

good cause for the action. There has been sufficient evidence from the defendant justifying his action.

Ordered, adjudged and decreed:—

1. That plaintiff shall be denied relief and may work the land on northern Ejej Island, Aur Atoll, only if and when assigned to do so by the *alab*.

2. That no costs are assessed.

ITPIK MARTIN, Appellant

v.

FRANCISCO MOREI, Appellee

Civil Action No. 52-73

Trial Division of the High Court

Palau District

March 18, 1974

Appeal from land commission determination. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that appellant's admissions to land registration team defeated his claim on appeal.

1. Real Property—Sales—Recording

Where owner of land sold it to two different persons and the first transfer agreement was recorded, second sale, as a matter of law, could not be sustained, because buyer was prevented by the transfer from being an innocent purchaser without notice of the prior sale.

2. Real Property—Sales—Contracts

Evidence supported land commission determination defendant owned property on basis of sale by plaintiff where plaintiff acknowledged to land registration team that he had entered into and signed the sale agreement and plaintiff had not challenged the agreement for nine years, until the land commission hearing.

Assessor:

SINGICHI IKESAKES, *Associate Judge,*
District Court

Interpreter:

AMADOR D. NGIRKELAU

Counsel for Appellant:

PRO SE

Counsel for Appellee:

PRO SE

TURNER, *Associate Justice*

The Palau Land Commission determined, after hearing held in accordance with law, that Lot 003 A 05, designated in the Japanese Administration Tochi Daicho as Lot No. 1605, garden parcel known as Chur, Arakabesan Island, Palau District, is owned by the appellee, Francisco Morei. The appellant asked for reversal of the Land Commission determination but did not specify in his Notice of Appeal nor in his appeal argument whether he or someone else should be determined to be the owner.

The question of ownership would be one of considerable significance if the court decided to reverse the Land Commission determination because the record clearly shows that Martin has sold the Land in question at least three times.

Martin sold the land to the Japanese government (the Navy) during World War II. Most of the land on Arakabesan Island also was sold to the former administration. After the War the land was taken by the Trust Territory Alien Property Custodian. For an explanation of this transfer from the Japanese to the Trust Territory see *Wasising v. Trust Territory*, 1 T.T.R. 14, and *Ngiraibiochel v. Trust Territory*, 1 T.T.R. 485.

The Trust Territory government by its Land Settlement Agreement and Indenture No. PL-129, dated September 5, 1962, undertook to return the land sold to the Japanese on Arakabesan Island to the clans and the clan members of the island. Martin claimed the parcel in question by virtue of this transfer. There were two adverse claimants to Martin. The Land Registration team ruled against them and in favor of Martin.

The determination, according to the Commission record, was based upon the fact Martin was registered in the Tochi Daicho as individual owner and that no objections were made against the listing at the time of the Japanese survey

during 1938–1941. This court has held many times that a Daicho listing establishes prima facie ownership and that clear and convincing proof is required to overcome this presumption. *Johanes v. Mechol*, 4 T.T.R. 201. *Owang Lineage v. Ngiraikelau*, 3 T.T.R. 560. *Osima v. Rengiil*, 2 T.T.R. 151. The record shows the contestants of Martin's claim did not overcome the Daicho listing. Because there was no appeal from this determination the first part of the Commission determination necessarily is affirmed.

The next question confronting the commission, after the initial determination that Martin was the one time owner of the land, involves the issue on appeal. Martin sold the land to appellee by written agreement dated February 28, 1963, and recorded with the Clerk of Courts.

[1] Martin sold the same land to George Ngirarsaol for \$1,000 on May 22, 1971. Ngirarsaol appeared before the registration team to claim the land but did not appeal the determination in favor of Morei. It is apparent from the record that the sale to Ngirarsaol cannot be sustained as a matter of law. Ngirarsaol cannot claim as an innocent purchaser without notice of the prior sale to Morei because of the recordation of the transfer agreement. *Rudimch v. Chin*, 3 T.T.R. 323.

The double sale by Martin is similar to the facts in *Kaminanga v. Sylvester*, 5 T.T.R. 312 and on rehearing at 5 T.T.R. 341. It also is noted, for whatever guidance it may give to Ngirarsaol, that this court held in the *Kaminanga* case that the second buyer was entitled to recover the purchase price paid to the seller.

Appellant's appeal was founded upon two propositions: (1) that the Land Commission determination was not supported by the evidence and (2) that the sale agreement to Morei was invalid because the buyer did not meet his obligation under it. Appellant said, in effect, there was a failure of consideration.

[2] Both propositions are summarily rejected. Appellant acknowledged to the Land registration team that he entered into the sale agreement and that he signed it. Furthermore, he did nothing to abrogate or set the agreement aside for nine years until the Land Commission hearing, except that eight years after the first sale he purported to sell it again. The Land Commission properly upheld the sale to the appellee.

As far as the alleged failure of appellee to perform under his purchase contract, it is clear the appellant contrived the argument without any basis in fact. Appellant admitted at the appeal hearing that the appellee had done all things required by the purchase contract, including performing services for appellant and paying money to the seller. Appellant completely failed to support any grounds for appealing the Commission determination. Accordingly, it is

Ordered, decreed and adjudged that the determination of the Palau District Land Commission that Francisco Morei is the owner of Lot 003 A 05, Tochi Daicho designation No. 1605, located on Arakabesan Island be and the same hereby is affirmed and that a certificate of title shall issue in accordance with the law.

GILBERT U. DEMEI, Plaintiff

v.

FRANCISCO SUNGINO, Defendant

Civil Action No. 586

Trial Division of the High Court

Palau District

March 18, 1974

Auto negligence action in which defendant raised last clear chance doctrine issue. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held defendant had last clear chance where plaintiff passed auto in plaintiff's