

KENSI TELLEI and JOSEPH TELLEI, Plaintiffs

v.

NGODRII, Defendant

Civil Action No. 264

Trial Division of the High Court

Palau District

September 9, 1963

Action to determine boundary lines of parties' adjoining lands located in Koror Municipality. The Trial Division of the High Court, Chief Justice E. P. Furber, held that parties' mutual acceptance of boundary point will control as to position of corner in dispute.

1. Real Property—Boundaries

In construing deeds, quantity is least reliable of all descriptive particulars.

2. Real Property—Boundaries

Quantity description in deed must yield to monuments, natural or artificial, and to courses and distances, unless there is clear intent to convey certain quantity.

3. Real Property—Boundaries

Where parties claim quantity substantially greater than that mentioned in grants to them, they cannot rely upon intent to convey certain quantity.

4. Real Property—Boundaries

In case of conflict in description of boundaries of land, monuments, either natural or artificial, will ordinarily control all other calls.

5. Real Property—Boundaries

Descriptions of courses and distances and quantity will, in case of conflict, be controlled by and yield to description of natural object, landmark or permanent artificial monument.

6. Real Property—Boundaries

Where boundary lines of adjoining landowners are not definitely known or their location is in dispute, owners may establish lines by written or oral agreement or by mutual recognition of and acquiescence in certain line as true boundary line.

7. Real Property—Boundaries

If adjoining landowners act fairly and honestly in agreeing as to boundaries when neither is sure of exact location of boundary lines, agreement is to be given effect notwithstanding they may have been mistaken as to location of line.

8. Real Property—Boundaries

Where owners of adjoining land reach mutual acceptance of same point on land sketch, their agreement controls position of corner in dispute.

FURBER, *Chief Justice*

This matter came on for hearing upon the Master's Report and was argued by Ibedul Ngoriyakl as counsel for the plaintiffs and Benjamin Mersai as counsel for the defendant. Both counsel stated the parties have no objection to the easterly boundary line found by the Master, which is apparently based on monuments finally identified to the satisfaction of all concerned. The entire argument before the court related to the northerly boundary line.

The argument of both counsel is based to a surprising extent upon computations of the area of the land involved. The land in question is a corner lot owned by the plaintiffs, bounded on the south and west by roads and on the north and east by land owned by the defendant at the time of the bringing of this action, but which the court has been informed has now been sold subject to the determination to be made in this action.

As the claims of the parties were originally submitted, the only dispute was as to the location of the northeast and southeast corners of the lot. Both parties claimed the northwest corner was at the same point and also that the lines ran straight from one corner to the next one. Therefore it would seem that when the northeast and southeast corners had been determined, that would settle the whole dispute and that the northerly boundary line should run from the northwest corner as claimed by both parties to what had been determined as the northeast corner. However, if that were done, the total area would come out somewhat less than the 704 tsubo which was the area as determined in one of the later Japanese land surveys.

Therefore it is suggested that the northeast corner should be moved enough further north so as to make the whole area come out approximately 704 tsubo, and the Master has recommended a point which will bring the area to exactly 704.2 tsubo.

The argument for the defendant is that this will give the plaintiffs more land than they bought from the defendant and his predecessor in interest by two separate grants which, according to the terms of the grants, together covered 627.65 tsubo, out of which an unspecified number of tsubo were given to the community for the building of a road.

OPINION

The history of the various computations of the area of the lot here in question illustrate very clearly how unreliable quantity is likely to be in determining description of land. Clearly somebody made a mistake in computing the area, either at the time of the original grants or at the time of the later Japanese land survey. It is a great tribute to the accuracy and sincerity of the Japanese surveyors during the latter part of Japanese times that the Palauans place such great reliance on the computation of area by these surveyors that they even wish to move a previously unquestioned boundary to make the area come out right. Carried to its ultimate conclusion, however, such a practice would seem likely in the end to push one owner at least partially out of a block and into the street.

[1-3] The well accepted English and American rule in construing deeds is that quantity is the least reliable of all descriptive particulars and must yield to monuments, either natural or artificial, as well as to courses and distances unless there is a clear intent to convey a certain quantity. 16 Am. Jur., Deeds, § 289. The plaintiffs here can hardly claim to rely upon any intent to convey a certain quantity

since the quantity they are claiming is substantially greater than that mentioned in the grants to them.

[4, 5] Furthermore, it is also an established American practice to recognize that monuments, either natural or artificial, will ordinarily in case of conflict in the description of boundaries to land control all other calls. That is, that the descriptions of courses and distances and quantity will in case of conflict be controlled by and will yield to description of a natural object or landmark or permanent artificial monument. 8 Am. Jur., Boundaries, §§ 51 and 53.

[6-8] Also it is well settled that where the boundary lines of the adjoining landowners are not definitely known or their location is in dispute, such owners may establish the lines by either written or oral agreement or by their mutual recognition of and acquiescence in a certain line as the true boundary line and that if the adjoining owners have acted fairly and honestly in the matter, neither being too sure of the exact location, their agreement is to be given effect notwithstanding they may have been mistaken as to the location of the line. 8 Am. Jur., Boundaries, §§ 72, 73, and 77. Although the parties were not in agreement on the location of the whole of the northerly boundary line, it is believed that on analogy to the principles discussed above, their mutual acceptance of the same point shown as corner A-1 on the sketch attached to the Master's Report, should under all the circumstances control the position of the northwest corner. The Master's Report is accordingly approved except for the location of and the reasoning connected with the northwest corner and the line therefrom to the northeast corner as determined by the Master.

JUDGMENT

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

1. As between the parties and all persons claiming un-

der them, the boundary lines between the plaintiffs Kensi Tellei's and Joseph Tellei's property known as Iretech located in Koror Municipality, Palau District, and the adjoining land formerly owned by the defendant Ngodrii run as follows:—

Beginning at an iron pin, shown as corner A-1 on the sketch attached to the Master's Report on this action, at the edge of the road on the westerly side of the property, thence running in a straight line slightly north of east to an iron pin shown as corner B-2 on said sketch, thence turning and running slightly west of south in a straight line to corner 3 on said sketch.

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

3. No costs are assessed against any party.

NGEDRONG IBETANG, Plaintiff

v.

NGIRMEKUR SKED and OBAKRAIRUR SKED, Defendants

Civil Action No. 278

Trial Division of the High Court

Palau District

September 9, 1963

Action to determine ownership of land in Ngardmau Municipality, formerly transferred from clan to lineage, after which lineage acquiesced in defendants' use of parts of land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that land was not used by defendants long enough at any one time to give them ownership of land itself, but that defendants own plantings made by them and have right to go upon land and harvest them.

1. Palau Land Law—Use Rights

Under Palau custom, one may be allowed to plant on lands unused by owner, and although plantings belong to person making them, ownership of land itself is not transferred.