

ARTHUR IRONS, Plaintiff

v.

RUDO, Defendant

Civil Action No. 161

Trial Division of the High Court

Truk District

December 21, 1961

Action for determination of title to land on Udot Island, in which plaintiff asserts that he did not consent to his father's transfer of individually owned land to person who is not a relative. The Trial Division of the High Court, Chief Justice E. P. Furber, held that ownership of land was in transferee, as transfer of land in payment for extended care during last illness did not require consent of children of transferor.

1. Truk Land Law—Individual Ownership—Distribution Among Children

Under Truk custom, interest of man's children in his individually owned land is greater than mere hope of inheritance.

2. Truk Land Law—Individual Ownership—Distribution Among Children

Under Truk custom, individually owned land in Truk Atoll is considered to be inherited properly by man's children, unless he has specifically made some other disposition of it.

3. Truk Land Law—Individual Ownership—Transfers

There is some evidence that when land on Truk is given to individual as individual land and not to use under some lineage or group ownership, he may do what he wants with land.

4. Truk Land Law—Individual Ownership—Care of Owner During Last Illness

Caring for the sick during their last illness by anyone outside of person's matrilineal family has long been recognized in Truk as proper ground for transfer of individual land.

5. Truk Land Law—Individual Ownership—Care of Owner During Last Illness

Under Truk custom, care of sick person for sustained period imposes obligation to be met in some manner, and transfer of individual land to meet such obligation is considered payment rather than as gift.

6. Truk Land Law—Lineage Ownership—Gifts

Under Truk custom, in transferring lineage land, only consent of adults is needed.

7. Truk Land Law—Individual Ownership—Transfers

Under Truk custom, where consent to transfer of individual land is not required, notification of landowner's children of intended transfer is expected as matter of good practice.

8. Truk Land Law—Individual Ownership—Care of Owner During Last Illness

Where payment is due under Truk custom for extended care of person in his last illness, that person may transfer individually owned land in payment for care without either obtaining consent of adult children or notifying them of transfer.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The land in question was given by Manas to Andreas as his individual land.

2. The sale by Andreas to Kurajuga only covered the part of Nepanau between the road and the taro patch then in existence on Nepanau.

OPINION

This action raises the question as to whether an owner of individual land in the Truk Atoll (in this instance on Udot Island in the Truk Atoll) may, at least under some circumstances, transfer it without the consent of his children.

There is little doubt about the basic facts in this action so far as they relate to this question of law. The defendant is claiming on behalf of himself and his younger brother Isiuo. Their father Manas owned the land in question as his individual land at the beginning of his last illness. Rudo had been living in Ponape for many years. The evidence as to the exact dates is somewhat vague, but apparently he had been away about fifteen years when his father became seriously sick. Manas sent for Rudo to come to Truk and take care of him. Rudo failed to do this. Isiuo was only about nine years old at the time. Andreas and those acting under his direction took care of both Manas and Isiuo until Manas died. Andreas was the son of Rudo's and Isiuo's mother's sister and at the time was the head or

leader of their extended matrilineal family, and not a member of Manas' matrilineal family. Manas was bedridden for at least six months (according to some of the testimony, for about a year). Well along in his illness and after Rudo had refused to come from Ponape to assist him, Manas gave, or at least purported to give, the land in question to Andreas in appreciation of, or payment for, the care Andreas had given him and stood ready to give him until he died, and told Andreas expressly that he could dispose of this land as he thought best. The particular part of the land in question was sold by Andreas to Kurajuga through whom the plaintiff claims. Rudo claims he knew nothing of the transfer by his father until he returned to Truk some twenty years after his father's death and there is no evidence to contradict this. Isiuo claims that the night his father died Manas told him he and his brother would have the land, but Isiuo also admitted that his father told him that same night he was sorry for him because the land was going to be sold, so it appears that Isiuo was too young at the time to really understand the situation.

[1, 2] There are many indications that under Trukese custom the interest of a man's children in his individually owned land may be greater than the mere hope of inheritance which they would ordinarily have in the United States. It is quite generally agreed that such land in the Truk Atoll will be considered to be inherited properly by the man's children, unless he has specifically made some other disposition of it. See "Land Tenure Patterns, Trust Territory of the Pacific Islands, Volume 1", p. 178, and "Property, Kin, and Community on Truk" by Ward H. Goodenough, p. 45. The question comes on how much freedom a man has in making some other disposition of such land. It has been argued by some that he cannot dispose of it at all without the consent of all his children—or

at least all of his adult children. Mr. John L. Fischer, the former District Anthropologist for the Truk District, states as follows in "Land Tenure Patterns, Trust Territory of the Pacific Islands, Volume 1", p. 179:—

"There is considerable sentiment that a man must acquire permission of his children before disposing of his personal property through gift or sale as they would ordinarily stand to inherit it. The sentiment is strongest in the case of gift, which is in fact quite rare. In the case of sale, many feel that the children stand to inherit or benefit by the money from the sale, which is equal in value to the land. Accordingly, there is no legal claim on the part of the children to such land."

