ROBERT NARRUHN, Appellant
v.
ESTER, and Others, Appellees

Civil Appeal No. 34

Appellate Division of the High Court

April 13, 1972

Trial Court Opinion—3 T.T.R. 423

Appeal from determination of ownership of land on Puenes Island, Truk Lagoon. The Appellate Division of the High Court, D. Kelly Turner, Associate Justice, held that the lower court erred in transferring land from appellant after he had shown he had purchased it.

Judgment reversed.

1. Equity—Generally

   A judgment which can be made as a matter of law upon acceptably proven facts does not require resort to equitable principles to support it.

2. Real Property—Boundaries

   In the absence of a survey, any court opens the door to technically inaccurate and erroneous land description when it attempts to describe a parcel by metes and bounds.

3. Real Property—Boundaries

   When the land in issue has not been surveyed the court should describe land divisions in general terms when conflicting claims are settled and leave it to the owners of adjoining lands to agree upon boundary lines.

Before BURNETT, *Chief Justice*, BROWN, JR. and TURNER, *Associate Justices*

TURNER, *Associate Justice*

This action involved a small portion of the land, Mesor, located on Puenes Island, on the barrier reef of the Truk lagoon within Uman municipality. The parties agreed that the land Mesor was divided into eleven parcels. The only dispute presented for settlement to the trial court was whether Robert Narruhn, the appellant, who intervened as a claimant against the estate of Napoleon De Fang, owned the northern portion of Mesor No. 2, which was one of the eleven divisions.

This appeal comes from a trial court decision that the appellee Ester, special administratrix of the Napoleon De Fang estate, was owner of "the north one-half of the land Mesor." The trial court also held that "the south one-half of the land Mesor" belonged to the estate of Taro Setin, represented by Sintau, special administrator.

It is apparent that the court erred in its description of the property and in its disposition of the "south one-half of the land Mesor." The parcel of land which was held to belong to the estate of Taro Setin had been sold to appellant Robert in 1957 and his ownership of this parcel was not disputed by any of the parties.

The record shows Associate Justice Kinnare held a pretrial conference July 20, 1964, at which time Robert presented his claim against the De Fang estate and submitted a sketch of Mesor showing the eleven divisions and the ownership of each part. With the exception of the northern part of Division No. 2, which was in dispute, Robert owned by purchase seven of the divisions and the southern half of No. 2.

None of the other parcels were considered by the trial court; it rejected testimony as to ownership of these parts

of Mesor. Perhaps because Robert purchased the southern portion of No. 2 from Taro Setin and then attempted to use the evidence of that purchase to prove his claim to the northern part, the trial court woefully misconstrued the facts as to the issue before it.

Taro Setin was made a party to the proceedings at the 1964 pre-trial because he told the court he sold the southern part of No. 2 to Robert in 1957—which no one disputed—and in the same year sold the northern part to Napoleon De Fang—which Robert disputed. Both parts of Mesor No. 2 thus became involved in the trial, even though ownership of the northern parcel was the only one in dispute. To compound this error, the trial court ignored the other ten divisions of Mesor, most of which Robert owned, and treated the case as if it involved a dispute as to ownership of "all of Mesor." By "all of Mesor" the court meant all of the No. 2 division.

As a matter of pleading and proof the only question the trial court had before it was a relatively simple dispute as to ownership of a small plot of land which was a part of the land Mesor. The court should have been concerned only with the question of proof whether Napoleon or Robert purchased the land in question from Taro Setin.

If the case had been tried soon after the pre-trial conference in 1964, when the seller was still alive, the decision should have presented no problem. If Robert had made his claim before Napoleon died when the two buyers and the seller all could have been before the court, there would have been even less difficulty in reaching a correct decision. In all probability, however, there would have been no lawsuit if the parties all were alive because Robert quite obviously based his claim upon evidence relating to his undisputed 1957 purchase.

[1] A judgment which can be made as a matter of law upon acceptably proven facts does not require resort to

equitable principles to support it. We have no quarrel with the several maxims of "fireside equity" extracted from 27 Am. Jur. 2d, Equity, by the trial court in support of its decision. But we do say these lessons from another branch of jurisprudence were not applicable to this case.

