

viously have had in the land and the courts will not, and should not, assist him in regaining such rights.

[2] On the question of adverse possession between brothers, the common law on this subject is enunciated in 3 Am. Jur. 2d Adverse Possession § 147, as follows:

It is a general principle that members of a family may not acquire adverse possession against each other in the absence of a showing of a clear, positive, and continued disclaimer and disavowal of title, and an assertion of an adverse right brought home to the true owner a sufficient length of time to bar him under the statute of limitations from asserting his rights. Stronger evidence of adverse possession is required where there is a family relation between the parties than where no such relation exists. The existence of a family relationship between the parties will prevent or rebut a presumption of adverse holding. (Footnotes and authorities deleted.)

From the evidentiary and legal points of view, the appellant has failed to sustain his burden of proving adverse possession on his part.

In view of the foregoing, the judgment of the Trial Division is hereby **AFFIRMED**.

LONET ELDRIDGE, Appellant

v.

ELIKEN ELIAM, Appellee

Civil Appeal No. 364

Appellate Division of the High Court

Ponape District

January 25, 1984

Appeal from trial court judgment affirming Land Commission determination of ownership. The Appellate Division of the High Court, Miyamoto, Associate Justice, held that father, as "administrator" of the land for minor child under Ponapean custom, had no authority to grant the land to someone outside of the family, and therefore judgment of the trial court was reversed.

ELDRIDGE v. ELIAM

Ponape Land Law—Inheritance

Under Ponapean custom, father, as “administrator” of land for his minor child, had no authority to grant the land to someone outside the family.

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Before MUNSON, *Chief Justice*, MIYAMOTO, *Associate Justice*, and HEFNER¹, *Associate Justice*

MIYAMOTO, *Associate Justice*

This is an appeal from the judgment of the trial division affirming the Ponape State Land Commission Determination that Eliken Eliam is the owner of Tract No. 73966, formerly Japanese Lots Nos. 1269 and 1270, being a portion of the land known as Peinpwe, situated in the Pohnauleng section, Madolenihmw Municipality, State of Ponape

The land Peinpwe was originally owned by Alpert and during the German Land Reform Program of 1912, the land was caused to be registered in the name of his grandson, Lonet Eldridge, a male minor child about six years of age, as owner, and also in the name of Lincoln Eldridge, his father, as “administrator” of the land for the minor child. During the Japanese administration, the land was subdivided into five parts by Lincoln Eldridge and his wife Kari, and these individual portions went to their sons, Anton, Lonet and Sakies and to Roland Norman and Eliken Eliam. These lands were subsequently surveyed and registered in the Tochi Daicho by the Japanese administration.

¹Chief Judge, Commonwealth Trial Court, Northern Mariana Islands, designated as Temporary Justice by Secretary of Interior.

No problems arose as a result of this subdivision until the Land Commission began to determine the titles to these lands.

As to Anton's interest in the land, the Land Commission determined his portion to be his and in the subsequent appellate action, the trial division and the appellate division (in Civil Appeal No. 365) affirmed the ruling of the Land Commission.

As to Roland Norman's interest in the land, the trial division, in *Roland Norman v. Lonet Eldridge*, Civil Action No. 10-73, ruled in favor of Lonet Eldridge, finding, *inter alia*, that Lonet had established adverse possession over the land registered in Roland Norman's name. There was no appeal. There is no indication in the judgment what Roland Norman's relationship was to the Eldridge family.

This action, third among the five subdivisions, is to determine whether Elikan Eliam, a Mokilese person, a friend of Lincoln Eldridge but not a member of the Eldridge family, could receive the land from Lincoln Eldridge, the administrator of the land under the German deed.

As stated in Civil Appeal No. 365², it is a Ponapean custom that the father exercised control over the land by virtue of his senior position although the paper title was held in his son. Further, the court took notice of family agreements which were encouraged by the Japanese administration.

Here, Elikan Eliam was not a member of the Eldridge family. Elikan was a friend of Lincoln Eldridge, the administrator, and was considered "family," however, he was not a member of the family to whom Lincoln could divest Lonet's land.

As indicated in Civil Appeal No. 365, the court took notice of the official Japanese survey begun about 1941 and found that there was strong presumption that the deter-

² *Lonet Eldridge v. Anton Eldridge, et al.*, 8 T.T.R. 432, 434 (App. Div. 1984).

minations made by the Japanese surveyors and registered in Tochi Daicho were correct.

Here, Lincoln, as administrator, had no authority to include in the family agreement a grant of land to someone outside of the family. The action of Lincoln Eldridge was clearly *ultra vires*. Therefore, the grant of land to Eliken Eliam is declared void on its face. Further, the appellee has no claim under adverse possession because he freely admits he had not gone back on the land since the end of World War II.

Therefore, Tract No. 73966 is declared to be owned by Lonet Eldridge, the original owner of the land. The judgment of the trial court is hereby REVERSED.

LUJANA, PHILLIP JITIAM and JIBAJ RIKLON,
Plaintiffs-Appellants

v.

CLANRY and AJNER, Defendants-Appellees

Civil Action No. 366

Appellate Division of the High Court

Marshall Islands District

January 25, 1984

Appeal from a judgment of the trial court in an action to determine *alab* rights to certain *watos*. The Appellate Division of the High Court, Miyamoto, Associate Justice, held that where trial court stated in its judgment that, based on the case of *Loeak v. Loeak*, 8 T.T.R. 163 (App. Div. 1980), it had to "go beyond the evidence", this was not a correct interpretation of the *Loeak* case, but actions taken by trial court pursuant to this proposition were nonetheless proper, and therefore trial court judgment was affirmed.

1. Courts—Judicial Notice

In land ownership dispute, where highly relevant Determinations of Ownership of the District Land Title Officer could have been judicially noticed, or introduced as exhibits, based on the holding of *Loeak v. Loeak*, 8 T.T.R. 163 (App. Div. 1980), court should have insured that inexperienced counsel was not prevented by ignorance or inadvertence from