Mr. Ward H. Goodenough, who made a study of property and kinship under the Trukese social structure as part of the Coordinated Investigation of Micronesian Anthropology of 1947 to 1948, states the restrictions on such an owner's freedom of disposal as follows on page 36 of his "Property, Kin, and Community on Truk":—

"Full title carries with it the maximum number of rights and privileges and the minimum number of obligations. Except for two restrictions, a full title holder may sell, destroy, lend, or give his property as kiis (a form of gift imposing no obligation on the recipient) or niffag (a form of gift which obligates the recipient to the giver) as he sees fit. Inheritance and membership in a corporation (the term used by Mr. Goodenough to cover any of the groups which may hold property and function as individuals in relation to it under Trukese custom, such as a lineage or extended matrilineal family) are the two considerations which restrict a full title holder in the exercise of his privileges. He may not present his property in the form of a niffag to someone other than his natural heirs, his children, without the latter's consent, for the recipient of the niffag supplants his children as heir to the full title. Should a full title holder fail to gain the consent of his children in making a niffag, they are empowered to confiscate the property given away. This applies mainly to property which is productive, non-productive property being less subject to this restriction, at least in practice. A junior member of a corporation may not alienate his property by sale, or presumably by niffag or kiis, without approval of his

mwaaniici (oldest brother or head man of a lineage). The reason for this seems to be that a corporation may call upon its members for contributions of their personal property or its produce, should its interests demand it. Before alienating his property, therefore, a junior member makes sure that he will not jeopardize his corporation's interests by doing so. This restriction again, is less likely to apply to non-productive property." The parenthetical explanations above have been inserted by the court.

[3] On the other hand, it has also been stated many times that, when land on Truk is given to an individual as his individual land and not merely to use under some lineage or group ownership, he may do what he wants with the land.

[4,5] In discussing this matter many Trukese constantly fall back on analogies connected with lineage or extended family ownership of land which was traditionally much commoner than individual ownership. Caring for the sick during their last illness by anyone outside of a person's matrilineal family has long been recognized in Truk as a proper ground for the transfer of land, even family or lineage land. Such care for a sustained period very clearly imposes an obligation for payment to be met in some manner and ordinarily by the transfer of land, and a transfer of land made to meet such obligation is considered as payment rather than as a gift in the strict sense of that word. See "Land Tenure Patterns, Trust Territory of the Pacific Islands, Volume 1", p. 191-195.

[6,7] It also appears quite clear that Trukese land concepts are extraordinarily flexible, and that general principles can be varied to meet many sorts of practical difficulties. In transferring even family or lineage land, the consent of only the adults is needed and the fact that there are a number of members of the lineage who are minors not old enough to understand the situation or in-

telligently consent will not prevent a transfer if it is recognized as a socially acceptable or tolerable matter under the particular circumstances. It has been argued by some that even though the consent of a man's children may not be necessary for a transfer of his individual land, the adult children must be notified of it, and it is clear that such notification is at least expected as a matter of good practice when practicable.

[8] After an extended study of this situation, however, the court holds that where payment is clearly due under Trukese custom for extended care of a person in his last illness, that person may make a transfer of his individually owned land in Truk Atoll, in payment for such care, without either obtaining the consent of his adult children or notifying them of the transfer. In such a situation the court believes that notice to the adult children is highly desirable and constitutes one of the best and most acceptable evidences under local custom of the transfer, but that this is just a matter of proof and if the transfer is otherwise satisfactorily shown it will not be defeated by the lack of notice to the children, particularly in a case like the present one where the adult son who is now complaining was far away at the time.

The court therefore holds that Manas' transfer of the land here in question to Andreas was effective and transferred ownership of the land free and clear of any claims of either the defendant or his younger brother.

No issue has been raised in this action as to the division of rights in the land in question between the plaintiff and his father and other members of his family on behalf of all of whom he has made claim, and the court makes no determination or intimation as to how the rights may be divided or held as between them.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the part of the land known as Nepanau, located in Tunuk Village on Udot Island, Truk District, which part lies between the road and the taro patch long established and at one time used by Kus on Nepanau, is owned by the plaintiff Arthur Irons, who lives on Udot Island, and his father and other members of his family, for all of whom he makes claim in this action; and neither the defendant Rudo nor his brother Isiuo, for whom the defendant also claims, both of whom live on Udot Island, has any rights of ownership in that part of Nepanau. The part of Nepanau owned by the plaintiff's family includes the relatively new taro patch established on the land by this family since they took possession of it.

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

3. No costs are assessed against either party.