

ant Robert Kumaichi and Mechellings in consultation with those having the care and custody of the children.

7. Costs shall not be awarded either party.

JOHNNY MAKAYA, Plaintiff

v.

ERLIN MAKAYA and AMBILOS IEHSI, Defendants

Civil Action No. 331

Trial Division of the High Court

Ponape District

March 20, 1968

Action to recover for improvements made to land. The Trial Division of the High Court, R. K. Shoecraft, Chief Justice, held that although plaintiff failed to prove a right to enter and cultivate land in question, justice required that due regard be given to his rights in and to the fruits of his labor insofar as the court could do so consistent with rights of former landowner and innocent purchaser.

1. Ponape Land Law—Use Rights

Plaintiff failed to prove that an agreement was ever made whereby the defendant would convey certain land to plaintiff's son pursuant to an adoption agreement and that plaintiff would have the right to enter and cultivate the land because of such agreement.

2. Real Property—Improvements

Where person cultivated land in question and constructed buildings thereon in reliance on the family relationship of the parties, justice required that due regard be given to his rights in and to the fruits of his labor insofar as the court could do so consistent with the rights of the former owner and the innocent purchaser of the land.

SHOECRAFT, *Chief Justice*

STATEMENT OF THE CASE

This is an action in which the plaintiff claims to have entered upon and cultivated land belonging to the defendant pursuant to an agreement or understanding arising

out of the adoption by defendant of the eldest son of the plaintiff in 1953. Plaintiff also claims to have built three houses on defendants' land. Defendant, Erlin Makaya, sold the land in 1967 to the defendant Ambilos Iehsi. Plaintiff prays for compensation in an amount not to exceed \$5,000.00 for the crops and buildings located on the said land.

Defendant, Erlin Makaya, admits the adoption of plaintiff's son, but denies that there was any agreement arising out of the adoption whereby plaintiff was permitted to enter and cultivate the land. Further, defendant claims that the adoption agreement itself was revoked by the action of plaintiff in taking the child away from the defendant after six years. Defendant, Erlin Makaya counter-claims for \$6,000.00 for care furnished to plaintiff's son, and for \$1,000.00 for plaintiff's entry and subsistence from the land, and that plaintiff be required to remove the houses "or all other things which he intentionally planted on the land."

The parties entered the following stipulations:—

1. That the land is, or was, owned by Erlin.
2. That Erlin sold the land to Ambilos Iehsi.
3. That the plaintiff, Johnny, and defendant are true brothers.
4. For more than five (5) years past the plaintiff has used and occupied the land in question.
5. During the period of occupancy and use of the land, the plaintiff has planted certain crops and constructed certain structures on the land.

FINDINGS OF FACT

1. That since 1953, to the present, plaintiff, Johnny Makaya, has planted coconut trees, breadfruit trees, yams, cacao, and kava on said land and has constructed several structures, three of which, consisting of one dwelling, one

cookhouse, and one copra dryer, are still standing on the land. All of said structures are of non-permanent construction and are removable. Said structures have little monetary value.

2. That the defendant, Erlin Makaya, also had cultivated portions of the land since 1942, the year in which his father, Ernis Makaya, conveyed the land to him. Ernis Makaya is the father of plaintiff, Johnny Makaya, as well, and had made a division of his land in 1941 or 1942, between his three sons. This dispute is between two of said sons.

3. That the defendant, Erlin Makaya, harvested crops from said land without interference from the plaintiff up to the time of the sale of said land to Ambilos Iehsi.

4. That the defendant, Erlin Makaya, adopted the son of the plaintiff in 1953 and in 1959 the child returned to live with his natural parents.

5. That the land which is the subject of this action was owned by the defendant, Erlin Makaya, that the said defendant had the right to, and did, sell said land to the defendant, Ambilos Iehsi, and that the defendant, Ambilos Iehsi, is entitled to possession of the said land.

6. The stipulations of the parties are incorporated herein and adopted as part of the findings of the Court.

CONCLUSIONS OF LAW AND OPINION

[1] It is the opinion of the Court that the plaintiff has failed to prove that an agreement was ever made whereby the defendant, Erlin Makaya, would convey the said land to plaintiff's son pursuant to an adoption agreement and that plaintiff would have the right to enter and cultivate said land because of such agreement.

[2] Plaintiff has failed to sustain the burden of proof that defendant, Erlin Makaya, has acted in any way

inconsistent with defendant's right of ownership and use of said land. However, the evidence indicates that the plaintiff cultivated said land and constructed the buildings thereon in reliance on the family relationship of the parties, and justice requires that due regard be given to the rights of the plaintiff in and to the fruits of his labor, insofar as the Court may do so consistent with the rights of the defendant and the innocent purchaser of the land.

JUDGMENT

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

1. The defendant, Ambilos Iehsi, is entitled to, and hereby is granted the right of immediate possession to said land.

2. The plaintiff, Johnny Makaya, shall have the right, for one (1) year from this date, to remove from said land any buildings constructed thereon by him, and to harvest in a peaceful manner, during the said period of one (1) year, a reasonable amount of any crops planted on said land by him.

3. Defendant, Ambilos Iehsi, or anyone acting through him, shall not interfere with the rights herein granted to plaintiff, and the plaintiff, Johnny Makaya, or anyone acting through him, shall not interfere with the right of Ambilos Iehsi to harvest crops from said land at any time, including the period of time granted to plaintiff for such harvesting.

4. The plaintiff shall not destroy any coconut trees or breadfruit trees and shall not cause damage in the harvesting of other crops beyond that usual for such harvesting in accordance with good Ponapean agricultural practice.

5. In the event a dispute arises between the parties as to the rights granted to plaintiff herein, either party may

BUIKESPIS v. TRUST TERRITORY

refer the matter by motion to the District Court, Ponape, and Judge Carl Kohler is authorized to hear the matter as Master and report his findings to this Court.

6. Upon the expiration of the above-stated period of one (1) year, all rights of the plaintiff in and to said land, and the fruit thereof, shall terminate.

ISAURO BUIKESPIS, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 298

Trial Division of the High Court

Palau District

April 16, 1968

Appeal from conviction of offense of negligent driving. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that such a conviction did not depend upon the negligence or wrongful parking of the complaining witness but rather the manner and circumstances of the operation of the motor vehicle operated by accused.

Affirmed.

1. Reckless Driving—Mutual Fault

The property of a conviction of reckless driving does not depend upon the negligence or wrongful parking of the complaining witness. (T.T.C., Secs. 815(b)(1), 814(g)(9), 814(g)(6))

2. Reckless Driving—Generally

The core of the offense of reckless driving lies not in the act of operating a motor vehicle, but in the manner and circumstances of its operation. (T.T.C., Sec. 815(b)(1))

3. Reckless Driving—Negligence

The fact that a bus driver blindly backed out to a highway and there hit a vehicle was reckless driving in the manner and circumstances of the operation of the bus. (T.T.C., Sec. 815(b)(1))

4. Appeal and Error—Scope of Review—Facts

Where there is sufficient evidence in the opinion of the trial court to justify the conviction, appellate court will not upset such verdict.