

NELI MWOKIN, Plaintiff
v.
SULI SAIRENIOS, Defendant
Civil Action No. 240
Trial Division of the High Court
Ponape District
August 14, 1968

Action to determine ownership of land on main island of Pingelap Atoll. The Trial Division of the High Court, Harold W. Burnett, Associate Justice, held that evidence was insufficient as a matter of law to establish oral wills purporting to dispose of land and that where private rights in land were established in period of Japanese administration, court would not, without more, upset such rights.

1. Ponape Custom-Pingelap-Inheritance

According to Pingelap custom, a child may inherit land from his or her father even though the mother of the child has left the father, provided that the child remains and works with the father.

2. Ponape Custom-Pingelap--Inheritance

According to Pingelap custom, if a child leaves the father and goes to live with the mother who has left the father, he does not inherit land from the father in the absence of clear evidence of a contrary intent.

3. Wills-Oral-Evidence

The testimony of an interested party that he or she has heard about an oral will from the beneficiary of that will, which was allegedly made in the absence of witnesses, is, without other evidence, insufficient as a matter of law to meet the burden of establishing the existence of a will.

4. Ponape Custom-Pingelap--Adoption

Under Pingelap custom an adoption is valid where there is consent by both the real and adopting parents, and registration of the adoption is not essential to its validity.

5. Ponape Land Law-Pingelap-Transfers of Property

There is no reason under Pingelapese custom why an adoptive mother could not transfer ownership of land to her adopted son.

6. Equity-Laches

Where there is a long and unexcused delay in bringing an action and such delay causes an unreasonable burden on the defendant, the court will decline to remedy any alleged wrong done to the plaintiff on the ground of laches.

7. Ponape Land Law-Pingelap-Law Governing

Although the land law on Pingelap is unique, the principles controlling rights established and persisting during a former administration are of Trust Territory-wide application, thus private rights in land which were clear under the Japanese administration should be equally clear under the present administration unless something very specific has happened to change them since the end of the Japanese administration.

Reporter:

JOANES EDMUND

Counsel for Plaintiff:

KAPUS DIOFILOS

Counsel for Defendant:

ROBERT SAIRENIOS

BURNETT, *Associate Justice*

This case comes before the High Court upon a Master's Report, the Honorable Carl Kohler, Presiding Judge of the Ponape District Court, acting as Master on Pingelap Island.

Neither party presented written or oral argument in support of or in opposition to the Master's Report.

OPINION

Iona, the mother of the plaintiff Neli and wife of Tomati, deserted Tomati taking Neli with her, and Tomati later remarried. Prior to his departure to Nauru in the Gilbert Islands for an extended stay, Tomati allegedly made an oral will in which he left his lands with his uncle to care for and then provided that, upon his death, the lands should go to Sules; Tomati died in Nauru and the uncle gave the lands to Sules. Upon Sules' death, the land was inherited by her daughter Sulia who, in turn, adopted Isiro who presently holds the land with defendant Suli, his real mother, and, in accordance with Pingelap custom, the adopted sister of Sulia. Neli Mwoikin, the real daughter of the deceased landowner Tomati, brought the action to recover a parcel of land called Perseno and a *taro* patch containing ten rows called Pwopereu, both located on the

main island of Pingelap Atoll. The land is held by the family and descendants of Sules, the deceased younger sister of Tomati, who claimed it originally under an oral will.

[1,2] According to Pingelap custom, a child may inherit land from his or her father even though the mother of the child has left the father, provided that the child remains and works with the father. If the child leaves the father and goes to live with the mother, he does not inherit land from the father in the absence of clear evidence of a contrary intent. Since Neli left her father, she would not be entitled to inherit the land as a matter of right.

Both parties in this dispute have alleged oral wills in which Tomati is supposed to have devised the land to them or their forbears. With respect to oral wills, this court has held in a decision involving land on Ngatik Atoll:-

"The law there with regard to wills is entirely different from that on Ponape Island and was not affected by the German land reform. The last instructions that can be proved were made voluntarily by the owner while he or she was of sound mind will control." *Toter v. Ioanes*, 1 T.T.R. 160.

In that case there was considerable testimony affirming the existence of the will, including the testimony of the Municipal Secretary who had recorded the will in a municipal registration book which was since destroyed. The only evidence presented in this case with respect to the will alleged by the plaintiff which was supposed to have devised the land to her, is the testimony of her daughter who said she had heard about the will from her mother who was the beneficiary. The court holds that this evidence is insufficient to establish the existence of an oral will.

