

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.

Assessor: JUDGE PABLO RINGANG
Interpreter: SINGICHI IKESAKES
Counsel for Plaintiff: MOSES MOKOLL
Counsel for Defendant: WILLIAM O. WALLY

TURNER, *Associate Justice*

RECORD OF HEARING

At the pre-trial conference held before D. Kelly Turner, Associate Justice, at Koror, Palau Islands, on April 16, 1968, defendant moved to dismiss the action, and after hearing on the motion, substituted a motion for summary judgment on the ground there was no disputed material issue of fact and that he was entitled to judgment as a matter of law based upon the rule of *res judicata*.

Defendant's motion was based upon the agreed facts adduced at the hearing and that as a matter of law, the issues in this case had previously been decided in *Bsechel Uchelbil and Sumang Yechadrechemai v. Joseph, Iroror, Kliu, and Baules Sechelong*, Palau District Civil Action No. 263, which held, among other matters that:-

1. The land Eklbai is clan land; and
2. The "present user" of the land "is to be permitted to continue such use as long as he or she desires".

FINDINGS OF FACT

1. Defendant Joseph, who also was a defendant in Civil Action No. 263, together with the defendant Kliu, were "present users" of the land Eklbai at the time of the judgment in Civil Action No. 263, on September 9, 1963.

2. That the defendant Joseph is a member of the Eklbai Clan.

3. That construction of a cement block home by the defendant, for his own use on the land in question is within the meaning of "use" contemplated in Civil Action No. 263.

4. That the land in question, Eklbai, is clan land subject to the right of the defendant to use it.

OPINION

[1] The right of the defendant to use the land "as long as he wishes" has been settled by the judgment in the previous case. Under the doctrine of res judicata, the same questions may not be tried a second time between the same parties. *Sintau Wang v. RosangSungiyama*, 3 T.T.R.367.

[2] The judgment in the previous case limited the use of this clan land to "present users" and under the findings of fact the defendant was such a user. The defendant may build a home on the land and live in it. If, however, the defendant decides not to use the land and the house built on it for himself, or in the event he dies, then use of the land and the house shall be decided by the clan, and the defendant's assigns or heirs will have no claim to it.

JUDGMENT

It is ordered:

Defendant shall have and hereby is granted judgment against the plaintiff and those he represents.

Defendant is awarded such costs as he may be entitled to under the law upon filing claim for them.