

Now therefore it is hereby ordered that this appeal is dismissed, with each party to bear its own costs incurred with respect to the appeal.

RITA K. CASTRO, Plaintiff-Appellant

v.

TERESITA SN. ATTAO, JAMES B. JOHNSON, JOAQUIN S. PANGELINAN, ELMER L. GAY, FRANCISCO C. ADA and EDWARD E. JOHNSTON, Defendants-Appellee

Civil Appeal No. 123

Appellate Division of the High Court

Mariana Islands District

March 18, 1975

Land title dispute. The Appellate Division of the High Court, Hefner, Associate Justice, held that if appellant owned land, government could not pass title to it to appellee by a homestead permit and subsequent quitclaim deed.

1. Real Property—Generally

Landowner cannot be deprived of his land except by his consent, or as a result of his own negligence, or in some manner provided by law.

2. Judgments—Summary Judgment—Tests and Standards

On a motion for summary judgment, inferences to be drawn from underlying facts contained in the materials before the court must be viewed in the light most favorable to the opposing party.

3. Real Property—Deeds—Government Deeds

If government did not own land it could not pass title to another by a homestead permit and subsequent quitclaim deed.

Counsel for Plaintiff-Appellant:

William B. Nabors

Counsel for Defendants-Appellee:

William Amsbary, District Attorney, Marianas for Government Micronesian Legal Services Corporation by Wilfred R. Mann for Attao

Before HEFNER, *Associate Justice*, WILLIAMS, *Associate Justice*, and BROWN, *Associate Justice*

HEFNER, *Associate Justice*

The Trial Court granted the defendants-appellee's motion for a summary judgment and the plaintiff-appellant appeals therefrom.

The plaintiff's complaint alleges that her deceased husband owned the property in dispute prior to World War II, but in 1955 the Government had granted a homestead permit to defendant Teresita Sn. Attao. The area included the property claimed by plaintiff. In December, 1969, the Government issued a certificate of compliance to Attao and on January 30, 1971, it issued a quitclaim deed to her. Plaintiff further alleges that a determination of ownership was made on June 17, 1970, finding defendant Attao to be the owner.

The thrust of the defendant's motion is that defendant Attao was issued a homestead permit in May of 1965 and that she complied with the Homestead law (67 TTC 201, et seq.) and is the owner following the granting of the certificate of compliance and quitclaim deed.

In the Trial Court's order it was conceded that for the purposes of the motion, plaintiff's allegation that she is the owner of the property is accepted as true. *Scheuer v. Rhodes*, (1974) 416 U.S. 232, 40 L.Ed.2d 90; 94 S.Ct. 1683.

The defendants argue that merely from the fact that the Government asserted ownership to the property by issuing defendant Attao a homestead permit, the Government was able to pass fee simple title to defendant Attao by its quitclaim deed dated January 30, 1970. The case of *Berman v. Parker*, 348 U.S. 26, 99 L.Ed., 27 75 S.Ct. 98 (1984) is cited for authority for this break in the chain of title. *Berman* involved an action by property owners to enjoin the condemnation of their property pursuant to the

District of Columbia Redevelopment Act. The property owners challenged the constitutionality of the Act. The Supreme Court of the United States held that the legislative branch had broad powers to enact the legislation in question and that the rights of the property owners who were defendants in condemnation proceedings pursuant to the Act were satisfied upon receipt of just compensation for the taking.

[1] In the case at bar, there was no taking and no condemnation suit filed. The end result of a condemnation or eminent domain proceeding is to provide a procedure to place title in the Government and determine the just compensation to be paid the owners. The judicial decree is the chain of title from the former owner to the Government. *United States v. Carmack*, 329 U.S. 230, 91 L.Ed. 209, 67 S.Ct. 252, 10 TTC § 56. The mere fact that the Government assumed the property belonged to it cannot be a substitute for an eminent domain proceeding. There is no pretense by the defendants that there was compliance with the eminent domain provisions of the Trust Territory Code 10 TTC § 51 et seq. Without this procedure being followed, there is a gap in the title and it is fundamental that one cannot deed away property he does not own. The owner cannot be deprived of his property except with his consent or as a result of his own negligence or in some manner provided by law. 62 Am.Jur. 2d 332.

Therefore, if it is found that the plaintiff was the owner of the property and did not lose the property after a determination of facts which may support a theory by virtue of adverse possession, laches, estoppel or some other theory, all of which must be determined at a trial, then she may prevail.

[2, 3] On a motion for summary judgment, inferences to be drawn from underlying facts contained in the

materials before the court must be viewed in light most favorable to the party opposing the motion. *United States v. Diebold, Inc.*, 39 U.S. 654; 8 L.Ed.2d 176; 82 S.Ct. 993. From the record at this stage, it appears there are substantial issues of fact which must be determined by the Trial Court. At least the chain of title upon which the defendants rely is defective on its face and only upon a trial can it be determined if the plaintiff or the defendants should prevail.

The Court's order entered July 19, 1974 is hereby reversed and this matter is remanded to the Trial Division of the High Court for a trial on the merits.

JABWE, Successor to KAIKO, Plaintiff-Appellee

v.

HENOS, Defendant-Appellant

Civil Appeal No. 84

Appellate Division of the High Court

Marshall Islands District

March 27, 1975

Appeal disputing determination of *dri jermal* interests. The Appellate Division of the High Court, Hefner, Associate Justice, held that the evidence supported the trial court's decision.

1. Appeal and Error—Generally

On appeal, the Appellate Division of the High Court will make every reasonable presumption in favor of correctness of the lower court's decision and the burden is on the appellant to affirmatively show error; and the court's function is to determine whether there is any evidence supporting the judgment.

2. Marshalls Land Law—"Dri Jermal"—Transfer of Rights

Will transferring one's *dri jermal* rights to one's children does not have to be approved by the *alab*.

Counsel for Appellant:
Counsel for Appellee:

JOHN HEINE
MENNA BUNITAK