

brought in this court, we have no jurisdiction to entertain them.

JUDGMENT

The summons herein as to all named defendants is quashed, set aside, and held for naught, and this action is dismissed.

MOOLANG and YAMOR, Plaintiffs

v.

MANGGUR TORUUAN, Defendant

Civil Action No. 34

Trial Division of the High Court

Yap District

October 7, 1965

Action to determine rights to land in Rumung Municipality. Plaintiffs claim land on basis of inheritance, former owner's adoption of minor plaintiff, and expressed desire of former owner that land should pass to minor plaintiff upon owner's death. Defendant claims on basis of inheritance within patrilineal extended family. The Trial Division of the High Court, Associate Justice Paul F. Kinnare, held that parties should make further effort to 'settle dispute between themselves, and that failing such settlement within six months, either party may by written motion ask Court to make final determination as to use and control of land in question.

1. Yap Land Law-Patrilineal Ownership

Although under Yap custom inheritance of land rights continues largely within patrilineal extended family, court must consider fact that former owner adopted minor party and indicated his intent that he succeed him in lands involved.

2. Yap Land Law-Patrilineal Ownership-Use Rights

Under Yap custom, while former holder of use rights in land may express desire during his last illness as to disposition of such rights upon his death, 'such desire is not binding upon family.

3. Yap Land Law-Patrilineal Ownership-Use Rights

Under Yap custom, expressed desire of former holder of use rights in land as to disposition of rights upon his death, although not binding, is factor to be considered by family in determining future control of land.

KINNARE, *Associate Justice*

The lands involved in this action, located in the Village of Bulwol, Rumung Municipality of Yap District, are Biledabar, Eyed, Ruu, Lowut, Baleau, Tayid niga, Achabuth and 01. The plaintiff Moolang is the true father of the plaintiff Yamor (m) and while he makes claim to all the lands except Achabuth and 01 through the line of descent from Falan Gootmag and Machafen, it appeared at the trial that his prime claim is based upon the fact that Ungin, whose control of all of the lands involved during his lifetime was clearly established, adopted Yamor and stated that these lands would pass to Yamor when he (Ungin) died. Ungin did die about two years before this action was brought and since that time the dispute has existed between plaintiffs and defendant.

The court considers that defendant's relationship to Falan Gootmag and Machafen is such that under ordinary Yapese custom, under which inheritance of land rights continues largely within the patrilineal extended family, has a stronger claim to the lands involved than does the plaintiff Moolang.

[1] However, as the court also considers it clearly established by the great weight of the evidence that Ungin did adopt Yamor and indicated his intent that Yamor should succeed him in the lands involved, that this fact must also be considered. The defendant contended that in accordance with Yapese custom, Ungin's adoption of Yamor and his gift of the lands to him was revoked by family action after Ungin's death, and that therefore any rights Yamor might have had in the said lands terminated when his adoption was revoked. The court considers that defendant did not establish an effective revocation of the adoption and the attempted gift.

[2,3] In the case of *Duguwen v. Dogned*, 1 T.T.R. 223, the court stated : –

Under Yapese customary law, inheritance of land rights continues largely within the patrilineal extended family, and while the former holder of use rights may during his last illness express a desire as to the disposition of those rights on his death, such desire, even if clearly expressed and established beyond question, is not binding in any absolute way, but is an important factor to be considered by the family in determining the future control of the land."

The plaintiff contended that both defendant and defendant's father were adopted from their true parents and therefore defendant lost whatever rights he might otherwise have in the lands involved. The court considers that plaintiff failed to sustain the burden of proof upon him in this connection and finds that the defendant has not lost any rights he may have had in these lands because of the claimed adoptions.

In view of the above findings and in the light of the particular circumstances existing here, the court believes that the parties should make further effort to settle the dispute between them concerning the lands involved by means of traditional Yapese customary procedures. Layan, Sr., presently in charge of the lands involved under order of the Presiding Judge of the District Court for the Yap District, will continue to control the said lands until further order of this court or until the parties reach an agreement.

Accordingly, it is

Ordered, adjudged, and decreed as follows:-

1. Defendant's Exhibit No.1, a piece of shell money known as "Yar nu Ngabuchei" shall be returned to the plaintiff Moolang.
2. Layan, Sr., presently in charge of the lands involved in this action shall remain in control of the said lands until further order of this court or until agreement of the parties as to the disposition of the said lands.

3. Both parties are required to make a sincere effort to agree as to the use and control of the said lands according to traditional Yapese custom in solving disputes of this kind. If they are unable to reach such agreement within six (6) months from this date, either party may ask the court by written motion to make a final determination as to the use and control of the said lands.

4. No costs are assessed against any party.

JOAB J. (sometimes written JOAB S.), Plaintiff

v.

LABWOJ, Defendant

Civil Action No. 125

Trial Division of the High Court

Marshall Islands District

December 7, 1965

See, also, 2 T.T.R. 172

Hearing on motion for further order in aid of judgment, and incorporating motion for injunction. In earlier judgment by Trial Division of the High Court, plaintiff was recognized as *iroij erik* and defendant was recognized as holding *alab* rights on certain *wato* on "Jebrik's Side" of Majuro Atoll. Judgment had not been recognized by defendant, who refused to cooperate with plaintiff as required by Marshallese custom. The Trial Division of the High Court, Chief Justice E. P. Furber, held that defendant was enjoined from exercising *alab* rights on the land during his lifetime. Acting *alab* rights for the remainder of defendant's lifetime were granted to relative of defendant, who agreed to cooperate with plaintiff and recognize plaintiff's *iroij erik* powers over the land.

Motions granted.

Assessor:

Interpreter:

Counsel for Plaintiff:

Counsel for Defendant:

JUDGE SOLOMON

LANGINMO JACOB

LEVI, L.

Acting for himself on December 1;
not present or represented December 7, 1965