

MARINO LEKEOK, Plaintiff
v.
IRORO ILANGELANG, Defendant
and
GILLIAN T. TELLAMES, Intervenor
Civil Action No. 516
Trial Division of the High Court
Palau District
June 21, 1974

Land title dispute. The Trial Division of the High Court, Hefner, Associate Justice, held that statute, not Paluan custom, governed distribution of land held in fee simple by person who died intestate.

1. Palau Land Law—Clan Ownership—Transfer

Where witness testified that that transfer of title to clan land to him sometime prior to 1934 was confirmed by 1936 trial held during the

Japanese administration, and the Japanese had conducted a survey of the land between 1938 and 1941 and registered the land in the Tochi Daicho in the name of person witness sold the land to in 1936, and the sale, according to an exhibit at current proceeding, was consented to and confirmed by the Japanese administration and the chiefs, the clan's interest in the land was cut off and the sale was valid.

2. Property—Adverse Possession

Although interest in land may be waived by not asserting one's claim to it over a long period of time, defendant could not prevail on her claim to land where she allegedly possessed it from 1948 to 1971, at which time she attempted to build a house on it and plaintiff filed a suit and intervenor intervened, and there were apparently no acts or transactions during that time which put plaintiff and intervenor on notice that they should act.

3. Decedents' Estates—Distribution

Land decedent held in fee simple at time of his death intestate passed according to statute providing for the distribution of the land in such cases, not under Paluan custom.

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| <i>Assessor:</i> | BENJAMIN N. OITERONG, <i>Associate Judge, District Court</i> |
| <i>Interpreter:</i> | AMADOR D. NGIRKELAU |
| <i>Reporter:</i> | SAM K. SASLAW |
| <i>Counsel for Plaintiff:</i> | JOHN C. NGIRAKED |
| <i>Counsel for Defendant:</i> | JONAS OLKERIIL |
| <i>Counsel for Intervenor:</i> | IN PRO SE |

HEFNER, *Associate Justice*

This action concerns land known as Ngedemong and described in the Japanese Tochi Daicho as Lot 80, although in the pleadings and Master's Report it is referred to as Lot 79. Plaintiff's exhibits 1 and 2 in evidence further describe the parcel in question.

A Master's Report was issued in this matter and all parties desired to present evidence before this Court and the prior order remanding this matter back to the Master is hereby rescinded.

At the initial stages of the trial, it was agreed by the plaintiff and his sister, who was in court, that there was

no claim to the land made on behalf of Rolmii Joseph, contrary to the Master's Report. The Master found that the deceased, Luis Tellames, made an oral will two hours prior to death, willing the land to Rolmii Joseph. The Trust Territory Code specifically states that such a will of real property is not effective. 13 TTC Sec. 7.

It was stipulated by all parties that the property was listed in the Tochi Daicho as individual land of Luis Tellames; that Luis Tellames died on December 20, 1963; that plaintiff is the oldest surviving brother of Luis Tellames, and that Intervenor Gillian Tellames is the adopted son of the deceased Luis Tellames.

All three parties have submitted evidence upon which a claim to the land can be based. All three parties apparently were content in believing that the property was theirs and it wasn't until 1971 when Defendant Iroro attempted to construct a house on the land this litigation was initiated.

Plaintiff's claim to the land is based on Palauan custom. Essentially, he asserts that as the oldest surviving brother of the deceased, Luis Tellames, he is the proper representative to handle the property and distribute same to the proper parties pursuant to Palauan custom. In effect, he would hold the land as the personal representative of the deceased for the relatives.

Defendant Iroro's claim is based on two grounds. She is the chief title bearer of the Ngedelmong Clan and since the land was clan land prior to 1934, a purported sale of the land by one Debelbot Ilek to Luis Tellames was invalid and, further, that if the sale was valid, Luis Tellames returned the land to the clan in 1948-1949 by an oral transfer.

Intervenor Gillian Tellames claims the land was owned by Luis Tellames at his death and as the oldest living male child, he is entitled to it pursuant to Section 801 of the Palau District Code.

It is fairly well agreed and the evidence is abundant that though the land was clan land sometime prior to 1934, that the chief title bearer of the land, Olikong Oitablai, in some manner transferred some sort of claim of title to Debelbot Ilek and in 1936 a sale was made of this interest to Luis Tellames. Money was paid to Debelbot Ilek by Luis Tellames. However, in approximately 1936 and after the sale, a trial was held in the Japanese Court. In essence, the mother of Defendant Iroro brought suit against Debelbot Ilek claiming he had no right to sell the land since it was clan land. The outcome of that lawsuit was disputed.

[1] The Court finds that title was confirmed in Debelbot Ilek by the Japanese administration and therefore this establishes the validity of the sale to Luis Tellames.

Not only did Debelbot Ilek testify that he won the lawsuit, but it is clear that the Japanese conducted a survey of the land after the trial between 1938 and 1941 and then registered the land in the individual name of Luis Tellames in the Tochi Daicho. Plaintiff's exhibit No. 1 indicates the agreement between Debelbot and Luis Tellames was confirmed and consented to by not only the Japanese administration but also the Chiefs of Koror. All of these facts substantiate that any interest of the clan was cut off. *Elechus v. Kdesau*, 4 T.T.R. 444. The facts of this case are even stronger in the favor of individual ownership than that found in the *Elechus* case since here, the individual grantee, Luis Tellames, paid for the property.

