

1168, in accordance with the terms of that restraining order, and the defendant Elizabeth Joshua is authorized to withdraw said check from the District Finance Officer for the Palau District forthwith.

No costs are assessed against either party.

MOOLANG and YAMOR, Plaintiffs

v.

MANGGUR TORUUAN, Defendant

Civil Action No. 34

Trial Division of the High Court

Yap District

December 15, 1966

See, also, 3 T.T.R. 69

Action to determine right to possession and use of certain land in Rumung Municipality, in which parties were unable to reach settlement according to traditional Yapese custom as recommended in previous Judgment Order of Court. The Trial Division of the High Court, Chief Justice E. P. Furber, held that minor plaintiff, as adopted son of former landowner, is entitled to be considered part of paternal family group holding rights of possession and use in land if he lives with and fulfills all his obligations to that family, and that defendant is entitled to act as head of paternal family group in exercise of its rights of possession and use.

1. Yap Land Law-Patrilineal Ownership

Words "own" and "owner" are misleading in reference to land in Yap Islands, since traditional method of landholding is by paternal family or household groups;

2. Yap Land Law-Patrilineal Ownership

Paternal family groups in Yap Islands normally have right of immediate possession and use of land subject to certain rights in people outside of that family group.

3. Yap Land Law-Patrilineal Ownership

Right of immediate possession and use of land in Yap Islands regularly descends within paternal extended family.

4. Yap Land Law-"Mafen" Rights

Mafen rights to land in Yap Islands regularly descend in matrilineal line, often from paternal grandfather's or great-grandfather's sisters

who have married into other lines or from female ancestor who married into lineage having the use rights.

5. Yap Land Law-Patrilineal Ownership
Under Yapese system of land rights, theory as to rights in land based on matrilineal inheritance is inapplicable to rights of possession and use.
6. Yap Land Law-Patrilineal Ownership--Supervision
Under Yapese system of land ownership, small child, even if he is true son of deceased man formerly in control of land, cannot be expected to exercise that control unless and until he becomes either actual senior male member of family or is accepted by adults in family as its active leader.
7. Yap Land Law-Patrilineal Ownership-Supervision
Under Yap custom, when man in control of land dies leaving no adult son, control normally passes to his next older brother or person considered to be "brother under the custom" as head of family, in preference to son who is still a child.
8. Yap Land Law-Patrilineal Ownership--Supervision
Under Yap custom, head of family does not control family lands merely for his own benefit as if they were his individual property, but as trustee for whole family.
9. Yap Land Law-Adopted Child
Under Yap custom, adopted child cannot reasonably expect to acquire land rights from family which adopts him unless child stays with and fulfills obligations as member of that family.
10. Yap Land Law-Adopted Child
Under Yap custom, when adopted child does not remain with and fulfill obligations to adopted family, family is justified in treating child as if he is no longer connected with family.
11. Yap Land Law-Adopted Child
Under Yap custom, true parents of child cannot properly control land rights which child may be entitled to as result of adoption.
12. Yap Land Law-Adopted Child
Under Yap custom, rights in land to which adopted child is entitled as result of adoption remain in paternal family into which child is adopted.
13. Yap Land Law-Adopted Child
Under Yap custom, minor adopted child is entitled to be considered part of adoptive paternal family group holding rights of possession and use in land if he lives with and fulfills all his obligations to that family as adopted member thereof.
14. Yap Land Law-Adopted Child
Under Yap custom, true father of minor adopted child is not entitled to exercise rights in land to which adopted child is entitled as result of adoption, unless he can obtain permission of former owner's paternal family and exercises rights in cooperation with family in accordance with reasonable directions of its acting head.

