

PERETIW, Plaintiff
v.
MERIAM AND REMOS, Defendants
Civil Action No. 271
Trial Division of the High Court
Truk District
April 17, 1968

Action to determine ownership of portion of a former mangrove swamp on Fefan Island in Truk District. The Trial Division of the High Court, E. P. Furber, Temporary Judge, held that while none of the parties had any right as against the government to any part of the swamp, except for a small portion which had become dry land by action of natural forces, as between the parties those who took possession of any part of the rest of the swamp were entitled to retain possession and use of that part until the government took some action on the matter.

1. Real Property-Accretion

Where an area becomes dry land as a result of natural forces it is owned by the owner of the original portion as an accretion to it.

2. Truk Land Law-Generally

Written authorization from Japanese Government superseded and limited whatever government representatives may orally have said regarding ownership of land.

3. Public Lands-Shore Lands

Trust Territory Code Section 32, with a prior determination by the Japanese administration that all marine areas below the ordinary high watermark belong to the government, has completely superseded any rights that owners of a reef or water over the reef may formerly have had in abutting swamp lands, or any rights that abutting landowners may previously have had to swamp lands between their dry landholdings and deep water.

4. Truk Land Law-Use Rights

Any power a village chief might have over the use and distribution of certain mangrove trees in a swamp would not carry with it the right to transfer ownership of any part of the swamp from the Government.

5. Truk Land Law-Use Rights

Chief's giving of permission to block up a bridge so that part of a swamp would become suitable for the planting of taro was not sufficient to transfer ownership of that part from the Government.

6. Truk Land Law-Use Rights

While none of the parties had any right, as against the Government, to any part of Government owned land in question, those who first took possession of any part of the area were entitled to retain possession and use unless and until the Government took some action on the matter.

7. Truk Land Law-Adverse Possession

As to the land in question none of the parties had any right to interfere with the prior possession of any other party and those who pulled up plantings by others there and then made plantings of their own in the same location, or who mixed their plantings in among earlier ones by others, gained by so doing no rights as against those who first took possession of that land.

FURBER, *Temporary Judge*

FINDINGS OF FACT

1. The area which the Japanese authorities gave Tarup and Nopun permission to fill in and build on, covered only that immediately surrounding the house sites and did not include any of the areas in dispute in this action.

2. Peretiwi and those working under him, and Remos and those working under him, developed the part of the disputed area west of the highway without any trouble between them before Meriam and those claiming under her entered, destroyed previous plantings made by others and then made plantings of their own.

3. Anton, acting for Meriam, planted coconuts on the northerly part of the swamp area east of the highway, known to the parties as Nepieu, before Peretiwi planted there, and Peretiwi planted coconut trees on the southern part of this swamp area before anyone on behalf of Meriam planted there. Anton and Peretiwi have each pulled up some of the coconuts planted by the other in these areas and Peretiwi has also planted taro among some of the coconut trees planted by Anton. In addition to this, Peretiwi has planted taro along the western edge of this swamp area abutting the highway.

4. The part of the shaded area on the sketch attached to the Pre-Trial Order marked "Now Dry Land" has been formed naturally by action of the waves.

5. Carl Hartmann, as chief or magistrate of Fefan Island, gave oral permission during the time of the U.S. Naval administration to people of Sapoer Village to block up the bridge over which the highway passed so as to make the former mangrove swamp west of the highway suitable for the planting of taro. The work of blocking up the bridge was done by the people of Sapoer Village, under Dity (sometimes spelled Titi) as village chief.

6. The sale of the land Nefori by Ouka to Meriam with the consent of Ariech did not purport to carry with it ownership of any of the abutting swamp.

OPINION

This action involves conflicting theories as to the ownership of portions of a former mangrove swamp on Fefan Island in Truk District. A highway was built across this mangrove swamp in Japanese times running roughly north and south with a bridge in it to permit water coming from the west to flow toward the lagoon on the east side of the highway. As indicated in the fifth finding of fact above, this bridge was blocked up as a village project during American times so as to make the area west of the highway suitable for the planting of taro, and part of the area east of the highway has been filled in by wave action so that a small area of dry land has been developed by natural forces.

