

YOICHI, RUTH, TORIS ARUKUOS and PIULA, Plaintiffs

v.

AMAS, Defendant

Civil Action No. 325

Trial Division of the High Court

Truk District

July 17, 1968

Action to determine title to lineage land on Uman Island. The Trial Division of the High Court, Joseph W. Goss, Temporary Judge, held that while ordinarily lineage land remains in the lineage, the holder of such land may make a gift of part of the property if no adult member of the lineage objects to such gift.

1. Truk Land Law-Lineage Ownership

Ordinarily lineage land remains in the lineage after the holder's death rather than passing to his children.

2. Truk Land Law-Lineage Ownership-Transfers

Where there was no objection at the time a holder of lineage land gave half of such land to his children, or within a reasonable time thereafter, by the adult members of the lineage, the gift was valid.

GOSS, *Temporary Judge*

FINDINGS OF FACT

1. The land Nefouken, Sapotiw Village, Uman Island, was lineage land administered by Manew. Upon Manew's death, the land was administered by his sister's son, Urien.

2. Since Japanese times the land has been worked by Urien, his sisters, and their successors.

3. The Japanese officials paid Urien for trees which they cut down on the property.

4. At the end of the war Urien and his sister, Piula, took possession of the buildings evacuated by the Japanese. This was done without objection from the defendant Amas.

5. Papier, who was the husband of Urien's sister, Ruth, paid the tax in Navy times for the coconut trees on the land Nefeuken.

6. Defendant made no objection to any of the above and did not claim the property until after Urien's death.

7. Urien's sisters, Plaintiffs Ruth and Piula, Ketepu the son of Arukuos, and Itoko the daughter of Toris, were present when Urien made his will dividing the land with one-half to his sisters Ruth, Arukuos, Piula, and Toris; and one-half to his children. Neither Itoko nor Ketepu objected to the gift to Urien's children, nor did their mothers object within a reasonable time thereafter.

OPINION

[1, **2**] This case concerns the claims of Yoichi, representing the children of Urien, and Urien's sisters Ruth, Toris, Arukuos, and Piula, to the land Nefouken, Sapotiw Village, Uman Island. All plaintiffs claim through Urien. Yoichi claims that Urien gave one-half of Nefouken to his children. Defendant's position is that the land was owned by his mother Keicho, and not by Urien. The evidence presented clearly supports plaintiffs' claim that the land Nefouken was lineage land once administered by Manew and then by his sister's son, Urien. As such, it would ordinarily have remained in Urien's lineage after his death, rather than passing to his children. Instead Urien attempted to divide Nefouken by making an oral testamentary gift of one-half of the property to his children. Two of his sisters, and also children of his other two sisters, were present when Urien made the will. There was no objection at the time, and there is no indication in the record of any objection within a reasonable time thereafter. Urien's will is therefore deemed consented to by the only adult members of the lineage referred to in the record, and the gift is held to be valid. Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 168. *Fred v. Airinios*, 3 T.T.R. 274. *NuBia v. Sak*, 2 T.T.R. 446.

With reference to the Order for Survey entered herein on April 11, 1967, at such time as the survey is completed the case may be reopened, and the parties may stipulate that a Judge of the High Court include the survey, as a part of the judgment herein.

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

1. As between the parties and all persons claiming under them the land Nefouken located in Sapotiw Village, Uman Island, is owned as follows:-

One-half by the lineage of Ruth, Toris, Arukuos, and Piula.

One-half by Urien's children, represented by Plaintiff Yoichi.

Defendant Amas has no right; title, or interest in the land.

2. Time for the completion of the survey previously ordered herein is extended to sixty days from the date this judgment is entered. The survey will show the location of the one-half of Nefouken owned by Urien's children and the one-half owned by the lineage of his sisters. At such time as the survey is completed and agreed to by the parties as provided in said order, this case may be reopened and a Judge may on stipulation of the parties incorporate the survey into this judgment.

3. This judgment will not affect any rights-of-way there may be over, across, or upon the land.

4. No costs are assessed against any party.

5. The clerk is instructed to have this Judgment Order docketed, translated, and furnished to counsel, to the Headquarters Land Management Officer, and to the District Land Management Officer.

6. Time for appeal herein is extended to and including a date sixty days from the date this judgment is entered.