It is also not disputed that Luis Tellames possessed and used the land until 1945, obtaining rents and profits therefrom, and in 1945 he gave permission to the plaintiff to live on the land which he did until 1948. Therefore, the land in question, at least to 1948, was the individual fee simple land of Luis Tellames. Once it is determined that the land

is individual land, the lineage or clan from which it came retains no control over it. *Obkal v. Armaluuk*, 5 T.T.R. 3.

In 1948–1949, defendant Iroto testified that Luis Tellames told her he will return the land to the clan since he had gotten his money out of the land. However, there is no evidence whatever that there was any further action or conversation to affect a return of the land to the clan. Title was never changed, no written documents were signed, nor did Luis Tellames deliver to defendant Iroto any of the maps or papers dealing with the land. There is some indication that Luis Tellames even tried to will the land away just prior to his death which demonstrates his belief that he still owned the land.

The law in the Trust Territory does not require a transfer of land to be in writing and there is no statute of frauds. *Rechemang v. Belau*, 3 T.T.R. 552. However, there must be some evidence to support a finding that the deceased Luis Tellames transferred his individual fee simple land to the Defendant Iroto and the Court cannot find sufficient evidence to do that.

[2] The only way the defendant can be successful in her claim is her alleged possession of the land from 1948 until 1971 when she attempted to build a house on the property. Although one may waive his interest in land by not asserting his claim to it over a long period of time (*Oucherecher Clan v. Termeteet*, 4 T.T.R. 285), there does not appear any acts or transactions of the Defendant Iroto or the clan which would put the other two claimants on notice that they should act until Defendant Iroto commenced building the house. As soon as she manifested her claim to the land, plaintiff filed this lawsuit and Gillian Tellames intervened.

It is therefore the Court's conclusion the Defendant Iroto, on behalf of the Ngedelmong Clan, cannot prevail with her claim to the land.

As between the plaintiff and intervenor Gillian Tellames, the case of *Rechemang v. Belau*, 3 T.T.R. 552, appears to resolve the remaining dispute.

It has been testified that the traditional funeral meeting (chelebechil) did not settle anything regarding the land in question and the parties were waiting for the plaintiff, as the proper party, to call another meeting. Seven years elapsed and no meeting was held and the only thing that brought this matter to a head was the start of the Defendant Iroro's house. If the plaintiff had a customary duty to perform, he was certainly dilatory in carrying out the duty.

The Palau District Legislature first enacted an inheritance law in 1955 (See Land Tenure Patterns, TTPI, page 322) and in 1959 the current district inheritance law, Section 801, was enacted.

It is conceded that the death of Luis Tellames occurred after the effective date of Section 801.

In the *Rechemang* case, the Court stated that Section 801 of the Palau District Code impinged upon the custom of the distribution of property at the traditional funeral meeting. In that case the Court found that the land in question was family land and not fee simple, and Section 801 did not apply. However, it is clear from the decision in that case that if the Court had found the land to be fee simple land, the property would have gone to the oldest living male child of sound mind, natural or adopted.

This case reflects the classic dispute between the older generation and the younger generation as noted in Land Tenure Patterns, TTPI, page 322. Although fee simple land in Palau was rare in the past, it is now becoming more commonplace and hence the legislature determined the need to legislate on the matter. Section 801 states that

"Land now held in fee simple or hereafter required by individuals, may be transferred, devised, sold or otherwise disposed of at

such time and in such manner as the owner alone may desire, regardless of established local customs which may control the disposition or inheritance of land through matrilineal lineages or clans.”

In the event the owner does not make a will, Section 801(c) provides for the distribution of the fee simple land to the oldest male living child if there is such a child. The fact that the land was not registered with the Clerk of Courts pursuant to 801(a) does not mean that the land did not remain the fee simple land of Luis Tellames. He owned the land in fee simple prior to the effective date of Section 801. All transfers after the effective date of Section 801 must be registered within 90 days but this in no way alters the fact that the land was fee simple at the date of death of Luis Tellames.

It is also clear that even before the enactment of Section 801, the Trust Territory Courts rejected the argument that individually owned land reverts to the lineage or clan if there is no will. *Ngeskesuk, et al., v. Solang*, Palau Civil Action 49-73 and *Solang v. Ngeskesuk*, Palau Civil Action 56-73, both reported in 6 T.T.R. 505. It has been held that the land goes to the heirs of the deceased, said heirs being determined on the basis of Palauan custom. Section 801 resolved the problem of determining who were “heirs” under Palauan custom.

The two-year statute of limitations, 6 TTC 304, has no application in the present case either for or against plaintiff or intevenor Gillian Tellames. If the plaintiff had taken actual or effective possession of the land as the personal representative of the deceased it would be another matter.

[3] It is therefore the judgment of this Court that the property described as Lot 80 in the Tochi Daicho and sometimes referred to as Lot 79, and further described on that certain property plat prepared by the Division of Lands and

Surveys, dated June 13, 1971 (said map erroneously refers to court civil action, Case No. 519 rather than 516) is hereby adjudged to be the individual fee simple land of Gillian Tellames and the filing of a copy of this Judgment with the Clerk of Courts, Palau District, shall be deemed to satisfy the requirements of Section 801(a) of the Palau District Code.

No costs are allowed.