The plaintiff claims that he and his group are entitled to practically the whole area in dispute because of an alleged permission from Japanese authorities at the time that two members of his group were seeking permission to fill in a part of the taro swamp, not now in dispute; for a house site.

The defendant Meriam's basic claim is that, having become the owner of the dry land known as Nefori and a small portion of the dry land Neouo immediately west of the taro swamp, her family group is entitled to own the part of the swamp directly east of those lands as far as the highway and that, as the owner of the dry land Nepieu east of the highway and north of the part of the swamp on that side of the road, this family group is the owner of all the swamp south of that.

The defendant Remos claims that, as owner of the reef and the abutting waters over the reef, his lineage should be entitled to the entire swamp area back to dry land, although he has only made claim to the part of the swamp which he says he and those working under him planted west of the highway.

In addition to these basic claims, each party claims to have been the first to develop certain parts of the swamp.

[1] The court cannot agree with the claims of any of the parties as to outright ownership of any of the swamp, except the small portion at the extreme easterly edge which has now become dry land as a result of natural forces. This part appears clearly to be owned by the owners of the original land Nepieu as an accretion to it. Meriam's family group's ownership of the original dry land portion of Nepieu was not directly disputed by any of the parties in this action, but no determination is made as to the exact limits of this group. 56 Am. Jur., Waters, §§ 476-498, particularly § 491.

All the rest of the swamp in question would appear from the evidence to be Government land under the terms of Trust Territory Code Section 32. Since the Government is not a party to this action, however, no determination is made as to its rights beyond the determination that none of the parties have shown that they are entitled to outright ownership of any of this part.

[2] As indicated above, the plaintiff Peretiw's claim to ownership of the swamp is based upon alleged permission from the Japanese administration. This permission was given after members of Peretiw's group had been stopped by the Japanese from filling in for a house site part of the swamp well south of that now in dispute, unless and until formal permission was given for this by the government. Allegedly Japanese surveyors, in surveying the area for the house site desired by Peretiw's group, orally indicated the group could have a large part of the swamp, but the evidence is undisputed that these representatives said they would have to submit the matter to their superiors and that the applicants would have to await word from higher authorities. The written authorization thus received was introduced in evidence and does not cover any of the area now in dispute. The court holds that this written authorization supersedes and limits whatever the government representatives may orally have said they would recommend or ask for.

[3] Trust Territory Code Section 32, with the preceding determination by the Japanese administration that all marine areas below the ordinary high watermark belong to the Government, is considered to have completely superseded any rights that owners of the reef or waters over the reef may formerly have had in such abutting swamp lands, or any right that abutting landowners may previously have had to swamp lands between their dry landholdings and deep water.

[4,5] Claim has been made that the mangrove was placed by the administration under the supervision of the village chief and that his consent to cut down or destroy the mangrove carried with it the right to own the areas so cleared. Without trying to determine what supervisory power the village chief may have had over the use and distribution of the mangrove trees, the court holds that

any such power of supervision would not carry with it the right to transfer ownership of any part of the swamp from the Government. Very definite and clear delegation of power from the Government would be required for that. Similarly the chief of Fefan Island's giving of permission to block up the bridge so that the part of the swamp west of the highway would become suitable for the planting of taro is not considered sufficient to transfer ownership of that part from the Government.

[6,7] While it is believed that none of the parties has any right, as against the Government, to any part of the former mangrove swamp except the small portion which has become dry land by the action of natural forces, as between the parties, those who first took possession of any part of the rest of the swamp are entitled to retain possession and use of that part unless and until the Government takes some action on the matter. As to all the swamp in question, except the small portion mentioned above that has become dry land, none of the parties has any right to interfere with the prior possession of any other party. Those who pulled up plantings by others there and then made plantings of their own in the same location, or who mixed their plantings in among earlier ones by others, gained by so doing no rights as against those who first took possession of that part of the swamp. 3 Am. Jur. 2d, Adverse Possession, §§ 205, 210, 237.

