

PILIEM NORMAN, Plaintiff
v.
ANGKEL ESKAR, Defendant
Civil Action No. 314
Trial Division of the High Court
Ponape District
December 17, 1968

Action to determine rights to homestead lands. The Trial Division of the High Court, Harold W. Burnett, Associate Justice, held that right to succession to homestead land is controlled by statute and where settler had not complied with the statutes regarding such succession the homestead land reverted to the government upon the death of the settler.

1. Homesteads--Succession

In the absence of statutory provision there is no descent of, or succession to, private interests in the United States or state lands where such interest is not perfected and a patent issued before the entryman dies.

2. Homesteads-Succession

Except where specific statutory provision is made for inheritance and continuation of the homestead, all rights of the settler are lost by his death.

3. Homesteads-Succession

There can be no succession where there is clear and unambiguous statutory direction as to the manner in which a homesteader might designate his successor except upon full compliance with that direction. (T.T.C., Sec. 958)

4. Ponape Land Law-Japanese Supervised Lease-Succession

The rights of a lessor under a Japanese lease are lost upon death and cannot be inherited.

Counsellor Plaintiff:
Counsel for Defendant:

YASUWO JOHNSON
YOSTER CARL

BURNETT, *Associate Justice*

This action comes before the court upon setting for trial. The dispute involves the land Pohnpillap, Uh Municipality, Ponape District.

At pre-trial conference held March 7, 1968, the parties stipulated that the land in question is the property of the Trust Territory Government, that Sindaro Essang (also known as Sindaro Eskar) had occupied the land under Homestead Entry Permit No. 12, but that no deed had ever been granted by the Trust Territory Government. Plaintiff claims pursuant to a will dated October 2, 1966, while defendant claims right of succession as an adopted son of Sindaro Eskar.

In further conference on September 27, 1968, counsel were advised that they would be required to prove on trial whether the conditions of the homestead law, Section 950 et seq., Trust Territory Code, had been complied with by Sindaro Eskar, and particularly whether Sindaro Eskar had ever made a designation of a successor in accordance with Section 958 of the Code.

Upon commencement of trial, the parties further stipulated that no deed of conveyance had been issued, nor certificate of compliance executed by the District Administrator in accordance with Section 957, and that no designation had been filed by the deceased pursuant to Section 958.

Defendant thereupon moved for dismissal on the ground that no title could be shown in Sindaro Eskar from whom both parties claim right of succession.

[1] I conclude that, failing proof of compliance with the conditions established by the homestead law, no title or claim of title had been perfected in Sindaro Eskar at the time of his death, and that consequently no rights remain which can pass by inheritance or otherwise to either party. See: 23 Am. Jur.2d, Descent and Distribution, § 175:—

"However, in the absence of statutory provision, there is no descent of, or succession to, private interests in the United States or state lands where such interest is not perfected and a patent

issued before the entryman dies." Citing *Hall v. Russell*, 101 U.S. 503, 25 L.Ed. 829.

[2, 3] Except where specific statutory provision is made for inheritance and continuation of the homestead, all rights of the settler are lost by his death. Certainly there can be no succession where there is, in fact, clear and unambiguous statutory direction as to the manner in which a homesteader might designate his successor except upon full compliance with that direction. See: Section 958, Trust Territory Code, which provides in part:-

" . . . all rights under the permit shall inure to the benefit of such person or persons, if any, as the homesteader shall last designate in writing filed in the District Land Office. In the event no designation has been made by the homesteader as provided herein, then the permit shall be revoked, and the land together with all appurtenances thereto, entered thereunder, shall revert to the Government."

[4] Mention is also made, in the original pre-trial order, of the fact that, prior to the issuance of the Homestead Entry Permit, the land had apparently been held under a Japanese lease. This court has consistently held that rights of a lessor under such permission of the Japanese Government are, likewise, lost upon death and cannot be inherited. Thus, notwithstanding the obviously long occupancy of the property by the deceased, his right of occupancy never ripened into a title which he might dispose of, either by will or inheritance..

It is unfortunate that, as suggested by the plaintiff, it is unlikely that the homesteader was even aware of the requirements of the law in this regard, and thus did not take the required steps to perfect his entry. The court is not free, however, to substitute its judgment as to conditions under which title to government land should pass for those conditions and procedures established by law. The land here in dispute reverted to the government upon the

death of Sindaro Eskar; its present disposition is subject to the discretion of appropriate administrative officials of the Trust Territory Government, and not of this court.

Accordingly, the defendant's motion to dismiss must be and is hereby granted.

LUDWIKA SEDEK, ELPINA IKALAP and
MADILDE EUR, Plaintiffs

v.

LOFES ESEDEP and SEPIO BERMANIS, Defendants

Civil Action No. 285

Trial Division of the High Court

Ponape District

December 18, 1968

Request by counsel to withdraw from further participation in the case. The Trial Division of the High Court, Harold W. Burnett, Associate Justice, held that where counsel was allowed to withdraw normally the court would set the matter over for action at a future date, however, where changed factual allegations of party were completely at variance with those previously made the action should be dismissed without prejudice to the right of party to refile it if he chose to do so.

1. Civil Procedure--Withdrawal of Counsel

When counsel is permitted to withdraw, the court will ordinarily set the matter over for action at a future date, after his client has been given an opportunity to procure other counsel.

2. Civil Procedure--Generally

The judicial process, which includes both the pre-trial conference and the trial, is a search for truth, and a search for a just solution to what one must assume to be a legitimate controversy, and at no point is a party to an action to assert that which he does not know to be true, nor is the trial to be reduced to a guessing game, with the parties introducing the element of surprise through a sudden shift of factual stance.

Counsel for Plaintiffs:
Counsel for Defendants:

YOSTER CARL
HEINRICH IRIARTE