

MARIA MAGULATA ROSARIO, Appellant

v.

DOMINGKO PELEP, Appellee

Civil Appeal No. 302

Appellate Division of the High Court

Ponape District

March 21, 1983

Appeal from a judgment of the trial court which reversed a title determination by Ponape Land Commission. The Appellate Division of the High Court, Nakamura, Associate Justice, held that where appellant had continuous possession and control of the land for over twenty years after applicable statute went into effect in 1951, including living on the land as well as conveying portions of it, and that where one party was the child of a grandchild of a sister of the opposing party, there was not a sufficiently close family relationship to rebut or prevent a finding of adverse possession, and therefore trial court erred in not finding title by adverse possession, and judgment was reversed.

1. Administrative Law—Land Title Determination—Appeal

An appeal from a determination by a Land Commission to the Trial Division is to be treated and effected in the same manner as an appeal from a District Court in a civil action. (67 TTC § 115)

2. Administrative Law—Land Title Determination—Appeal

The trial court in an appeal from a determination by a Land Commission may review the facts as well as the law, even if no additional evidence is taken. (6 TTC § 355(2))

3. Appeal and Error—Scope of Review—Facts

The Appellate Division is bound to give due recognition to the findings of fact of the trial court unless there is no evidence to support it or it is clearly erroneous. (6 TTC § 355(2))

4. Appeal and Error—Scope of Review

Appellate Division must defer to the findings of the trial court if there is any evidence from which the trial court might properly have drawn its conclusion.

5. Limitation of Actions—Recovery of Land

Since statute of limitations for land claims went into effect in 1951, any claim of ownership of the land through possession of the land adverse to the title holder begins to toll in 1951, even if it began earlier.

6. Real Property—Adjudication of Ownership—Evidence

A claim of ownership may be evidenced by conveying or devising the land.

7. Adverse Possession—Family Relationship

In a land ownership dispute where one party claimed title by adverse possession, there was not a sufficiently close family relationship to rebut strong evidence of adverse possession, where one party was the child of the grandchild of a sister of the opposing party.

8. Adverse Possession—Particular Cases

Trial court erred in land ownership dispute in not finding that appellant had title by adverse possession, where appellant had continued possession and control of the land for over twenty years after applicable statute went into effect in 1951, including living on the land and conveying portions of it.

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Before BURNETT, *Chief Justice*, and NAKAMURA,
Associate Justice

NAKAMURA, *Associate Justice*

This is an appeal from a judgment of the trial court, the trial court having reversed a title determination of the Ponape Land Commission and Nett Land Registration Team. The matter in the trial court was not tried de novo, but rested on the record made before the Land Commission.

This case involves the title determination to the land known as Pahnlepindong which is situated in the Municipality of Nett, Ponape State. The claimants before the Land Commission were Maria Magulata Rosario, Carlos Rosario, and Domingko Pelep. Following proceedings on the matter, the Land Commission determined on December 1, 1976, that the property in question is the property of Maria Magulata Rosario, subject to her obligations to other members of her family.

Domingko Pelep appealed the determination of the Land Commission to the Trial Division of the High Court. On February 21, 1979, the trial court reversed and set aside the determination of the Land Commission and awarded

judgment in favor of Domingko Pelep. Maria Magulata Rosario now brings this appeal from that judgment.

The relevant facts in this case as determined by the Land Commission's findings are as follows:

1. The property at issue was registered under a German Land Title to a man named Lorens.

2. Lorens had five children. They are Cecilia, Pictirino, Maria Magulata, Kendrude, and Elizabeth.

3. When Lorens died in 1920, title to the land in question passed to his only son Pictirino, and Pictirino's name was registered as the title holding person.

4. At the time Pictirino passed away in the late 1920's, he had no natural or adopted children of his own. Pictirino was, however, survived by several sisters and a half-brother named Pretrich.

5. Following Pictirino's death, his eldest living sister, Maria Magulata, took complete possession of the land. Until the dispute that was brought before the Land Commission, Maria Magulata controlled, managed, and administered the development and use of the property, without protest by anyone.

6. Maria Magulata was the eldest living sister of the last known registered title holder, Pictirino.

7. Carlos Rosario is the son of Elizabeth. Elizabeth is the younger sister of Maria Magulata.

8. Domingko Pelep is claimed to be the son of Selestino. Selestino was the grandson of Cecilia. Cecilia was the sister of Maria Magulata.

