

ASAO ASANUMA, Plaintiff
v.
PIUS and JOAQUIN A. FLORES, Defendants

Civil Action No. 130

Trial Division of the High Court

Palau District

July 31, 1958

Action to determine title to land in Koror Municipality. Plaintiff purchased land in question from defendant Flores, in good faith and without knowledge of defendant Flores' agreement with defendant Pius, his "brother under the custom" to sell back to Pius the land and improvements thereon for agreed sum. The Trial Division of the High Court, Chief Justice E. P. Furber, held that plaintiff acquired full title to land free of Pius' claims and that, in accordance with Palau customary law, defendant Flores is liable to defendant Pius for damage caused him by breach of obligations under custom and of their previous agreement.

1. Palau Land Law—Individual Ownership

Since concepts of "individual land" and transfer of land by written instrument are foreign to Palau custom, general principles of land transfers applied by administering authorities who introduced concepts, rather than Palau custom, will be used in determining ownership of land.

2. Real Property—Sales—Bona Fide Purchaser

Where seller in Palau Islands gives buyer clear evidence of full ownership of land, and latter buys land on that evidence in good faith and for value paid, without notice of seller's prior oral agreement with third party to sell same land to him, first buyer acquires full title to land free of third party's claims.

3. Real Property—Sales—Bona Fide Purchaser

Transfer of or encumbrance upon real estate or any interest therein, other than lease for term not exceeding one year, is not valid as against subsequent purchaser or mortgagor of same real estate who buys in good faith for valuable consideration without notice of prior transfer, if transfer to subsequent purchaser is recorded first. (T.T.C., Sec. 1023)

4. Palau Custom—Family Obligations—"Brothers Under the Custom"

Under Palau custom, one altercation and beating is insufficient to terminate relationship of "brothers under the custom."

5. Palau Custom—Family Obligations—"Brothers Under the Custom"

Under Palau custom, where party attempts to get from his "brother under the custom" same price for real estate for which he was ready to sell to outsider, actions are entirely inconsistent with party's obligation under such customary law.

6. Palau Custom—Family Obligations—“Brothers Under the Custom”

Under Palau custom, party’s “brother under the custom” is entitled to preferential treatment of at least five to ten percent in transaction for sale of land by party.

7. Palau Custom—Family Obligations—“Brothers Under the Custom”

Under Palau custom, after claiming and receiving advantages of relationship of “brothers under the custom,” party cannot repudiate relationship and escape its obligations or disadvantages.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff Asao purchased the land in question for value in good faith from the defendant Joaquin A. Flores without notice of any claims of the defendant Pius, relying upon the document evidencing a complete transfer which had been given by Pius to Joaquin A. Flores.

2. By stressing and inducing Pius to rely upon the relationship of “brothers under the custom,” which they had assumed to each other, the defendant Flores purchased the land in question from Pius for \$100.00 less than he otherwise could have.

3. No adequate ground for termination of the relationship of “brothers under the custom” between Pius and Flores has been shown.

4. At the time when Pius raised objection to Flores building upon the land in question, Flores made an agreement with Pius that if Flores decided to move away, he would sell the land and building back to Pius upon Pius reimbursing him for his expenditures in connection with the property.

5. Flores later induced Pius to agree to buy back the land in question together with all improvements and materials thereon for \$1,500.00, and agreed to sell these to him for this sum.

6. Without giving Pius any reasonable opportunity to raise this \$1,500.00, and in violation of both this agreement and his obligation to Pius as a "brother under the custom," Flores then sold the land with the improvements and materials thereon to an outsider, namely the plaintiff Asao, for the same price.

7. Flores by violating his obligations as a "brother under the custom" and his agreements referred to above has caused Pius damages to the extent of \$175.00.

CONCLUSIONS OF LAW

1. This action involves the ownership of a piece of "individual land" in the Palau Islands and the question of damages for selling it to the plaintiff Asao in violation of the agreement to sell it to the defendant Pius.

[1, 2] 2. As explained in the third paragraph of the Conclusions of Law in *Ngiruhelbad v. Merii and Others*, 1 T.T.R. 367, it is recognized that "individual land" was a foreign concept that had no place in Palauan customary law. Similarly, the transfer of land by a written instrument is also a concept foreign to Palauan custom. So far as the ownership of the land in question in this case is concerned therefore, the court considers that the general principles concerning land transfers applied here by the administering authorities who introduced these concepts must be considered rather than any question of Palauan custom. These basic principles appear to be in accord with the practice of many countries where such ownership and transfer have been in effect for many years. The court, therefore, holds that since Pius had given Flores clear evidence of full ownership of the land and the plaintiff Asao bought it from him in reliance on that evidence, in good faith for value paid, without notice of Pius' later oral agreements with Flores, Asao has acquired full title to the

land free of Pius' claims. See 19 Am. Jur., Equity, § 484; and 55 Am. Jur., Vendor and Purchaser, § 651.

[3] 3. In this connection attention of all concerned is invited to the provisions of the Trust Territory Code, Section 1023, which was inserted by Executive Order No. 40 of October 6, 1953, providing for the recording of land transfers with the Clerk of Courts for the district in which the land lies. Requirements as to the form of documents to be recorded will be found in General Order No. 2 of the Trial Division of the High Court. Under paragraph b of that section of the code it is expressly provided as follows:

"No transfer of or encumbrance upon title to Real Estate or any interest therein, other than a lease for a term not exceeding one year, shall be valid against any subsequent purchaser or mortgagee of the same Real Estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded."

This is a common type of provision in the United States and it is respectfully suggested that much greater use of this procedure might profitably be made by the Micronesians. See 55 Am. Jur., Vendor and Purchaser, § 652.

[4-7] 4. So far as the relationships between Pius and Flores are concerned, however, this case is governed largely by Palauan custom. The one altercation and "beating" which Flores alleges terminated his brother's relationship to Pius, is considered totally insufficient to terminate this relationship under Palauan custom. To try to get from Pius the same price for which he was ready to sell to an outsider is also considered to be entirely inconsistent with Flores' obligations under the custom and his previous agreements with Pius. At the very minimum Pius was entitled to preferential treatment of from 5 to 10%

in such a transaction. After claiming and receiving the advantages of the relationship of "brothers under the custom," Flores cannot properly or reasonably expect to repudiate the relationship and escape its obligations or disadvantages. He is, therefore, liable to Pius for the damage he has caused him.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the 199.83 *tsubo* of land constituting a part of that known as Omis, located in Koror Municipality, Palau District, which was sold by the defendant Pius to the defendant Flores in 1953, is now owned by the plaintiff Asao Asanuma, who lives in Koror.

2. This judgment shall not affect any rights of way there may be over the land in question.

3. The defendant Pius, who lives in Koror, is granted judgment against the defendant Joaquin A. Flores, who also lives in Koror, for \$175.00 damages, with interest at 8% a year from the date of this judgment until it has been paid in full.

4. No costs are assessed against any party.