

to find, indeed it is not argued by appellants, that we are concerned with casual sales.

The judgments are hereby **AFFIRMED**.

CARMEN CHACO ILISARI, Plaintiff-Appellee

v.

GUILLERMO M. TAROLIMAN, Defendant-Appellant

Civil Appeal No. 122

Appellate Division of the High Court

Mariana Islands District

April 27, 1976

Appeal from trial court's finding of an oral sale of land and decree of ownership to plaintiff. The Appellate Division of the High Court, Hefner, Associate Justice, affirmed, holding that after legal title has passed from government to an entryman on public grounds, he may alienate the land as he sees fit and verbal transfer of land is valid since there is no statute requiring a written instrument to transfer land in Trust Territory.

1. Appeal and Error—Evidence—Reweighting

Appellate division shall not set aside findings of fact of Trial Division of High Court unless findings are clearly erroneous and Appellate Division cannot reweigh evidence and decide whether in its opinion it should reach same or different conclusion as trial judge did as to facts. (6 TTC § 355(2))

2. Real Property—Transfers, Generally—Oral Agreements

Where defendant received a homestead permit in 1958, plaintiff moved onto property sometime thereafter, defendant received certificate of compliance in 1961 and government deed in 1962, defendant conceded that he received \$250 from plaintiff and gave plaintiff the homestead permit, plaintiff testified that she entered into an agreement for sale of house and land after she paid defendant \$250 and that defendant gave her the deed he received from government, at time of delivery of deed defendant said words to effect that land was now plaintiff's, and defendant admitted that he did not ask plaintiff to leave premises until this litigation was initiated, there was more than sufficient evidence upon which trial court could base its finding of an oral sale of land to plaintiff. (6 TTC § 355(2))

3. Real Property—Transfers Generally—Oral Agreements

Verbal transfer of land is valid as there is no statute requiring a written instrument to transfer land in Trust Territory.

4. Real Property—Transfers Generally

After legal title has passed from government to an entryman on public grounds, he may alienate the land as he sees fit.

5. Real Property—Transfers Generally—Particular Cases

Where defendant obtained a homestead permit in 1958, and received certificate of compliance in 1961 and government deed in 1962, and delivered deed to plaintiff who paid defendant \$250 for land, conveyance to plaintiff was not one which transferred any rights in or to the homestead permit but was a conveyance of a legal title which the government had previously given to defendant, who could alienate the land as he saw fit.

Counsel for Appellant:

JOSE S. DELA CRUZ and DAVID ALLEN, Micronesian Legal Services Corporation, Saipan

Counsel for Appellee:

JOSE A. TENORIO, *Public Defender's Office*, Saipan

Before BURNETT, *Chief Justice*, HEFNER, *Associate Justice*, and WILLIAMS, *Associate Justice*

HEFNER, *Associate Justice*

This appeal concerns a parcel of real property located on Saipan, Mariana Islands. The Trial Court made specific findings of fact to the effect that after the defendant obtained a homestead permit in 1958, the defendant agreed to sell the property to plaintiff; plaintiff moved onto the property, paid the sale price, and after the defendant received his certificate of compliance in 1961, and government deed in 1962, he delivered the deed to plaintiff. From these facts the Court found that an oral sale of the land was effected and decreed the plaintiff the owner.

The appellant asserts that there is not sufficient evidence in the record to support the finding of a sale and that any alleged sale was void, citing *Romolor v. Igisaiar*, 4 T.T.R. 105.

[1] As to the first contention, the Appellate Division shall not set aside findings of fact of the Trial Division of

the High Court unless the findings are clearly erroneous. 6 TTC 355(2). This Court cannot reweigh the evidence and decide whether in its opinion it should reach the same or different conclusion as the trial judge did as to the facts. *Arriola v. Arriola*, 4 T.T.R. 486. This is exactly what the appellant is asking this Court to do.

There is no question the defendant received a homestead permit in 1958 and the plaintiff moved onto the property sometime thereafter. The defendant received a certificate of compliance in 1961 and government deed in 1962. Defendant further concedes he received \$250 from the plaintiff and gave to the plaintiff the homestead permit (Exhibit 2).

The testimony of the plaintiff was that the plaintiff and defendant entered into an agreement for the sale of the house and land and after plaintiff paid \$250, the defendant gave her the deed he received from the government. At the time of the delivery of the deed, the defendant said words to the effect that the land was now the plaintiff's (Rep. Tr. pp 20, 21).

The defendant admits that he did not ask the plaintiff to leave the premises until this litigation was initiated.

[2] In view of the record, there is more than sufficient evidence upon which the Trial Court could base its finding. The only issue for this Court to determine is whether the sale by the defendant to the plaintiff was void because of 67 TTC § 209 and the holding in *Romolor v. Igisaiar*, 4 T.T.R. 105.

Section 209 in part reads:

No rights in or to a homestead permit granted under the provisions of this Chapter shall be sold, assigned, leased, transferred or encumbered

In *Romolor*, supra, the Trial Court found that the plaintiff could not obtain specific performance and enforce an agreement the defendant made to convey the land after his homestead had been perfected.

We agree with the reasoning in *Romolor*, and if the facts of this case were the same, the plaintiff would be denied specific performance.

However, in this case, after the homestead permit matured, and after a certificate of compliance was issued and a deed was issued to the defendant transferring the land to the defendant, the defendant handed the deed to the plaintiff and verbally conveyed the land to the plaintiff. Thus, the defendant went one crucial step further than the defendant in *Romolor*. He conveyed the land after acquiring title from the government.

[3] As pointed out by the Trial Court, specific performance is not required here since in the Trust Territory, a verbal transfer of land is valid as there is no statute requiring a written instrument to transfer land. The plaintiff's suit is, in reality, nothing more than a request to formalize a verbal conveyance of land so that the record is established that the land is hers.

[4, 5] The conveyance, after the grant by the government to the defendant, was not one which transfers any rights in or to the homestead permit. It was a conveyance of a legal title which the government had previously given to the defendant. After legal title has passed to an entryman on public lands, he may alienate the land as he sees fit. *Stark v. Starr*, 94 U.S. 477, 26 L.Ed. 276; *United States v. Budd*, 144 U.S. 154, 12 S.Ct. 575, 36 L.Ed. 384.

The defendant is not in a position to attack the very deed he received from the government nor is he claiming that title was not vested in him upon the filing of the government deed in April of 1962. Upon receipt of title he simply verbally conveyed the property to the plaintiff, and the prohibition of 67 TTC § 209 is no longer applicable.

The judgment is AFFIRMED.