the lots in question.

2. The Petitioner is estopped to make claim as to all of the lands named in the amended petition and is limited to the right to distribution of the lands transferred to the heirs of Vicente D. de Castro, deceased, represented by Remedios de Castro as land trustee, in exchange for certain of the lots listed in the amended petition.

3. The court does not have jurisdiction to hear this action considered either as a complaint or an appeal from title determinations made in 1953.

The lands in question have all been described by lot numbers in the North District as shown on the map prepared by the Japanese administration as a result of a survey which began on or about 1932 and was completed in 1939, the results being published at the Municipal Building in Garapan on or about July 1, 1939, the Japanese map showing these lot numbers having been admitted as Exhibit #1 in this action. These same lot numbers have also been referred to as shown on Land and Claims Map #4 on file with the Clerk of Courts for the Mariana Islands District, as successor to the Clerk of Courts for the former Saipan District.

FINDINGS OF FACT

1. The Petitioner has not sustained the burden of proving that Lot No. 360 was ever owned by the deceased

2. The northeasterly part of Lot No. 305 and the whole of Lot No. 317 were determined by the Land Title Officer for the then Saipan District by Determination of Ownership No. 740 dated November 3, 1953, filed November 9,

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1953, with the Clerk of Courts for the then Saipan District, to be vested in the Area Property Custodian.

3. Lots Nos. 303, 304, 314, and the southwesterly part of Lot No. 305 were conveyed to the Government of the Trust Territory of the Pacific Islands by the heirs of Vicente D. de Castro, represented by Remedios de Castro as land trustee, by deed dated May 3, 1956, filed with the Clerk of Courts for the then Saipan District on the same day, pursuant to Exchange Agreement No. 220 dated December 21, 1955. This exchange agreement was specifically approved in writing by the Petitioner, Gregorio P. Castro, and was acquiesced in by all other adult heirs of Vicente D. de Castro.

4. Lot No. 326 was conveyed to the Government of the Trust Territory of the Pacific Islands by the heirs of Vicente D. de Castro, represented by Remedios de Castro as land trustee by deed dated May 3, 1956, filed with the Clerk of Courts for the then Saipan District on the same day, pursuant to Exchange Agreement No. 221 dated December 21, 1955. This Exchange Agreement was also specifically approved in writing by the Petitioner and was acquiesced in by all other adult heirs of Vicente D. de Castro.

5. Both Exchange Agreements Nos. 220 and 221 were signed reluctantly by Remedios de Castro and the Petitioner but knowingly after extensive discussions and opportunity for consultation with others.

6. Lots Nos. 306 and 316 were included in the conveyance made by Vicente P. de Castro, son of and purporting to act as agent for Vicente D. de Castro about 1934 or earlier to Japanese interests for use as a railroad site and buildings connected therewith. This conveyance was known to Vicente D. de Castro in time for him to have brought proceedings during the Japanese administration to correct or rescind it if there was anything wrong about it, but he

took no action on the matter up to the time of his death about 1945.

7. Alleged Lot No. 307 is in fact a house site located on the southwesterly part of Lot No. 305.

8. Alleged Lot No. 313 is in fact a house site located on the northeasterly part of Lot No. 305.

9. Alleged Lot No. 315 is in fact a house site located on Lot No. 314.

10. Alleged Lot No. 325 is in fact a house site located on Lot No. 326.

11. Alleged Lot No. 329 is in fact a house site located on Lot No. 330.

12. There is no Lot No. 1,299 in the entire North District. This number was inserted in the Petition through error and the lot intended to be referred to by it is Lot No. 299.

13. Under the accepted practice of the Saipan Land and Claims Office, and generally accepted on Saipan, the house sites passed with conveyance of lots on which they were located and were included in title determinations as to such lots without any specific mention of the house site.

14. The Government of the Trust Territory of the Pacific Islands has failed to completely comply with its Exchange Agreement No. 220, but did substantially do so. The Exchange Agreement called for the conveyance, among other properties, of part of Lot No. 431, South District, described in the Exchange Agreement as bounded and described as follows : -

On the north by Lot No. 415 and the remainder of Lot No. 431, owned by the Government,
On the southeast by a road,
On the southwest by a road,
said parcel containing an area of 3.0 hectares more or

less.

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This area had been marked out with temporary stakes and shown to the Petitioner and his sister in connection with obtaining their consent to the Exchange Agreement. In fact the Government, by deed dated April 13, 1956, filed May 3, 1956, with the Clerk of Courts of the then Saipan District, conveyed to the heirs the above-described area, *with the omission* of a triangular piece on the southwest part of the lot, this piece containing an area estimated to be not more than two-tenths of a hectare, but with the result that the heirs' land is not bounded on the southwest by the road except at the extreme westerly or northwesterly corner. On discovering this discrepancy, the Petitioner promptly protested to the Government about it.

15. The representatives of the Government, in marking out the part of Lot No. 431 to be conveyed to the heirs, in good faith intended at that time to convey the area so described and marked out, believing then that it was government land. Later, however, as a result of further survey before the deed was delivered, the Government authorities came to the conclusion that they could not convey this triangular piece of land because they believed it was privately owned and, therefore, placed the permanent boundary marker at the southwesterly corner of the land conveyed some forty or more feet to the east of where the temporary stake had been placed. There was no intentional fraud involved.