[3] Although the Master's Findings of Fact included the finding of an oral will, devising the land to Sules, there were only two witnesses who testified to this will. (One witness was the present possessor of the land, who testi-

fied that her mother, the alleged beneficiary, had told her about the will which was made in the absence of witnesses. The other witness was a relative who had heard from his father who, in turn, had heard from the beneficiary about the will.) The court holds that the testimony of an interested party that he or she has heard about an oral will from the beneficiary of that will, which was allegedly made in the absence of witnesses, is, without other evidence, insufficient as a matter of law to meet the burden of establishing the existence of a will. In other words, the court will recognize neither of the two alleged contradictory wills in this case.

[4, 5] There was some question during the proceedings whether Isiro was an adopted child of Sulia since the adoption was not recorded in the municipal registration book. Under Pingelap custom an adoption is valid where there is consent by both the real and the adopting parents, and registration of the adoption is not essential to its validity. The required consents having been made, Isiro is the legally adopted child of Sulia. There is no reason under Pingelapese custom why Sulia could not transfer ownership of land to her adopted son.

[6] The defendant's grandmother (by adoption), Sules, the defendant's mother (by adoption), and the defendants Isiro and Suli Sairenios have held the land in dispute since 1918. The plaintiff knew in 1918 that the lands were awarded to Sules by Iakana, the uncle of her older brother. Although the plaintiff privately requested that the lands be returned to her, she waited for forty-six years before bringing an action in the court. Over such a period of time witnesses of any alleged oral will will die and memories fade. Evidence is destroyed or lost. The burden placed on the defendant of showing the validity of his ownership of the land becomes intolerable. For this reason, where there is a long and unexcused delay in bringing an action and

such delay causes an unreasonable burden on the defendant, the court will decline to remedy any alleged wrong done to the plaintiff on the ground of laches. See 27 Am. Jur. 2d, Equity, § 170.

[7] Finally, however bare the thread tracing the ownership from Tomati to Sules in 1918 may be today, the fact is that the right of Sules and her descendants in the land was recognized and persisted throughout the Japanese administration. Although the land law on Pingelap is unique, the principles controlling rights established and persisting during a former administration are of Trust Territory-wide application. The following statement of the court in a decision involving land on neighboring Mokil Island is pertinent to this case.

"Further, in this action, an attempt is being made to upset a situation which continued during most, if not all, of the period of the Japanese Administration of Mokil. The inference is strong that neither plaintiff felt there was anything he or she could do to upset the disposition in question during the period of the Japanese Administration, and that they are now trying to appeal to some more favorable principle of law of the present administration. Any such claim has no merit. Private rights in land which were clear under the Japanese Administration should be equally clear under the present administration, unless something very specific has happened to change them since the end of the Japanese Administration." *Orijon v. Etjon*, 1 T.T.R. 101.

Mention should be made of the reference, in testimony of witnesses for the plaintiff, to the dispute having been brought before a police official in Japanese times, and a decision rendered favorable to the defendant. The testimony was ambiguous and inconclusive, and would permit no finding that any determination was made by an official with authority to do so. No further inquiry need be made since, if it were so established, the plaintiff would be effectively foreclosed by that determination, which would not be subject to review by this court in the absence of a

showing of fraud or gross error. See *Jatio8 v. Levi*, 1 T.T.R. 578.

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

As between the parties and all persons claiming under them:-

1. Isiro, the real son of defendant Suli Sairenios, and adopted son of Sulia, daughter of Sules, is the owner of the land on Pingelap Atoll known as Perseno and of the ten rows of *taro* known as Pwopereu.

2. Suli, the real mother of Isiro, and adopted sister of Sulia, shall have the right of possession and control during the minority of Isiro.

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

4. Time for appeal is extended to October 14, 1968.

IN THE MATTER OF THE PETITION FOR DISTRIBUTION
OF THE ESTATE OF JUAN P. FAISAO, Deceased

By CONSOLACION K. FAISAO, Widow and Petitioner

Civil Action No. 190

Trial Division of the High Court

Mariana Islands District

August 19, 1968

Action for title determination. The Trial Division of the High Court, E. P. Furber, Temporary Judge, held that the land in question passed to deceased's surviving brother subject to a trust agreed upon between the parties.

Marianas Land Law-Trusts

Where deceased agreed with his brother, having no sister, that he would hold certain lands for the benefit of all their mother's descendants, upon his death -the land passed to the surviving brother subject to the trust assumed by the deceased.