

AKOS, Plaintiff
v.
OREM, SINAKO, AND SOTARO, Defendants
and
KONO, Defendant-Intervenor
Civil Action No. 375
Trial Division of the High Court
Truk District
April 18, 1968

Action to determine ownership of taro patch in Tol Island, Truk District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice held that original owner of land was, under the circumstances of the case: bound by his agent's sale of land and subsequent sale by owner to another person was ineffective to deprive original purchaser of rightful possession.

1. Agency-Liability of Principal

If a principal acts or conducts his business, either intentionally or through negligence, or fails to disapprove of the agent's act or course of action so as to lead the public to believe that his agent possesses authority to act or contract in the name of the principal, such principal is bound by the acts of the agent within the scope of his apparent authority as to any person who, upon the faith of such holding out, believes, and has reasonable ground to believe, that the agent has such authority and in good faith deals with him.

2. Agency-Rights of Third Party

Where principal's failure to disavow his agent's sale of land until third party purchaser came to him after the principal had sold the same land to another, the disavowal came too late to affect the rights of the third party purchaser.

3. Estoppel-Generally

In a case in which the circumstances would justify the predication of an estoppel against an owner with respect to the assertion of the fact of ownership, his consent to the consummation of a transaction involving the disposition of his land may sometimes constitute one of the elements which is regarded as pointing to the particular inference that he is debarred from denying that the person who assumed to deal with the property as its owner was authorized to do so.

4. Truk Land Law-Lineage Ownership-Sales

Payment to and acceptance by brother of owner of land lineage had an interest in, and payment to such owner's daughter and division with owner's adult children, in accordance with Trukese custom, indicated lineage approval of sale of lineage land.

5. Equity-Generally

Where one of two innocent parties must suffer from the wrongful act of another, the loss should fall upon the one who, by his conduct, created the circumstances which enabled the third party to perpetuate the wrong and cause the loss.

6. Equity-Generally

As between equities otherwise equal, he who has the prior equity in point of time is entitled to a like priority in point of right.

<i>Assessor:</i>	JUDGE F. SOUKICHI
<i>Interpreter:</i>	SABASTIAN FRANK
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	YOSCHUNE
<i>Counsel for Defendants:</i>	KINDIN A.
<i>Counsel for Intervenor:</i>	KESKES. MARAR

TURNER, *Associate Justice*

FINDINGS OF FACT

1. Orem, as head of his lineage, owned and controlled the taro patch Episan, located in Wichukuno Village, Tol Island, Truk District.

2. Orem's brother, Suwa, and the children of his deceased sister, Rota, who are Meichik and Siteuo, were acknowledged by Orem to have "an interest", but not control of the disposition of Orem's portion of the taro patch.

3. Orem, some years before the present dispute, divided the taro swamp into three parts: -

a. One part he retained for himself and is the subject of this action.

b. One part he gave to his children, Sinako, Eiko, Rio, Sotaro and Achie. Sotaro sold the children's part in 1963 or 1964 to the defendant Kono and his wife, Ruth, for fifty dollars (\$50.00), but accepted ten dollars (\$10.00) in full payment. Sotaro spent the money without dividing it with his brothers and sisters.

c. One part he gave to his deceased sister's son, Meichik.

4. Orem sent Notius, in whose house Orem lived after the events of the case began, to advertise the sale of his retained portion of the taro patch for two hundred dollars (\$200.00), according to Orem's deposition testimony, and for three hundred dollars (\$300.00) according to the trial witnesses.

5. The plaintiff, Akos, learned of this offer of sale and asked Sinako, Orem's daughter, to get Orem to reduce the price to one hundred fifty dollars (\$150.00).

6. In a few days, Akos, Sinako, Notius (who had been delegated by Orem to find a buyer), and three others met at the taro patch where Sinako, Orem's daughter, undertook to sell to Akos for one hundred fifty dollars (\$150.00).

7. Sinako had not discussed Akos' offer with her father but dealt with Akos in the belief her father would agree. Akos asked Sinako if Orem approved and she replied, "That is why I'm here to sell to you".

