

In the Matter of the Estate of
MARIANO DE LEON GUERRERO, Deceased

Civil Action No. 221
Trial Division of the High Court
Mariana Islands District

May 15, 1968

Action for distribution of decedent's lands. The Trial Division of the High Court, E. P. Furber, Temporary Judge, held that under custom on Saipan where a man inherits land from his father and dies leaving a widow and children, the widow is not entitled to any of the land as a matter of right.

Chamorro Custom-Widow's Rights

Under Chamorro custom where a man inherits land from his father and dies leaving a widow and children, the widow is not entitled to any of the land as a matter of right.

FURBER, *Temporary Judge*

FINDING OF FACT

1. The petitioner Ana G. Fajardo has not sustained the burden of proving that she is entitled to all the lands of the deceased under an alleged will.

2. About June 1931 Uehara Uto, a Japanese national, and the deceased, acting for his father Joaquin De Leon Guerrero, made an oral agreement that Uehara Uto, in return for 1200 yen paid the deceased, might occupy and use lot 1890 until he died or moved away. This agreement was terminated by Uehara Uto's death during World War II.

3. The Government of the Trust Territory of the Pacific Islands by Exchange Agreement No. 111 of April 30, 1954, undertook to convey to Francisco S. Pangelinan, representing the heirs of Jose W. Pangelinan deceased, as Land Trustee, said lot 1890 as well as other land and by Grant of Public Domain Lands dated April 16, 1956, pur-

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ported to convey said lot to the heirs of Jose W. Pangelinan, deceased represented by Francisco S. Pangelinan as Land Trustee; the description used in said deed, however, includes about 5,086 square meters of lot 1888, but the Government had no rights of ownership in either said lot 1890 or said lot 1888.

4. The petitioner Ana G. Fajardo has for some years acquiesced in her brother Francisco C. De Leon Guerrero's using the deceased's former land at the Golf Course (being lot 1742) and he has recently acquiesced in the petitioner using said lots 1888 and 1890 and he joined in executing a mortgage of a substantial part of lot 1888 to the Economic Development Fund, all the proceeds of which went to the petitioner and her husband.

5. To divide the deceased's lands as follows will give each of his two children land of the same value, disregarding the mortgage on a substantial part of lot 1888:-,

To Ana G. Fajardo:-

Lots 1888 and 1890 at Gualo Rai, and
Lot 16 in Block 81 in Chalan Kanoa Village.

To Francisco C. De Leon Guerrero : -

Lot 1742 at the Golf Course.

OPINION

This action involves the distribution of lands on Saipan, Mariana Islands District, owned by heirs of a Chamorro resident of Saipan who died in 1950, leaving a widow, a daughter and a son.

The daughter originally petitioned for the transfer to her of two lots (Nos. 1888 and 1890) in Gualo Rai. The son filed objection that an incomplete distribution was being sought and asked for an equitable distribution of all the lands owned by the heirs of the deceased. At Pre-Trial Conference it was agreed by these parties that the

deceased has also left lot 1742 at the Golf Course and a lot in North Garapan which had been exchanged with the Government for Lot 16 in Block 81 in Chalan Kanoa Village by Francisco as Land Trustee, to which exchange the petitioner raises no objection. The petitioner then, however, claimed she was entitled to all the lands of the deceased under an alleged written will dated "29-2-1948". A trial of the limited issue of whether she was so entitled, resulted in a determination that she had not sustained the burden of proving she was so entitled.

The Mariana Islands District Land Title Officer had filed a report that the Land Office records showed lot No. 1890 was the property of the Government of the Trust Territory of the Pacific Islands, but at the above-mentioned Pre-Trial Conference, it appeared that the District Administrator of the Mariana Islands District, alleged that this lot had been used by the Government in the Military Retention Exchange Program and was owned by the heirs of Jose W. Pangelinan represented by Francisco S. Pangelinan as Land Trustee. A special notice was accordingly issued to said Pangelinan heirs in response to which Francisco S. Pangelinan, as such Land Trustee, filed an answer objecting to the distribution of lot 1890. A copy of the special notice to the Pangelinan heirs was also sent the Attorney General of the Trust Territory. When the action was reached for further Pre-Trial Conference, with trial to follow immediately if that could be fairly done, John D. McComish, Esquire, District Attorney of the Trust Territory, arose in the spectators' section of the courtroom and stated that he did not wish to appear in this action either specially or generally but that he wanted all concerned to know he was present and was prepared to assist counsel for the Pangelinan heirs if such assistance was desired.

Trial was then had on the objection of Francisco S. Pangelinan as Land Trustee, resulting in the objection being overruled on the ground that the Government had no title to convey in either lot 1888 or 1890. Counsel for Mr. Pangelinan introduced no evidence in support of the Pangelinan heirs' title except the Exchange Agreement No. 111 set forth in the third finding of fact above, his quit-claim deed to the Government in accordance with that agreement, and the Grant of Public Domain Lands referred to in that finding of fact.

