

RIEUO, Plaintiff

v.

NOCHI, Defendant

Civil Action No. 152

Trial Division of the High Court

Truk District

December 21, 1961

Action for determination of title to land on Uman Island, in which plaintiff claims that his father gave individual lands to matrilineal family without consent of his children as required by Truk customary law. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where wife divorced landholder and divorce was not shown to be husband's fault, and she took children, who showed no further interest in father and did not work with him on land, father could transfer land to his matrilineal family without consent of or notice to his children.

1. Truk Land Law—Individual Ownership—Care of Owner During Last Illness

Under Truk custom, owner of individual land in Truk Atoll may transfer such land in payment for substantial services in caring for him during his last illness without consent of or notice to his children.

2. Truk Land Law—Individual Ownership—Transfers

Under Truk custom, in determining moral, if not legal, right to land after owner's death, how land is used for substantial period and who assists owner with his permission in using it is given great weight.

3. Truk Land Law—Individual Ownership—Transfers

Under Truk custom, logical successors to land build up equity in land by working it with owner.

4. Truk Custom—Marriage—Death of Spouse

Under Truk custom, where wife of deceased landowner remarries and takes children of landowner with her who are then considered children of their step-father, mother should be considered to have broken away from her former husband's family.

5. Truk Land Law—Individual Ownership—Transfers

In determining whether children's consent is required in father's distribution of land under Truk custom, if failure of children to stay with father is clearly shown to be fault of father, requirement would be different than where it is not fault of father.

6. Truk Land Law—Individual Ownership—Transfers

Under Truk custom, where, after divorce not shown to have been husband's fault, landowner's children have gone with their mother and

have shown no further interest in their father or his land until after his death, and landowner's patrilineal family has worked land with him for some years, he may give individual land to matrilineal family without consent or notice to his children.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Romu consented to and joined in the use of the lands in question as lands of his matrilineal family (or branch of his lineage as it has sometimes been called in this action), gave whatever individual rights he had in these lands to his matrilineal family, and acquiesced in his mother's direction that they should remain lands of that group.

2. Romu and his wife Ikechol were divorced and their children, namely, the plaintiff Rieuo and his sister Rieko, went with their mother and showed no further interest in either their father or the lands in question until after their father's death.

3. The plaintiff has not sustained the burden of showing any gift of either of these lands by Romu to either Rieuo or Rieko or both of them.

4. There is no evidence that the divorce above mentioned was due to the fault of Romu.

OPINION

[1] This action raises the question of whether there is another situation in which the owner of individual land in Truk Atoll may dispose of such land without the consent of or notice to his children, beside the one involved in the case of *Arthur Irons v. Rudo*, 2 T.T.R. 296, in which the court has just held that such an owner may so transfer such land in payment for substantial services in caring for him during his last illness. The principal considerations

and claims as to restrictions on the transfer of such land in Truk Atoll are discussed in the opinion in the Arthur Irons case.

In this present action there is some uncertainty in the evidence as to whether Romu ever owned the lands here in question as his individual lands or whether they had already been transferred by his father to Romu's extended matrilineal family, referred to in the memorandum of pre-trial conference as his "branch" of his lineage. The court is inclined to believe that the lands had become individual lands in Romu's hands. In view of the first finding of fact, however, it is immaterial whether the lands were transferred to Romu's matrilineal family by Romu or by his father Oune. For the purposes of this case it will be assumed that the lands were once individual lands of Romu.

[2, 3] The question then comes as to whether Romu could transfer these lands (located in Uman Municipality in Truk Atoll) to his matrilineal family, or branch of his lineage, without the consent of or notice to his children. According to uncontradicted testimony, the children's mother had remarried while Romu was away working on Angaur, had taken the children with her and they had been considered by their step-father as his children, and had shown no further interest in either their true father or the lands in question until after their father's death. Meanwhile Romu had been using the lands with his matrilineal family, or branch of his lineage, for years and had clearly recognized the lands, so far as he had the power to do so, as belonging to that group. This matter of how land is used for a substantial period and who assists the owner with his permission in using it, is instinctively given great weight by Trukese in determining in doubtful cases at least the moral, if not the legal, right to the land after the owner's death. As a general rule, any logical successors

in interest to the owner appear to build up a sort of equity in the land by working it with him and, conversely, those who would normally be expected to work it with him and fail to, thereby at least weaken their claim to it.

[4] In this instance, Rieuo himself was too small, at the time Romu died, to either work the lands or intelligently consent to a transfer of them, but Rieko was grown up, and from a Trukese point of view, it appears clear they and their mother should be considered as a unit and to have broken away from Romu as a practical, social, and economic matter. This may seem harsh from an American point of view, but it should be remembered that we are here dealing with an alleged restriction on the transfer of individual land under Trukese custom in a situation where it is clear there would be no such restriction from the usual American point of view. It is believed therefore that the limitations on whatever restriction there may be on such transfers must be judged by Trukese rather than American standards.

[5] As indicated in the opinion of this court in the Arthur Irons case cited above, however, Trukese land concepts are extraordinarily flexible and it may be that the situation would be different if the failure of the children to stay with their father and work with him to the extent of their ability in a normal way, was clearly shown to be due to some fault of the father, as seen from the Trukese point of view, or if there were other variations from the factors involved in this action.

[6] Without attempting to decide what the situation would be if it were clearly shown that the divorce or the failure of his children to work with him was due to the fault of the husband, the court holds that in the situation disclosed in this case, where after a divorce, not shown to have been due to the husband's fault, a man's children

have gone with their mother and shown no further interest in either their father or the land until after their father's death, and his matrilineal family has worked the land with him for some years, he may give his individual land in Truk Atoll to his matrilineal family without the consent of or notice to his children, regardless of their age.

The court therefore holds that Romu's transfer of whatever individual rights he had in these lands, passed these rights free and clear of any claims of Romu's children, and gave ownership to his matrilineal family if it did not already have it.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the lands known as Nepokur, located on Uman Island, and as Nikutur, located on Fanan Island, both in Uman Municipality, Truk District, are owned by the matrilineal family represented in this action by the defendant Nochi who lives on Uman Island, consisting of the descendants in the female line of Neitemo and her sister Nikopitik; and neither the plaintiff Rieuo nor his sister Rieko, for whom he also makes claim, has any rights of ownership in either of these lands, nor the right to use any part of them without the consent of the matrilineal family above described. While Rieuo and Rieko are *afokur* of that matrilineal family, they have disregarded that family so long that they cannot reasonably expect such permission to be granted in the absence of strong evidence of willingness to cooperate with the family in the future and assist in the care of the land.

2. This judgment shall not affect any rights of way there may be over the lands in question.

3. No costs are assessed against either party.