8. Akos paid fifty dollars to Sinako who divided it with Sotaro, Eiko, and Rio, who each got ten dollars, and she kept twenty dollars.

9. Akos paid Sotaro thirty dollars several weeks later.

10. Akos also paid Sinako an additional ten dollars later.

11. Akos paid Suwa, Orem's brother, forty dollars for "his interest" in Orem's taro paddy.

12. When Orem learned the sale had been made by Sinako to Akos, he left her house, where he had been living, and went to live with Notius.

13. Orem then sent for defendant-intervenor Kono and sold the paddy to him for two hundred dollars (\$200.00). With the sixty-dollar down payment from Kono, Orem gave fifty dollars to Sinako to return to Akos, who refused

to accept it and who later refused a ninety-dollar refund tender made by Sotaro.

14. All parties, including Orem, acknowledge Kono has paid two hundred dollars (\$200.00) in full. The money received, not the full amount being in cash, was divided and distributed for Orem by Notius.

15. Akos made his purchase and began working the taro patch on July 7, 1965, and continued working it until November of that year when Kono and his wife took possession.

16. Kono acknowledged seeing Akos working the patch prior to the purchase and acquisition of possession.

OPINION

The foregoing lengthy findings of fact are necessary to support the law applicable to this case. The practice in Micronesia of sales, once made, being dishonored for a better price or for other reasons, which seemingly occurs much too frequently, should be regarded with disfavor by all who desire to live under a government of law. The findings, in this instance, also unfavorably reflect on the conduct of the children and lineage members of the owner. Such flagrant disregard of Trukese custom, requiring respectful relationship and honest dealings between lineage members also is a matter for serious disapproval.

The only question in issue in this case was whether or not there was a sale in fact and law to the first buyer, Akos. We hold there was and the attempted sale to Kono was invalid.

Whether there was a completed sale to Akos depends upon the law of agency relating to the implied authority of an agent and estoppel of the principal to deny the lack of authority in the purported agent. One of the significant elements in reaching our conclusion is that Orem's agent, Notius, for the limited purpose of "advertising" an

intended sale, was present when the owner's daughter made the sale.

[1] These rules of agency may be found in 3 Am. Jur 2d, Agency, § 74, where it is said:-

". . . The acquiescence of the principal in an extension of his authority by an agent in the transaction in question may be sufficient to create the appearance of authority in the agent to do such act; the acquiescence in and consequent scope of, such authority is to be determined not only by what the principal actually does know of the acts of the agent within the employment, but also as to what he should, in the exercise of ordinary care and prudence, know the agent is doing in the agency transaction. In such case, the appearance of authority is created because of the fact that the third person is entitled to assume that the principal is cognizant of the exercise of authority and would forbid it if it were unauthorized.

"Stated inclusively, then, the rule is that if a principal acts or conducts his business, either intentionally or through negligence, or fails to disapprove of the agent's act or course of action so as to lead the public to believe that his agent possesses authority to act or contract in the name of the principal, such principal is bound by the acts of the agent within the scope of his apparent authority as to any person who, upon the faith of such holding out, believes, and has reasonable ground to believe, that the agent has such authority and in good faith deals with him."

[2] Orem should have learned of the sale either before or at the time it was made from either Sinako or Notius. When he did learn of it, he "got mad" and left Sinako's house to live in Notius' house. He did not attempt to rescind with Akos. His failure to disavow the sale until Akos came to him, which was after Orem had sold to Kono, came too late to affect the rights of Akos to the taro patch.

[3] As to estoppel of Orem to deny the sale, the law is explained in 28 Am. Jur. 2d, Estoppel and Waiver, § 104:-

"Many decisions predicating an estoppel in respect of an interest in real property are founded upon evidence which shows that the

Early estoppel not only remained silent with regard to his interest at the time when the transaction in question was in progress, but so conducted himself as to warrant the conclusion that he consented or assented to its being consummated. Estoppel to assert an interest has been predicated upon silence in conjunction with consent or acquiescence in cases involving transactions affecting ownership and leasehold interests.