It not only was improper for the court to inject these maxims into the decision, but it also confused and made complex a rather simple issue of law. Reliance upon the quoted maxims of equity was employed by the trial court to support its forfeiture of ownership of property Robert purchased from Taro which was not disputed and not before the court except that evidence relating to the forfeited parcel was offered by Robert as proof of ownership of the parcel which was the subject of the lawsuit.

The court not only forfeited Robert's undisputed ownership of the southern portion of Mesor No. 2 but it also transferred title back to the estate of the seller eleven years after the land had been sold. It would have made just as much sense for the court to forfeit Robert's ownership of the seven other divisions of Mesor as it was to order termination of ownership of the southern portion of Mesor No. 2.

It is apparent that the trial judge was so incensed by Robert's false claim to the northern part of Mesor No. 2 that he imposed the harsh forfeiture of title. The theory upon which the decision was made is set forth at 3 T.T.R. 432 and 433:—

> "His attempt by this action to quiet title to all of Mesor must fail and he cannot be given a judgment quieting title to *any* of Mesor. . . . In this case it may well be said that 'good conscience would revolt against granting him relief,' that is, awarding the plaintiff any part of Mesor after he has attempted to use the court to give him all of Mesor when, at most, he would have been entitled to only one-half of it."

The court was technically inaccurate when it referred to "all of Mesor" instead of Mesor Division No. 2. Also the

court erred in saying Robert attempted to quiet title to all of Mesor. The record is clear that the only quiet title issue was to the northern portion of Division No. 2. There was no occasion for Robert to "attempt" nor for the court to consider settling title to any of the remainder of Mesor because title to the remainder, including the southern portion of No. 2, was not in dispute and not before the court.

[2, 3] In addition to resolving the confusion evidenced in the judgment on appeal as to what title issue was before the court, we also must undertake to correct the judgment land description. In the absence of a survey, any court opens the door to technically inaccurate and erroneous land description when it attempts to describe a parcel by metes and bounds as was done here. Even relying on the sketch filed at the pre-trial, the trial court got lost in attempting to describe the boundary of the parcel held to belong to the De Fang estate. The boundary calls of the parcel taken from Robert and given back to the seller's estate compounds the first error in description. It is an exceptional case in which land boundaries can be described by metes and bounds. Experience shows a far more reliable method is for the court to describe land divisions in general terms when conflicting claims are settled and leave it to the owners of adjoining lands to agree upon boundary lines.

Here the court attempted, without surveyed calls of distance and direction, to describe the boundaries. It is most difficult to understand, for example, the following call contained in the judgment, 3 T.T.R. 434:—

> ". . . along said west shoreline of Mesor to a large coconut tree approximately one-half the distance along the shoreline along the north boundary lines of the lands which belong to Rapich, Kepue and Nemirock . . . ."

The record clearly shows lands formerly owned by Rapich, Kepue and Nemirock and sold to Robert did not

bound the north half of Mesor No. 2 but that this parcel was bounded by the south half of Mesor No. 2, formerly owned by Taro Setin and also sold to Robert.

Not only must this appeal decision reverse the trial court's order transferring the southern part of Mesor No. 2 to the estate of Taro Setin, but the description of the parcel held to belong to the estate of De Fang must be simplified and restated. The record does not clearly indicate Mesor No. 2 was divided into equal halves but we will not disturb the descriptive finding.

Accordingly, the case is remanded to the Trial Division for entry of the following judgment:—

1. That the estate of Napoleon De Fang, represented by Ester, special administratrix, is the owner of the land described as the northern half portion of Mesor Division No. 2, located on Puenes Island, Uman Municipality, Truk District.

2. That Robert Narruhn is the owner of the land described as the southern half portion of Mesor Division No. 2, located on Puenes Island, Uman Municipality, Truk District.

3. That the estate of Taro Setin, represented by Sintau, special administrator, has no right, title and interest to either portion of Mesor Division No. 2.

4. Costs are awarded appellees in accordance with law.

5. This judgment shall not affect any rights-of-way which may exist across said lands.