LONET ELDRIDGE, Appellant

v.

ANTON ELDRIDGE and TADASY YAMAGUCHI, Appellees

Civil Appeal No. 365

Appellate Division of the High Court

Ponape District

January 25, 1984

Appeal from Trial Division judgment affirming a Land Commission Determination. The Appellate Division of the High Court, Miyamoto, Associate Justice, held that where Japanese land survey in 1941 affirmed a subdivision of land, appellant and his predecessors in interest lost whatever rights they may have had by failing to contest this subdivision until 1980, and therefore Trial Division judgment was affirmed.

1. **Former Administrations—Official Acts**

   Where Japanese administration in survey of private land undertaken in 1941 affirmed a subdivision on certain property on Ponape, and appellant and his predecessors in interest could have contested this registration in the courts during Japanese and American times but did not do so until 1980, appellant lost whatever rights he may previously have had in the land.

2. Adverse **Possession—Family Relationship**

   Appellant failed to sustain his burden of proving adverse possession on property where contesting party was his brother, since there was not shown a clear, positive and continued disclaimer and disavowal of title.

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Before MUNSON, *Chief Justice,* MIYAMOTO, *Associate Justice,* and HEFNER[1], *Associate Justice*

MIYAMOTO, *Associate Justice*

This is an appeal from the judgment of the Trial Division affirming the Ponape State Land Commission Determination that Anton Eldridge is the owner of Tract No. 73965, formerly Japanese lots numbered 1257 and 1266, being a portion of a land known as Peinpwe, situated in the Pohnauleng Section, Madolenihmw Municipality, State of Ponape.

The issues involved stem from the original German Deed No. 57, which granted title of the land Peinpwe to Lonet Eldridge, then a male minor child six years of age, and which named his father, Lincoln Eldridge, as administrator of the land for the minor child. The issues raised are whether Lincoln Eldridge as administrator could subdivide the land although Lonet Eldridge had attained his adulthood and whether the subdivided parcels duly noted in the Tochi Daicho could be recognized as giving title to the recipients. Alternatively, the third issue raised is whether Lonet Eldridge established title through adverse possession.

The German deed did not clarify exactly what the duties of the administrator were. Lincoln Eldridge could have had a role of a father, a natural guardian, a trustee or manager of the estate or all of them. There is no statute or case law to guide anyone as to what his duties were. Further complicating the father's position was that the German certificate designated Lincoln Eldridge by his traditional title of "Naukroun En Lohd," instead of his Christian name. Whether the use of the traditional title in describing

[1] Chief Judge, Commonwealth Trial Court, Northern Mariana Islands, designated as Temporary Justice by Secretary of Interior.

Lincoln Eldridge had any significance is difficult to say and this matter had not been addressed by the Land Commission or the Trial Division. The fact of the matter is that, regardless of what the German deed stated, the Ponapeans practiced by another set of rules. According to John L. Fischer, District Anthropologist, in *Contemporary Ponape Island Land Tenure*, at page 96:

> It should be emphasized that the inheritance provisions of the deeds did not have much practical effect for a number of years. This is because in many cases at least the person registered originally on the land deed was not the actual "owner" or "tenant" under the existing feudal system, but rather the prospective heir; or if the prospective heir were female, her husband or brother.
>
> For instance, if a man had a piece of land at the time of the German land reform which he wished to give to his sister and his children eventually, he would arrange to have his brother-in-law's name written on the deed. Or if one of his sister's sons were old enough his name might be recorded. *In such cases the "true owner" still worked and controlled the land by virtue of his senior family position. From the Ponapean point of view he was still the "real owner" until he died, while the prospective heir was the one who "headed the paper for the land."* (Emphasis added.)

In the case of *Godlieb v. Welten*, 1 T.T.R. 175, at p. 179, the court held:

> The court takes notice that such *family agreements were encouraged by the Japanese Administration, given great weight, and considered definitely in accord with public policy.* (Emphasis added.)

The evidence in this case indicates that before the Japanese administration undertook to conduct a survey of all the privately-owned lands in Ponape, Lincoln and his wife, Kari, who was the natural daughter of Alpert, the original owner of the land, in a family conference, decided to subdivide the land Peinpwe amongst the family members and others. Lonet was included in this conference. Under this subdivision, the three children of the couple (Anton, Lonet and Sakies) and two others who were not members of the

immediate family (Eliken Eliam, a Mokilese person, and Roland Norman) were given their respective shares of land.

In 1941, the Japanese surveyors conducted a survey of Peinpwe and confirmed the subdivision of the land agreed to by the family. These were recorded in the Tochi Daicho, the Japanese land registry. The surveyors had access to German Deed No. 57. Lonet was not present when the surveyors arrived on the scene to conduct the survey, although he was notified of the planned survey. Lonet at no time objected to the subdivision of the land.