"In a case in which the circumstances would justify the predication of an estoppel against an owner with respect to the assertion of the fact of ownership, his consent to the consummation of a transaction involving the disposition of his land may sometimes constitute one of the elements which is regarded as pointing to the particular inference that he is debarred from denying that the person who assumed to deal with the property as its owner was authorized to do so."

[4] It also is to be remembered that Orem admitted that members of his lineage had "an interest" in his retained portion of the patch. Akos paid Orem's brother; Suwa, forty dollars (\$40.00) for his "interest". This payment to and acceptance by Suwa and the payment to Sinako and division with Orem's adult children, in accordance with Trukese custom, indicated lineage approval of the sale to Akos. Orem's own fault made his own disapproval of the sale ineffective.,

[5] There are further principles of law, founded upon equity and fair dealing, which are applicable to Orem. We find in 3 Am. Jur. 2d, Agency, § 76:-

"... where one of two innocent parties must suffer from the wrongful act of another, the loss should fall upon the one who, by his conduct, created the circumstances which enabled the third party to perpetrate the wrong and cause the loss."

As between Orem and Akos, it was Orem who caused Akos' possible loss of the land because of Sinako's wrongdoing.

[6] As between Akos and Kono" it is true, the same property may not be effectively sold after it once has been

sold. Equity is not on Kono's side because he was not an innocent purchaser without notice of Akos' rights. Kono saw Akos working the patch before he purchased from Orem. The rule of law applicable to Akos and Kono, even if Kono was an innocent purchaser without notice of Akos' claim-which he was not-is that: -

"... as between equities otherwise equal, he who has the prior equity in point of time is entitled to a like priority in point of right." 27 Am. Jur. 2d, Equity, § 149.

Under the facts and law of this case, Akos must prevail over both Orem and Kono. He is obligated to complete the payment of the purchase price in the amount of twenty dollars (\$20.00). Kono is entitled to recover his two hundred dollars (\$200.00) which Orem and his co-defendants admitted they received. Although they are not parties and no judgment may be entered against them, all of those who received a portion of Kono's payment should contribute to the repayment to Kono in at least the amount they received.

Accordingly, it is

Ordered, adjudged, and decreed : -

1. Akos is the rightful owner of the part of the taro patch in question, Episan, located in Wichukuno Village, Tol Island, Truk District, and is entitled to immediate possession.

2. Akos shall pay forthwith to the Clerk of Courts the sum of twenty dollars (\$20.00) as the balance of his purchase price, said payment due to Orem, which payment shall be paid by the Clerk to Kono in partial satisfaction of Orem's obligation to return Kono's purchase payment in the amount of two hundred dollars (\$200.00).

3. Kono shall have and hereby is granted judgment against Orem, Sinako, and Sotaro in the sum of two hundred dollars (\$200.00), subject to credit of the amount received from the Clerk of Courts as above ordered.

4. Akos shall have his costs in accordance with law upon filing itemized claim therefor within ten (10) days from entry of judgment herein.

SUMANG YECHADRECHEMAI, Plaintiff

v.

JOSEPH EBAU, Defendant

Civil Action No. 397

Trial Division of the High Court

Palau District

April 18, 1968

Motion for summary judgment on ground that there was no disputed material issue of fact and that defendant was entitled to judgment based upon res judicata. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where issues had been settled by a judgment in a previous case they may not be tried a second time between the same parties.

Summary judgment granted.

1. Judgments—Res Judicata

Where the right of a person to use land as long as he wishes had been settled by judgment in a previous case, under the doctrine of res judicata the same question could not be tried a second time between the same parties.

2. Palau Land Law-Clan Ownership-Use Rights

Where previous judgment limited use of clan land to Present users and defendant was a user he could build a home on it and live in it, but if he decided not to use the land and the house built on it for himself, or in the event he died, then the use of the land and the house would be decided by the clan and the defendant's assigns or heirs would have no claim to it.