

RAFAEN, Plaintiff
v.
ITOSI and RINA, Defendants
Civil Action No. 308
Trial Division of the High Court
Truk District
February 25, 1964

Action in which plaintiff claims title to land on Fefan Island against claim that land was purchased by defendants' predecessors in interest. Plaintiff's representative had previously brought action in Fefan Community Court concerning same basic dispute and was awarded damages against defendants in present suit. The Trial Division of the High Court, Associate Justice Paul F. Kinnare, held that plaintiff cannot recover both land and money, and that community court action represented election of remedies, regardless of fact plaintiff has failed to enforce his former money judgment.
Action dismissed.

1. Civil Procedure—Election of Remedies

Party who disputes another's right to certain land is not entitled to both land and money, and must elect one or the other remedy.

2. Civil Procedure—Election of Remedies

When party who disputes another's rights in land elects to sue for money claimed due him because of sale of land, he cannot later bring action for return of the land.

3. Civil Procedure—Election of Remedies

Party is bound by election of remedies whether or not he understands nature of his remedies or necessity of electing between them.

4. Civil Procedure—Election of Remedies

Where party manifests election of remedies by bringing suit for damages in regard to land dispute instead of seeking return of land, fact that judgment for damages has not been satisfied is not material, and he cannot ignore previous judgment and bring second suit for return of land.

KINNARE, *Associate Justice*

OPINION

This action concerns the land Faisewan in Wininis Village, Fefan Island, Truk District. At the pre-trial conference it appeared that the basis of the dispute between the

parties concerned a disputed sale of the property involved made in late Japanese times—the defendant claiming title by purchase and the plaintiff contending that the purchase admittedly made by the defendants' predecessors in interest in late Japanese times involved another land, Nefit, and not the land here in dispute.

It further appeared that an action had been brought in the Community Court of Fefan Island concerning the same basic dispute. Trial of this case commenced on April 15, 1961, and judgment was entered in favor of the plaintiff against the defendants on May 24, 1961, for the sum of \$100.00.

It should be noted that, while the defendants in the Community Court action were the same persons who are defendants in this action, the plaintiff in the Community Court action was Pios and the plaintiff in this action is Rafaen. However, Pios is married to Teresia, the true mother of Rafaen, and it was clear at the pre-trial conference that Pios was acting for and on behalf of the plaintiff in the Community Court action.

While there are no written pleadings in the Community Courts, it is clear from the transcript of the testimony in the Community Court that the plaintiff sought a money judgment against the defendants for the land Faisewan. The plaintiff testified: "We have not received any money for Faisewan until today, that is why I am now calling Itosi and Rina to pay us for our land." It was also agreed at the pre-trial conference that the defendants have not satisfied the said judgment in whole or in part.

We think there can be no dispute that the plaintiff is not entitled to recover both his land and the money for it, and in a case such as this the law pertaining to Election of Remedies applies:

"An election of remedies may be defined as the choosing between two or more different and coexisting modes of procedure and relief

allowed by law on the same state of facts. The doctrine is applicable where an aggrieved party has two remedies by which he may enforce inconsistent rights growing out of the same transaction and, being cognizant of his legal rights and of such facts as will enable him to make an intelligent choice, brings his action by one of the methods. Under such circumstances the law says he shall not thereafter adopt the alternate remedy, for a suitor cannot pursue a remedy which predicates his case upon one theory of right and thereafter seek a remedy inconsistent with such prior proceeding." 18 Am. Jur., Election of Remedies, § 3.

[1, 2] The plaintiff had two remedies available to him: he could bring an action for the return of the land Faisewan as he has done in this action, or he could sue for the money he claimed was due him because the land had been sold to the defendants or their predecessors in interest. He elected to sue for the money and he received a judgment therefor. He cannot now bring an action for the return of the land.

[3] Concerning the language quoted above from American Jurisprudence: "being cognizant of his legal rights", the following language in 18 Am. Jur., Election of Remedies, § 22, is applicable:

"Nor does the rule mean that a party will not be bound by an election because he did not have knowledge of the nature of his remedies and of the necessity of electing between them, for these are matters of law, and ignorance of the law will not excuse him."

The fact that the judgment has not been satisfied is not material here.

"It would seem that a litigant who has resorted to a particular remedy to prosecute his rights or redress his wrongs sufficiently manifests his choice of, and reliance upon, that remedy when he presses his suit to judgment or decree. Most courts would regard such action as decisive." 18 Am. Jur., Election of Remedies, § 20.

[4] No appeal was taken from the judgment of the Community Court and the time for taking such appeal has long since elapsed. The fact that the plaintiff has ne-

glected to take advantage of the proceedings available to him under the Trust Territory Code to enforce this judgment by means of an order in aid of judgment, execution and levy, or other appropriate proceedings, can in no way entitle him to ignore the judgment and bring this action. He may still take steps to enforce the Community Court judgment—he cannot maintain this suit.

Accordingly, it is ordered, adjudged, and decreed that this action be and it is hereby dismissed with prejudice.

JEMBA BEKLUR, Plaintiff

v.

LIJABLUR, Defendant

Civil Action No. 172

Trial Division of the High Court

Marshall Islands District

April 24, 1964

Action to determine *alab* rights in certain *wato* on Rairok Island, Majuro Atoll. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where *iroij erik*, with approval of *iroij lablab*, gave land in question as *kitre* to his wife, with understanding it should pass to their adopted daughter on wife's death, other members of wife's *bwij*, including adopted son, acquired no property rights therein.

1. Marshalls Land Law—"Kabijukinen" Land

Under Marshallese custom, if land is traditional family or *kabijukinen* land, *alab* rights pass down in family *bwij*.

2. Marshalls Land Law—"Kitre"

Under Marshallese custom, where land is given by individual to his wife as *kitre*, other members of her *bwij* acquire no property rights therein.

3. Marshalls Land Law—"Kitre"

Under Marshallese custom, an *iroij erik* and his wife are free to arrange that *alab* rights in *kitre* should pass down to their adopted daughter.

4. Marshalls Land Law—"Dri Jerbal"—Establishment

Under Marshallese custom, where adopted daughter of *iroij erik* receives *alab* rights in land and also is expected to look out for her