In *Belimina v. Pelimo*, 1 T.T.R. 210, at p. 213, the court held, with reference to the Japanese survey:

> The court takes notice that the official Japanese survey of private lands on Ponape, which began about 1941, was carried on with considerable care and publicity, after extended study of land rights on Ponape, that *it was intended to form the basis for the issuance of new title documents*, and that the government surveyors engaged in it were given broad powers. The court therefore holds that there is a strong presumption that the determinations made in this survey were correct unless the contrary is clearly shown. (Emphasis added.)

Also in *Weirland v. Weirland*, 1 T.T.R. 201, at p. 204, the court held that:

> In the case of lands which were divided with the approval of the Nanmarki and the Official Japanese surveyor in connection with the Japanese survey of private land on Ponape Island beginning around 1941, *it makes little or no difference which part-owner's name the title document was left in or transferred to, since the Government had given notice that these were to be recalled and replaced by the Japanese documents which would show the divisions approved by the surveyors.* (Emphasis added.)

And in *Teresita v. Ioakim*, 1 T.T.R. 147, at p. 148, the court found:

> The court takes notice that in connection with the Japanese survey of private land on Ponape Island that was in progress about

1941, the Japanese Government gave general notice to the Ponapeans that the Government would, under proper circumstances, permit the division of land, and that when the survey was completed the title papers which had been issued by the German Government on Ponape beginning in 1912, were all to be recalled and replaced by Japanese documents which would show the divisions approved by the surveyors. . . . The court holds that *the natural presumption, under all the circumstances, is that a division approved by the Japanese surveyors was to be absolute*, and that each holder of a part of a divided lot was thereafter to have as complete control over his part as the owner of the whole would have over the whole if there had been no division. (Emphasis added.)

Thus, it appears that the present subdivision of the land Peinpwe agreed to by the family was in accordance with Ponapean custom as well as the public policy of the Japanese government. Also, the subdivision of the land was affirmed by the Japanese surveyors despite their knowledge of the contents of German Deed No. 57. It is clear that the registration in the Tochi Daicho was meant to replace the German deed as indication of ownership of land.

However, Lonet alleges that there had been an irregularity in the survey proceedings in that Lonet was not present for the proceedings.

The Land Registration Team in its conclusion No. 8 found:

John Elias also stated that at the time the Japanese surveyors were surveying this areas he was a Japanese Policeman, and that part of his duties were to advise the owners where and when the surveyors are going to work their respective property. Also stated *he was the one who informed Lincoln, Anton, and Lonet that their land will be surveyed, and Lonet agreed, and he didn't object to it.* (Emphasis added.)

The court, however, is unable to find anything in John Elias' testimony to substantiate this.

Regardless, the fact of the matter is that the Tochi Daicho did indicate that Anton was the owner of Lots

1257 and 1266. Lonet, if he desired to, could have contested this registration in the courts during the Japanese and American times, but he did not do so. In fact, this question of his ownership was not raised at any time prior to the Land Commission hearing.

In *Wasisang v. Trust Territory*, 1 T.T.R. 14, at p. 16, the court held that:

> In accordance with the general principles there explained, *the present administration is entitled to rely upon and respect the official acts of the Japanese administration of these islands and is not required as a matter of right to correct wrongs which the former administration may have done*, except in those cases where the wrong occurred so near the time of the change of administration that there was no opportunity for it to be corrected through the courts or other agencies of the former administration. The present administration may be willing in some cases to grant relief from hardships imposed by the law in force under the former administration where the present administration is under no obligation to do so as a matter of right. The granting of such relief, however, is a matter of policy to be decided by the law-making authorities and not by the courts. The general rule is that it is not a proper function of the courts of the present administration to right wrongs which may have for many years before been persisted in by the former administration. (Emphasis added.)

[1] In this case, if the wrong occurred, it was in 1941 and Lonet could have sought judicial relief, but he had not done so, except in an adjudication proceeding in the Land Commission in 1980, approximately thirty-nine (39) years after the land registration.

In *Kanser v. Pitor*, 2 T.T.R. 481, at p. 489, the court held:

> Roughly and bluntly stated, the effect of the above is that if a person of full age and sound mind stands by, or he and his predecessors in interest together have stood by, for twenty (20) years or more and let someone else openly and actively use land under claim of ownership for that period or more, the person who so stood by will ordinarily be held to have lost whatever rights he may pre-

viously have had in the land and the courts will not, and should not, assist him in regaining such rights.

[2] On the question of adverse possession between brothers, the common law on this subject is enunciated in 3 Am. Jur. 2d Adverse Possession § 147, as follows:

> It is a general principle that members of a family may not acquire adverse possession against each other in the absence of a showing of a clear, positive, and continued disclaimer and disavowal of title, and an assertion of an adverse right brought home to the true owner a sufficient length of time to bar him under the statute of limitations from asserting his rights. Stronger evidence of adverse possession is required where there is a family relation between the parties than where no such relation exists. The existence of a family relationship between the parties will prevent or rebut a presumption of adverse holding. (Footnotes and authorities deleted.)

From the evidentiary and legal points of view, the appellant has failed to sustain his burden of proving adverse possession on his part.

In view of the foregoing, the judgment of the Trial Division is hereby AFFIRMED.