FURBER, *Chief Justice*

This action involves primarily the right to possession and use (sometimes referred to loosely as "ownership") of eight pieces of land, including the taro patches and fishing rights appurtenant to them, in Rumung Municipality in the Yap Islands proper of the Yap District. Original judgment order entered October 7, 1965, determined the principal issues of facts involved in the action and the parties were then required to make a sincere effort to agree as to the use and control of the lands according to traditional Yapese custom on the basis of the findings set forth in that judgment. The defendant, acting for himself, the active plaintiff Moolang, and counsel for both plaintiffs, have now reported to the court that they see no hope of settlement and have requested that the court make final determination as to the "ownership" of the lands in question.

OPINION

[1, 2] While the words "own" and "owner" are frequently used in a loose, informal way in referring to lands in the Yap Islands proper, this is most misleading since the traditional method of landholding in the Yap Islands proper is by patrilineal family or household groups, called "tabinaw", which normally have the right of immediate possession and use, but subject to certain rights in people outside of that family group or tabinaw. For a further explanation of this situation, see the conclusions of law by this court in *Duguwen v. Dogned*, 1 T.T.R. 223, and Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 257-268; which volume incorporates the substance of the mimeographed report on "Yapese Land Ownership and Inheritance Customs" by Francis B. Mahoney, former Yap District anthropologist, referred to in the conclusions of Jaw in the *Duguwen* case. The term "tabinaw"

is sometimes applied to a family group's lands as well as to the family itself and the type of rights primarily in dispute here is sometimes referred to as "immediate possession with permanent use rights".

[3-5] These rights of immediate possession and use regularly descend within the patrilineal extended family while the "*mafen*" rights, sometimes referred to as "ultimate possession or responsibility for the land but without use rights", regularly descend in the matrilineal line, often from the paternal grandfather's or great-grandfather's sisters who have married into other lineages, or from a female ancestor who married into the lineage having the use rights. These dual lines of succession to land rights can cause great confusion in discussion as to inheritance of rights in Yapese land with those not thoroughly familiar with the matter. In the present case, no express claim to the *mafen* rights has been made, but both sides have implied that they hold both the *mafen* rights and the rights to immediate possession and use. Some of the arguments of the counsel for the plaintiffs seem to be based on the theory of matrilineal inheritance which the court considers clearly inapplicable to rights of possession and use.

It has been expressly agreed that the deceased Ungin controlled all of the lands in question for some time before his death, his rights in part of these lands having been acquired through his father, in other parts from his mother, and in two other parts from neither his mother nor his father but as a result of services he had rendered. One of the basic issues at the trial was whether the plaintiff Yamor had been adopted by Ungin and the court found that he had been so adopted. The plaintiff Moolang, as Yamor's true father, claims that Yamor, as the adopted son, should succeed to Ungin's rights, but it is also agreed that Yamor was born on or about October 19, 1962, so that

he is still less than five years old. Aside from this adoption Moolang is related to Ungin through Ungin's mother while Manggur is related to Ungin through Ungin's father's sister.

The plaintiff claimed that Manggur had lost whatever rights he would otherwise have in the lands in question because both he and his father had been adopted out of Ungin's family, but the court has already held in the original judgment order in this action that the plaintiffs failed to sustain the burden of proving this, and that the defendant has not lost any rights he may otherwise have had in the lands because of the claimed adoptions. It further clearly appears that Layan, Sr., who has been cooperating well with the defendant Manggur, is more closely related to Ungin through his mother than Moolang is. It also appears that Yamor was adopted by Ungin before the former was born, that Ungin died not long after the adoption, and that Yamor has never lived with Ungin's patrilineal family. On the other hand, it also appears that Ungin grew up in the patrilineal family headed for some time by the defendant Manggur's father, Gootug, who is considered to be "brother under the custom" of Ungin's true father, who died while Ungin was young.