OPINION

[1; 2] While it is believed that in any court proceedings a minor should be definitely represented, either by a guardian regularly appointed in guardianship proceedings or by a guardian ad litem appointed for the particular case, the court recognizes that it has been customary on Saipan in dealing with land trustees concerning exchanges of land not to try to obtain formal appointments of any-

one to represent heirs who are minors where they are interested proportionately with the adult heirs and there is no conflict of the interest between the adults and the minors, consequently the court holds that the exchange agreements involved here, namely Exchange Agreements Nos. 220 and 221, are binding and valid as to all the heirs involved. The Petitioner, Gregorio P. Castro, having expressly consented to these agreements and shared in the use of the lands received in exchange for them since about May 3, 1956, and these agreements having contained a provision to release the Trust Territory and the United States of America from any and all claims arising out of the use and occupancy of the land to be conveyed by the heirs under these agreements, is estopped to now claim any rent for the use of the lands so conveyed.

[3] The court, however, expressly rejects the Objector's claim that Petitioner is estopped from claiming ownership of the lands abutting on those transferred simply because certain of these abutting lands are referred to in the Exchange Agreements as being owned by the Government, since it clearly appears these agreements were prepared by the Government and executed at the urgent request of the Government, with full knowledge that the Petitioner and his sister Remedios claimed these abutting lands.

[4] **If** there was anything wrong about the conveyance of land by Vicente P. de Castro, as alleged agent for Vicente D. de Castro, to Japanese interests for use as a railroad site and buildings connected therewith, it is too late now to have the matter corrected by court action. *Wasi-sang v. Trust Territory*, 1 T.T.R. 14. *Jatios v. Levi*, 1 T.T.R. 578. Trust Territory Policy Letter, P-1, of 29 December 1947.

[5] The court considers that the failure of the Government to completely comply with its Exchange Agreement

No. 220 is not a sufficient breach to warrant a rescission of that exchange agreement involving some 27 hectares more or less. 17 Am. Jur. 2d, Contracts, § 504. 27 Am. Jur. 2d, Equity, §§ 103, 107. 55 Am. Jur., Vendor and Purchaser, § 592. The Petitioner, however, having protested promptly against this change in the boundary line from that of the part of Lot No. 431 proposed to be transferred to the heirs, it would seem that he or the heirs are entitled to an equitable adjustment either in cash, land or otherwise for the difference between the area actually transferred and that agreed upon by express and clearly discernible boundaries, even though the area actually transferred does slightly exceed the estimated area stated in the agreement. The court is unable to pass on the question of any such adjustment at this time, since it is outside the scope of the issues raised by the Objector and would have to be made with the Trust Territory of the Pacific Islands, which is not itself a party and cannot be made one unless it voluntarily appears or waives its "sovereign immunity" from suit.

The Government's explanation of why it did not convey to the heirs the triangular piece of Lot No. 431, concerning the omission of which the Petitioner protests, is accepted only as bearing on the question of its good faith. No determination is made or implied as to whether this piece was in fact Government land or private land.

The court also expressly rejects the Objector's claim that Title Determinations Nos. 741 and 742 based on Petitioner's claim No. 129 amounted in effect to a determination that the heirs of Vicente D. de Castro did not own any of the lands listed in the claim except those covered by these Title Determinations. The very fact that two determinations were made on this one claim would seem clearly to indicate that neither one was intended to be a determination that the lots not enumerated in it were being

adjudicated. The court does, however, concur with the Objector's claim that the house sites within the various lots enumerated are included in the lots on which they are located, both in the determinations of ownership and the exchange agreements, without any express mention of the house sites.

[6] This petition is not considered as in any sense an appeal from Determinations of Ownership under Office of Land Management Regulation No. 1. Both counsel have acknowledged in their argument that their clients are bound by Determinations of Ownership Nos. 740, 741, and 742. These are considered to have standing similar to a judgment between the parties. So far as disclosed to date in this action, there has been no Determination of Ownership as yet to Lots Nos. 297, 299, 302, or 330 and no conveyance of these by anyone on behalf of the heirs.

The Objector having voluntarily filed objection, actually on behalf of the Government, by the Deputy Attorney General, appearing generally as his counsel, is considered to have submitted to the jurisdiction of the court to the extent of permitting it to adjudicate the validity of all aspects of his objection.

JUDGMENT

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

1. This action is hereby dismissed as to Lots and house sites Nos. 303, 304, 305, 306, 307, 313, 314, 315, 316, 317, 325, 326, 329 and 360.

2. As to the lots and house sites enumerated in the preceding paragraph, this is a final judgment.

3. The court reserves jurisdiction, however, to adjudicate the Petitioner's claim for distribution of Lots Nos. 297, 299, 302 and 330, as to which matters the Objector's motion to dismiss is denied. Trial is to be resumed as to these matters. The court also reserves jurisdiction to ad-

judicate the amount and nature of any equitable adjustment which should be made for the Government's failure to fully comply with Exchange Agreement No. 220, in case the Government decides to submit to the jurisdiction of the court for the purpose of having these adjudicated.

MARTIN MOOLANG, Plaintiff

v.

MOSES FIGIR, Defendant

Civil Action No. 45

Trial Division of the High Court

Yap District

March 29, 1968

Hearing on motion to dismiss in action seeking recovery of money damages for destruction of plaintiff's home by defendant. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that a judgment in a criminal prosecution is not a bar to a subsequent civil action based upon the same offense of which the party stands convicted and thus plaintiff could recover for damages caused by defendant's setting his house on fire even though defendant had already been convicted of arson and ordered to pay "restitution" to the plaintiff. (T.T.C., Sec. 171)

1. Civil Procedure--Generally

The general rule is that a judgment in a criminal prosecution is not a bar to a subsequent civil action based upon the same offense of which the party stands convicted.

2. Torts--Generally

The same act may constitute both a crime and a tort and there may be civil recovery as well as criminal prosecution.

3. Criminal Law--Restitution

Section 171 of the Trust Territory Code which gives the court discretion to order restitution or compensation contemplates restitution as punishment. (T.T.C., Sec. 171)

4. Civil Procedure--Damages

Civil damages are not punishment.