

YARUTERU, Plaintiff

v.

ANGAR, SITANIS, and that Lineage which
is a part of INANIFOT Clan, and which is headed
by Sitanis, Defendants

Civil Action No. 367

Trial Division of the High Court

Truk District

May 14, 1968

Action to recover purchase price paid for land on Moen Island in Truk Atoll. The Trial Division of the High Court, E. P. Furber, Temporary Judge, held that when head of lineage sold lineage land without approval purchaser may retain possession until he has been repaid in full or the head of the lineage dies.

Truk Land Law-Lineage Ownership--Sales

Where the head of the lineage agreed to the sale of lineage land, within lineage approval, and accepted payments toward it the purchaser may retain possession until he has been repaid in full or the head of the lineage dies, whichever happens first.

FURBER, *Temporary Judge*

FINDING OF FACT

The defendant Sitanis agreed to the attempted sale of the land in question and received a total of \$28.00 from the plaintiff Yaruteru toward the proposed purchase price of the land, including the trees on it.

OPINION

The foregoing finding of fact covers the only disputed question of fact involved in this action, which concerns a piece of land on Moen Island in Truk Atoll.

It is admitted that the defendant Angar undertook to sell the land in question to the plaintiff, Yaruteru, but that the land is lineage land and the lineage did not con-

sent to the sale. The plaintiff is in possession of the land under a temporary order for immediate possession issued by the Truk District Court, but is ready to return possession to the lineage if he is repaid the \$38.00 he admittedly paid Angar toward the purchase price and the \$28.00 he says, and the court has found, he paid Sitanis.

It was agreed at the beginning of the trial that Nikko and Kinota, referred to in the "Memorandum of Pre-Trial Conference and Order" as if alive, have in fact died, and that the land concerned is not the whole of Fanifou, but just the part marked "*Fanifou ewe mior fitkuku on*" on the sketch submitted by the plaintiff and now attached to the record of civil trial.

The only troublesome question of law involved is as to the right to possession and use pending the repayment of the money paid toward the purchase price. Since the defendant Sitanis, as head of the lineage, agreed to the sale and accepted payments toward it, the court considers that the plaintiff may retain possession until he has been repaid in full or Sitanis dies, whichever happens first, and that the plaintiff's possession and use of the land should be considered as off-setting any interest on the sums due up to the date of this judgment. The judgment itself however will bear interest at 6% a year in accordance with Trust Territory Code, Section 282.

JUDGMENT

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

1. The plaintiff Yaruteru, who lives in Peniesene Village on Moen Island, Truk District, shall recover of the defendant Angar, who lives in Penia Village on said Moen Island, the sum of thirty-eight dollars (\$38.00).

2. The plaintiff Yaruteru shall recover of the defendant Sitanis, who lives in said Peniesene Village, the sum of twenty-eight dollars (\$28.00).

3. As between the parties and all persons claiming under them, the plaintiff Yaruteru may retain possession and use of the part of the land known as Fanifou, marked "*Fanifou ewe miorfitkuku on*" on the Plaintiff's Sketch attached to the record of civil trial, which land is located in said Peniesene Village, until either said sums totalling sixty-six dollars (\$66.00) are paid to the plaintiff in full with interest at 6% a year from the date of this judgment, or the defendant Sitanis dies, whichever happens first. Upon such payment in full or upon Sitanis' death, whichever happens first, the plaintiff Yaruteru shall promptly surrender possession to the lineage now headed by Sitanis within the Inanifot Clan.

4. This judgment shall not affect any rights-of-way there may be over the land in question.

5. The plaintiff Yaruteru is awarded such costs, assessed against the defendant Sitanis, as the plaintiff Yaruteru may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code provided he files a sworn itemized statement of them within thirty days of the entry of this judgment; otherwise only \$3.50 costs will be allowed, assessed against the defendant Sitanis, to cover the filing and trial fees.