[6-8] The court is firmly of the opinion that under the Yapese system of land ownership, a small child, even if he were the true son of the deceased man formerly in control of the land, cannot be expected to exercise that control unless and until he becomes either the actual senior male member of the family or is accepted by the adults in the family as its active leader. When the man in control dies leaving no adult son, the control would normally pass to his next older brother (or person considered to be a "brother under the custom") as the head of the family, in preference to a son who is still a child. The head of the family, however, does not control the family lands

merely for his own benefit as if they were his individual property, but rather as trustee for the whole family. See Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 257 and 269.

[9-12] Furthermore, an adopted child cannot reasonably expect to acquire land rights from the family which adopts him unless the child stays with and fulfills the obligations of a member of that family. Otherwise, the family will be justified in treating the child as if no longer connected with the family. The court is also satisfied that under Yapese custom the true parents of the child cannot properly control the land rights which the child may be entitled to as a result of an adoption, but that the control of such rights, within the limitations of the system, remains in the patrilineal family into which the child was adopted.

[13, 14] Under all the circumstances, the court holds that the plaintiff Yamor is entitled to be considered as a part of the patrilineal family group holding rights of possession and use in the lands in question if he lives with and fulfills all his obligations to that family as an adopted member thereof, but that he is not entitled to exercise any of these rights as long as he fails to live with and fulfill his obligations to that family, and, further, that the plaintiff Moolang is not entitled to exercise any rights in the lands in question unless he can obtain the permission of what remains of Ungin's patrilineal family and undertakes to exercise such rights in cooperation with that family and in accordance with the reasonable directions of its acting head.

It appears that there may be a male member or members of Ungin's former patrilineal family still living who are senior to the defendant Manggur and would be more naturally entitled to be the head of the family. It may be that these have all either expressly agreed or acquiesced

in the defendant Manggur's serving as acting head. Since, however, none of these have appeared as parties in this action, no determination is made as to their rights.

SUPPLEMENTAL JUDGMENT

It is ordered,; adjudged, and decreed as follows:-

1. As between the parties and all persons claiming under them, rights in the lands known as Biledabar (including both the northern and southern parts thereof), Eyed, Ruu, Lowut, Baleau, Tayid niga, Achabuth, and OI, including the taro patches and fishing rights appurtenant thereto, all located in Buluol Village, Rumung Municipality; in the Yap Islands proper of the Yap District, are owned as follows : -

a. The plaintiff Moolang, who lives in Riy Village, Rumung Municipality, Yap District, has no rights of ownership in any of them, nor has he the right to control in any way the exercise of the plaintiff Yamor's conditional rights therein, described below.

b. The right to possession and use of all of these properties is owned by the patrilineal family group of which the defendant Manggur Toruuan, who lives in Toruw Village, Map Municipality, Yap District, is a member and into which the plaintiff Yamor was adopted, and the defendant Manggur Toruuan is entitled as between the parties to act as head of the family in the exercise of these rights.

c. The plaintiff Yamor, who also lives in Riy Village, Rumung Municipality, but is a minor born on or about October 19, 1962, is not entitled to exercise any rights in any of the above properties unless and until he goes to live with the defendant Manggur Toruuan's family group and fulfills all of his obligations as an adopted member of that family group. Unless and until he does this, the defendant Manggur Toruuan's family group may

disregard him in assigning use of these properties and the benefits therefrom.

d. All of the above rights are held subject to the Yapese system of land ownership, and no determination is made as to what persons other than the three parties to this action are or are not included within the defendant Manggur Toruuan's family group, nor is any determination made as to who are *mafen* of any of these properties, except that the plaintiff Moolang is not one of the *mafen*.

2. This supplemental judgment terminates the temporary right of Layan, Sr., who lives in Gaanaun Village, Rumung Municipality, to control the properties in question, which right was originally granted her by the temporary injunction issued in this action and was continued in effect by the judgment entered October 7, 1965, but this supplemental judgment shall not affect any other rights she may have in any of the said properties, either under agreement with the defendant Manggur Toruuan or otherwise.

3. This supplemental judgment shall not affect any rights of way there may be over any of the properties in question.

4. No costs are assessed against any party.