

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. The court can only look with suspicion upon the action of a party who firmly asserts a fact in support of his claim and then, on the morning of trial, elects to claim upon an entirely different basis.

I have, accordingly, determined that this action must be dismissed, without prejudice to the right of the plaintiffs to refile it if they choose to do so.

Plaintiffs were granted the right of possession by order of the Chief Justice, pending further order of the court. On the record it appears from the pre-trial order that the defendant Lofes Esedep claims title to the land in dispute as successor to his deceased mother who is the last registered owner of the land. He thereafter sold it to his co-defendant, Sepio Bermanis. Under the circumstances it is appropriate, and it is hereby ordered that possession of the land in dispute, known as Laulau No.5, Sokehs Municipality, Ponape District, shall be delivered to the defendant Sepio Bermanis.

GREGORIO LADORE, Appellant

v.

RAIS, Appellee

Civil Action No. 325

Trial Division of the High Court

Ponape District

December 23, 1968

Appeal from judgment of Ponape District Court. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that evidence supported District Court's finding and as there was no error in application of the law to such finding the judgment of the District Court would be affirmed.

1. Appeal and Error-Scope of Review

It is the primary function of an appellate court to deal with questions of law.

2. Appeal and Error-Scope of Review-Facts

Where there is any evidence from which the trial court might properly have drawn its conclusion as to the facts, that conclusion will not be disturbed on appeal.

BURNETT, *Associate Justice*

This is an appeal from judgment of the Ponape District Court, entered August 10, 1967, Civil Action No. 956.

Appellant, plaintiff, in the action below, alleged sale of a fishing net to the defendant appellee, who made only partial payment and thereafter left the net at the house of another where it was damaged. He sought payment in the amount of \$450.00, the alleged sale price.

The court found, contrary to the allegations of the plaintiff, that there was no contract of sale, but rather that the parties were engaged in a joint fishing venture. He found the damage to have resulted from joint negligence of the parties, and gave judgment to the plaintiff in the amount of \$25.00.

Appellant takes issue only with the findings of fact contained in the Judgment Order of the District Court, and points to no error of law on the part of the court.

[1,2] As correctly stated by counsel for appellee, it is the primary function of an appellate court to deal with questions of law. Where there is any evidence from which the trial court might properly have drawn its conclusion as to the facts, that conclusion will not be disturbed on appeal.

On the basis of the record herein, I cannot say that the findings of the trial court are contrary to the evidence. Consequently there being no error in application of the law to those findings, the judgment of the District Court must be, and hereby is affirmed.