The theory in support of the Pangelinan objection was that Uehara Uto had bought lot 1890 from the deceased on June 8, 1931, and that since he was an Okinawan this land had passed to the Government as alien property. The principal indications shown of any such sale were that one Okada Yoshio had filed an unsworn "Statement of Death or Disappearance of Owner or Lessee" claiming lot 1890 on behalf of Uehara Uto and that the deceased had not claimed lot 1890. According to the evidence no hearing was ever held or determination made on Okada Yoshio's claim on behalf of Uehara Uto and it was not the practice at that time to check such claims with the alleged grantor.

The claim filed by the deceased in 1948, introduced in evidence, appears not to be filled out in the same writing as his signature which is in ink. Against "Plot # " was written "I forgate"; that has been crossed out in ink and 3000 written beside it in ink; that in turn has been crossed out in pencil and 1888 written in, in pencil. There is uncontradicted testimony that both a German document with Japanese notations on it and a Spanish document were submitted with this claim showing a much larger area involved than just lot 1888. Furthermore the court understands that it was not until September 1931 that Japanese Civil Administration Office Ordinance No.3 was

amended by South Seas Bureau Ordinance No. 11 so as to permit sales of land by "natives" to any "Japanese or foreigners" and then only with the sanction of the Director of the South Seas Bureau and registration of the contract of sale on written application presented within 30 days after the sanction was granted. No basis at all has been shown for including any of lot 1888 in the purported grant to the Pangelinan heirs. This appears to have been a pure mistake.

On all the evidence the court holds that neither the Exchange Agreement nor the Grant of Public Domain Lands mentioned in the third finding of fact passed any rights in either lot 1890 or lot 1888.

Since the mortgage on part of lot 1888 was taken out for the benefit of the petitioner, it is believed that, as between her and her brother, this should be treated as her obligation and not be deducted from the value of the land in figuring a fair distribution.

After the Pangelinan claim was overruled, counsel for the deceased's daughter and that for his son submitted the question of distribution without further evidence. The petitioner argued strongly that their mother be given one hectare of the land at the Golf Course. The court considers it clear, however, under Chamorro custom on Saipan that where as here a man inherits land from his father and dies leaving a widow and children, the widow is not entitled to any of the land as a matter of right.

The court therefore holds that any grant from the lands in question to the widow must depend on the generosity of one or both of the children.

JUDGMENT

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

1. The lands in question, all located on Saipan, Mariana Islands District, are hereby divided and awarded as follows:-

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a. To the petitioner Ana G. Fajardo, who lives in said Saipan, as her individual property free of the claims of any other heir of Mariano De Leon Guerrero, deceased:-

Lots Nos. 1888 and 1890, Garapan District; and Lot 16, Block 81 Chalan Kanoa Village, said Lot 16 being the land given the heirs of the deceased by Exchange Agreement No. 428 of October 23, 1954.

b. To Francisco C. De Leon Guerrero, who also lives in said Saipan as his individual property free of the claims of any other heir of Mariano De Leon Guerrero, deceased:-

Lot No. 1742 Garapan District, being the land determined by the Title, Officer of then Saipan District's Determination of Ownership No. 776, dated January 15, 1954, and filed with the Clerk of Courts for the then Saipan District on January 19, 1954, to be the property of, the heirs of Mariano De Leon Guerrero, represented by Isabel C. Guerrero, and Francisco De Leon Guerrero as Land Trustees.

2; In accordance with Trust Territory Code, Section 283, after the time for 'appeal herefrom' has expired without notice of appeal being filed or after any appeal duly taken has been finally determined, this judgment shall operate to transfer ownership of said lands from the heirs of Mariano De Leon Guerrero, deceased to Ana G. Fajardo and Francisco C. De Leon Guerrero as above specified, as their individual properties when a copy hereof, certified by the Clerk of Courts or any judge of this court, is recorded in the Office of the Clerk of Courts for the Mariana Islands District.

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

4. Said Ana G. Fajardo is to hold said Francisco C. De Leon Guerrero harmless from any liability under the mortgage in which he joined covering a substantial part of said lot 1888.

5. The District Land Title Officer for the Mariana Islands District is requested to note this judgment in his records.

6. No costs are assessed against any party.

LLECHOLECH RECHEMANG, Plaintiff

v.

JOSEPH BELAU, Defendant

Civil Action No. 380

Trial Division of the High Court

Palau District

May 20, 1968

Action to determine title to land in Melekeiok Municipality, Palau District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that purchase of the land in question created a joint or family tenancy in the land and the sole surviving brother of the decedent became sole owner of the property, thus the decedent's adopted son did not inherit under section 801 of the Palau District Code as that section does not apply to joint tenancies.

1. Palau Custom-Funeral Meeting

It is customary that the funeral meeting of relatives of the decedent, his surviving spouse and children, when adopted, which is conducted by family, lineage and clan male elders, affirm any dispositions, or promises of gifts made by the decedent during his last illness, and that they agree upon the distribution, in accordance with rules prescribed by custom, of the decedent's property not disposed of by him.

2. Palau Land Law-Individual Ownership--Decedent's Estates

Section 801 of the Palau District Code impinges upon the funeral meeting custom by providing that lands held in fee simple by an individual which are not disposed of by will shall be inherited, first, by the "oldest living male child of sound mind, natural or adopted".