

NGEDRONG IBETANG, Plaintiff

v.

NGIRMEKUR SKED and OBAKRAIRUR SKED, Defendants

Civil Action No. 278

Trial Division of the High Court

Palau District

September 9, 1963

Action to determine ownership of land in Ngardmau Municipality, formerly transferred from clan to lineage, after which lineage acquiesced in defendants' use of parts of land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that land was not used by defendants long enough at any one time to give them ownership of land itself, but that defendants own plantings made by them and have right to go upon land and harvest them.

1. Palau Land Law—Use Rights

Under Palau custom, one may be allowed to plant on lands unused by owner, and although plantings belong to person making them, ownership of land itself is not transferred.

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2. Palau Land Law—Lineage Ownership—Use Rights

Under Palau custom, where parties plant trees on land belonging to lineage with acquiescence of lineage, they are entitled to use trees and to go on premises for that purpose as long as trees bear reasonably well or until lineage arranges with parties to acquire ownership of trees.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The land in question is part of that transferred by the Iuet Clan to the Itelochang Lineage within that clan and has never been transferred by the Itelochang Lineage.

2. Members of the Itelochang Lineage, however, have at least acquiesced in, if they did not definitely permit, the defendants Ngirmekur Sked and Obakrairur Sked and their father Sked before them, using parts of the land at times, but not long enough at any one time to give the defendants ownership of any of the land itself.

OPINION

The first finding of fact above controls the main issue in this action, which is as to the ownership of the land.

[1] There remains, however, the question of the ownership of the defendants' plantings on the land. It appears that in German times and early Japanese times Palauans were very cooperative and frequently permitted or acquiesced in other persons' planting on their lands if these were unused by the owner and that it was well recognized in such cases that the plantings belonged to persons making them without any thought of the transfer of ownership of the land itself. This concept has continued to a declining extent down to the present time when there appears to be a much keener and more exact feeling about ownership of land than there was in former days.

[2] In view of the above and the second finding of fact the court holds that under all the circumstances here disclosed the defendants Ngirmekur Sked and Obakrairur Sked own their plantings of beetlenut trees which it is agreed they have on the land in question and any plantings of tall bearing coconut trees they may have there and are entitled to use these and go on the premises for that purpose as long as they bear reasonably or until such time as the plaintiff or other members of the Itelochang Lineage may arrange by agreement with the defendants to acquire ownership of these trees.

In connection with this judgment it should be noted that during the course of the trial the defendants changed their position from that stated in the pre-trial order and claimed that the land in question belonged to the Metemintang Lineage for whom they claimed to be administering it.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the land shown as Lot No. 135 on "Map of private lands, Ngardmau, Babelthau Island, Palau Group" dated 31 July 1951 made in the Palau Land Office from the South Seas Aluminum Co. map of 1942, all of said land being sometimes referred to as Obong and part of it being sometimes referred to as Olchuchuchau, and another part of it sometimes referred to as Ngetkabil, said land being also shown as the larger rectangular piece shaded dark on the sketch attached to the pre-trial order, and which is located in Ngardmau Municipality, Palau District, is owned by the Itelochang Lineage within the Iuet Clan (which lineage is represented in this action by the plaintiff Ngedrong Ibetang as its female head) and neither the defendants Ngirmekur Sked and Obakrairur

Sked nor the Metemetang Clan or Lineage for which they claim have any rights of ownership in it.

2. The defendants Ngirmekur Sked and Obakrairur Sked, however, still own the beetlenut trees which they have planted on the land and any tall bearing coconut trees which they have planted there and have the right to go upon the land to harvest from and care for these trees according to good Palauan agricultural practices without causing any more damage or inconvenience than is reasonably necessary for such harvesting and care, so long as said trees continue to bear well enough to be of economic value, or until some other agreement is made between the defendants and the Itelochang Lineage with regard to such trees, but the defendants are to make no new or further plantings on the land even in replacement of their trees now there.

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

4. The plaintiff Ngedrong Ibetang is awarded costs of this action taxable under the first sentence of Section 265 of the Trust Territory Code. If the plaintiff has had any such taxable costs, beside the \$1.00 fee for filing the complaint and the \$2.50 trial fee shown by the Clerk's records, she is to file a sworn itemized statement of them within thirty days (30) of the entry of this judgment. Otherwise only the three dollars fifty cents (\$3.50) costs mentioned above will be allowed.