Before the Land Commission, Maria Magulata asserted that her 47 years of uncontested control and possession of the land gave her a superior claim to the land. She asserted that upon Pictirino's death, his half-brother Pretrich, was heir to the land according to the German Land Law that was applicable at the time. She asserted that Pretrich waived his rights to the land by not pressing his successive rights and by allowing her to take possession and control of the land.

Carlos Rosario claimed ownership of the land by virtue of his being the adopted son of Selestino. He asserted that

the land was transferred and registered in Selestino's name following the death of Pictirino.

Domingko Pelep claimed ownership of the land on the basis that he is the natural son of Selestino. He, like Carlos Rosario, asserted that the land was transferred and registered in Selestino's name following the death of Pictirino.

The Land Commission, following hearings on the matter, determined that:

. . . Maria Magulata Rosario, having taken possession and full controlled for over a period of almost half a century without anyone contesting her possession and controlled until recently, held that it will not be proper for the Commission to upset her possession at this time, and it held the strong presumption that the long, uncontested possession and controlled of the said land for that length of time indicates ownership to the property. Land Commission and Land Registration Team's Findings and Conclusion, December 1, 1976, at 4.

The Land Commission cited a string of five earlier Trust Territory High Court cases supporting the proposition that continuous and unopposed possession of land raises a presumption of ownership. The Land Commission also determined that the claims of Carlos Rosario and Domingko Pelep, that the land was transferred and registered in the name of Selestino, were unsubstantiated. On this point, the Land Commission stated:

. . . no documentary evidence was presented to prove this point and accordingly, this Commission cannot go on with the presumption that the registration of Selestino's name has in fact taken place. *Id.* at 5.

Following the Land Commission's decision Domingko Pelep appealed the determination to the Trial Division. After reviewing the Land Commission records and determination, the trial court found that: (1) there was no strong evidence of adverse possession as is required where family relationships of the parties exist; (2) that the evidence and the records of the Land Commission do support

a finding that Selestino was registered as the owner of the property; and (3) that Domingko Pelep is the only surviving heir of Selestino. Since adverse possession was not sufficiently established, since Selestino was registered as the landowner, and since Domingko Pelep was the only surviving heir of Selestino, the trial court reversed the Land Commission determination and awarded the land to Domingko Pelep.

In this appeal, Maria Magulata asserts the following contentions: (1) that the record of the Land Commission does not support the finding of the trial court that Selestino was registered as title holder of the land; (2) that even if Selestino was registered as the title holder of the land, Domingko Pelep could not inherit from Selestino because he was an illegitimate child of Selestino; and (3) that Pretrich was actually the heir to the land and that he, in effect, conveyed and granted all his rights as title holder of the land by acquiescing to the continued possession and control of the land by Maria Magulata. Appellant also contends that her long continued possession and control of the land vests her with ownership independent of whether Pretrich conveyed the land to her.

[1, 2] An appeal from a determination by a Land Commission to the Trial Division is to be “. . . treated and effected in the same manner as an appeal from a District Court in a civil action. . . .” 67 TTC § 115. The trial court in such an appeal may review the facts as well as the law, even if no additional evidence is taken. 6 TTC § 355(2); see also, *Cruz v. Alien Property Custodian*, 8 T.T.R. 281 (App. Div. 1982).

[3] Appellant’s first contention, that Selestino was never registered as the land owner, is well taken, since it is consistent with the Land Commission’s determination, but we are bound to give due recognition to the findings of fact of the trial court unless there is no evidence to support

it or it is clearly erroneous. 6 TTC § 355(2); see also, *Ladhore v. Rais*, 4 T.T.R. 169 (Tr. Div. 1968).

In reviewing the Land Commission's records, the trial court found the evidence from the testimony of Iakopus Olmus, that Selestino was registered as the owner of the property during the Japanese land survey in Ponape in 1941, convincing and uncontradicted. Since the trial court could properly review the facts and since we cannot find that this finding of fact is clearly erroneous, we are bound to abide by it.

[4] As to appellant's second argument, we find here too, that we must defer to the findings of the trial court if we can find any evidence from which the trial court might properly have drawn its conclusion. 6 TTC § 355(2); see also, *Ladhore v. Rais*, supra. The trial court in its judgment held that Domingko Pelep was the only surviving heir of Selestino. We find that there was evidence in the Land Commission records that Domingko Pelep was the publicly acknowledged and accepted child of Selestino. We, therefore, uphold the trial court's finding in this regard.