The plantings which Anton (husband of the defendant Meriam) made in cooperation with the defendant Remos it is believed must, now that they have come into disagreement, be considered as belonging to Remos' lineage which may decide to what extent, if any, Meriam's family group may share in these, either because of the relation between the two groups or because of Anton's participation in the planting.

It became apparent during the trial that the Pre-Trial

Order was in error in stating that the land involved was a part of the land Neouo. Since, however, the actual area involved was shown in detail on the sketch attached to the Pre-Trial Order, it is believed that no party was misled by this error and that it may now be disregarded.

JUDGMENT

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

1. As between the parties and all persons claiming under them, rights in the former mangrove swamp located partly in Sapoeer Village and partly in Aun Village on Fefan Island, Truk District, and shown on sketch attached to the Pre-Trial Order in this action, are held as follows :-

a. The portion of the easterly edge which has become dry land as a result of the action of natural forces and is marked on said sketch "Now Dry Land", is owned by the Saporelong group of Sapoeer Village, represented in this action by the defendant Meriam.

b. The family of Ounua's children, represented in this action by the plaintiff Peretiw, has the right to possession and use of the following portions' of said swamp:-

i. The part of the swamp in dispute west of the highway and south of a line running from a coconut tree at the westerly edge of the swamp, slightly north of the dividing line between the land Nefori and the land Neouo, and running in a straight line easterly to a "sol" tree at the edge of the highway.

ii. The part of the swamp west of the highway and immediately north of the part described in the foregoing subparagraph, extending west from the highway, half the distance from the highway to dry land, and extending north to a line running east from a bread-fruit tree slightly northeast of Dity's cookhouse; being the part of the shaded portion marked "Peretiw" on said sketch.

iii. The southern portion of the part of the swamp

east of the highway, where Peretiwi had originally planted coconut trees.

iv. The strip east of the highway and immediately abutting on it, where Peretiwi has planted taro, being the part of the shaded portion marked "Peretiwi Puna" on said sketch.

c. The Saporelong group of Sapoe Village, represented by the defendant Meriam in this action, has the right to possession and use of the northerly portion of the taro swamp east of the highway and west of the portion referred to above which has now become dry land, on which northerly portion there is a stand of coconuts planted by Anton and some taro planted by Peretiwi between the coconut trees, being the part of the shaded portion marked "Meriam L.U." on said sketch.

d. The defendant Remos' lineage, consisting of those descended in the female line from his mother Nouta, has the right to possession and use of the portion of the taro swamp bounded and described as follows : -

Commencing at the southwest corner thereof at the coconut tree mentioned in subparagraph b i above slightly north of the dividing line between the land Nefori and the land Neouo, thence turning and running

North by the dry land Nefori to the breadfruit tree mentioned in subparagraph b ii above, slightly northeast of Dity's cookhouse, thence turning and running

Northeasterly to an ivory nut tree at the edge of the highway, thence turning and running'

South by said highway to the part of the swamp described in subparagraph b ii above, thence turning and running

West by said part described in subparagraph b ii half way from the highway to dry land, thence turning and running

South by said part described in subparagraph b ii

to the part of the swamp described in subparagraph b i above, thence turning and running

West by said part described in subparagraph b i to the point of beginning; being the portion partly shaded and partly not shaded marked "Claimed by Remos, also by Meriam" on said sketch.

2. None of the rights to possession and use referred to above are to be construed as giving or implying any rights against the Government.

3. If any of the parties who are given rights in abutting portions of said swamp are unable to agree upon the exact location of the boundary as above specified between any such abutting parts, anyone of them concerned may, by motion filed in this action, request a survey and further determination of such boundary line.

4. This judgment shall not affect any rights-of-way there may be over any part of the former mangrove swamp in question.

5. Time for appeal from this judgment is extended to and including June 17, 1968.

6. No costs are assessed against any party.