Before going on to appellant's third basis for appeal, we should clearly state the following additional or changed findings of fact as determined by the trial court:

1. Selestino is the last known registered title holder. He was registered as the owner of the property during the Japanese land survey in Ponape in 1941.

2. Domingko Pelep, as the only surviving heir to Selestino, obtained title to the land at the time of Selestino's death.

Appellant's third contention, based upon her claim to the land through Pretrich and by virtue of her long continued and uninterrupted possession and control of the land, is an argument we must closely scrutinize.

Since Selestino was found to be the last known registered title holder we need not address the appellant's contention that she obtained the land through Pictirino's half-brother,

Pretrich. Instead we address ourselves to the appellant's argument that she has a claim to the land by virtue of her long continued and uninterrupted possession and control of the land.

The applicable statute is Title 6, chapter 7, section 302 of the Trust Territory Code. That section states:

§ 302. *Limitation of twenty years.*—(1) The following actions shall be commenced within twenty years after the cause of action accrues:

- (a) Actions upon a judgment;
- (b) Actions for the recovery of land or any interest therein.
- (2) If the cause of action first accrued to an ancestor or predecessor of the person who presents the action, or to any other person under whom he claims, the twenty years shall be computed from the time when the cause of action first accrued.

[5] It is clear that Maria Magulata had continued and uninterrupted possession and control of the land since the late 1920's. Title 6, chapter 7, section 302, however, did not go into effect until May 28, 1951. Therefore, any claim of ownership of the land through possession of the land adverse to the title holder, begins to toll in 1951, even if it began earlier. See *Osaki v. Pekea*, 5 T.T.R. 255 (Tr. Div. 1970); *Armaluek v. Orrukem*, 4 T.T.R. 474 (Tr. Div. 1969); *Oneitam v. Suain*, 4 T.T.R. 62 (Tr. Div. 1968).

The appellant's adverse possession claim, therefore, is one against Selestino and the subsequent heir to the land, and may be said to have begun to accrue in 1951.

The precise facts surrounding the lives of Selestino and Maria Magulata in the 1940's and 1950's are not all too clear from the record, but a sufficient picture of the circumstances for deciding this appeal can be ascertained.

It is clear that in 1944 or 1945, Selestino and his first wife split apart. Sometime after this split, but before 1948, Selestino moved from the land in question to Nanpil. In Nanpil he developed a relationship with a woman named

Luisa, and in 1948, Domingko Pelep was born to Selestino and Luisa in Nanpil.

It is also clear that before Selestino's death in 1952 or 1954, Maria Magulata conveyed portions of the land to Kendrude and Julita. The record supports the fact that Selestino was aware of these conveyances. Following the first conveyances, she further subdivided the land and conveyed portions of it to each of ten of her relatives.

[6] A claim of ownership may be evidenced by conveying or devising the land. Cf. *Preston v. Preston*, 207 P.2d 313 (1949); *Warner v. Wickizer*, 294 P. 130 (1930). We find that the actions of the appellant in living on and then conveying the land provided notice of her open, notorious, exclusive, and hostile possession of the land. This possession and control continued from a point in time before Selestino's death to 1976, when this challenge was made before the Land Commission. Since Selestino died, at the latest, in 1954, the required twenty year period of the statute of limitations had tolled well before 1976.

[7] Finally, we must consider whether the trial court properly held that a sufficiently close family relationship was existent here to prevent or rebut a presumption of an adverse holding. We find that it does not. We are not confronted here with a husband-wife, brother-sister, or parent-child type of family relationship. Here we have the grandchild and the child of the grandchild of a sister of the appellant. While we do recognize the added significance of extended family relationship in Ponape and throughout Micronesia, we do not find, in these particular circumstances, that the strong evidence of the appellant's adverse holdings are rebutted or prevented by the more distant relationship between these parties. 3 Am. Jur. 2d Adverse Possession §§ 147-153; see also, *Belimina v. Pelimo*, 1 T.T.R. 210 (Tr. Div. 1954).

[8] In view of the foregoing, we find that the trial court erred in not finding that the applicable statute of limitations had tolled against Selestino and his heir, and that the appellant's long continued possession and control of the land for over twenty years was sufficient to sustain her adverse holding.

Accordingly, we hereby reverse the decision of the trial court, and the trial court is hereby directed to enter a judgment in favor of the appellant.