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IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

-----X
ABEL SUZUKY,

Appellant/Cross-Appellee,

v.

MODESTO PETRUS,

Appellee/Cross-Appellant.
-----X

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: CIVIL APPEAL NO. 12-043
: (Civil Action No. 09-050)
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:
:

OPINION

Decided: August 28, 2013

Counsel for Appellant: Pro Se
Counsel for Appellee: Mariano Carlos

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice;
HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem; and
KATHERINE A. MARAMAN, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

This is the third time this quiet title action has been before us. The first two times we considered whether Abel Suzuky acquired title to a portion of Modesto Petrus's land via adverse possession. On the second appeal we concluded that Suzuky acquired title and remanded the matter to the Trial Division for a determination of the size of the parcel acquired. This is an appeal of the Trial Division's determination regarding the size

of the adversely possessed land.¹ For the reasons set forth below, we **AFFIRM in Part and REVERSE in Part**.

BACKGROUND

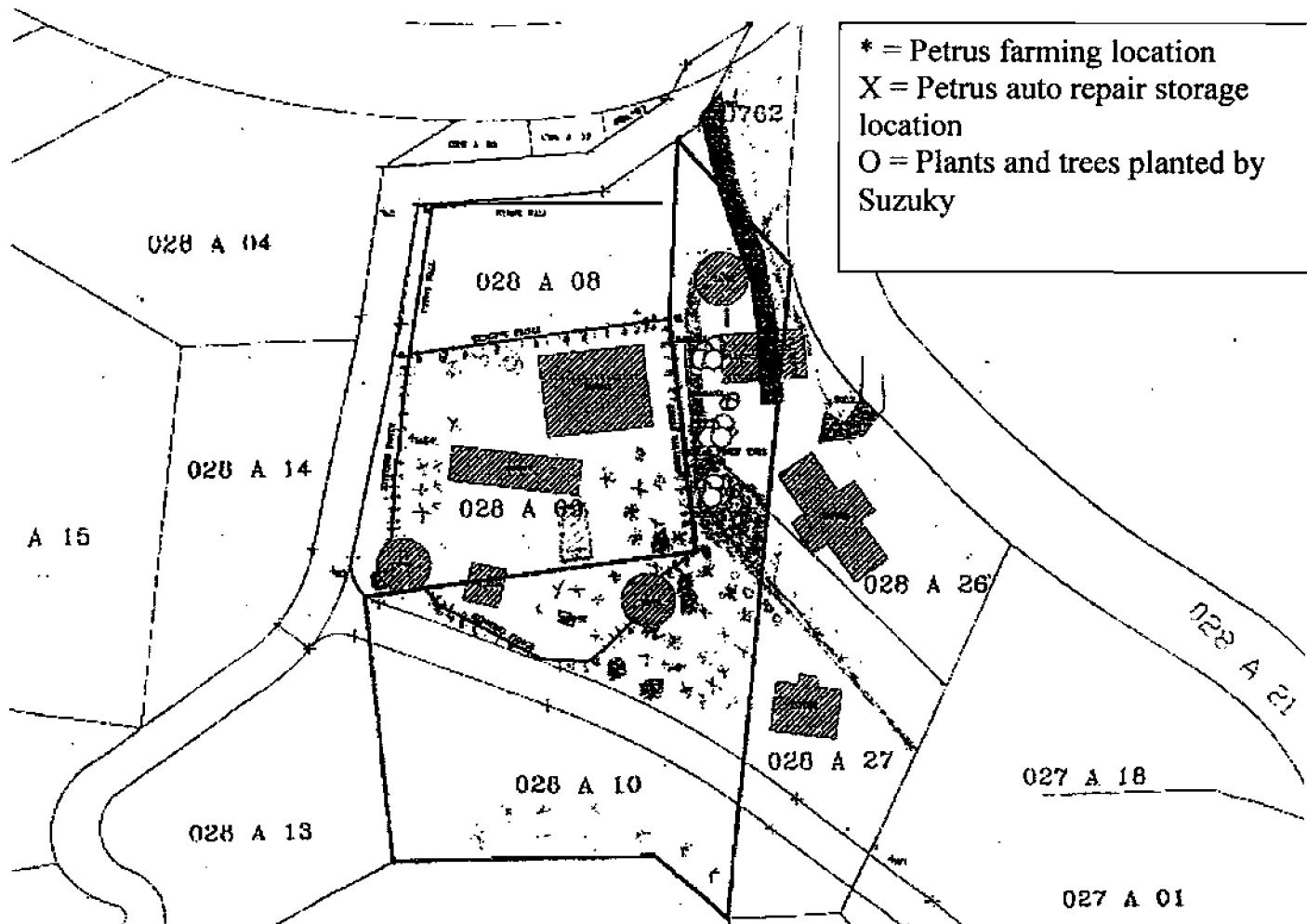
Appellant Modesto Petrus is the registered owner of Cadastral Lot 028 A 10 (“the Lot”). In 1985 Appellee Abel Suzuky began working on a portion of the Lot with the understanding that the land in question was unclaimed. Over the ensuing two decades, Suzuky planted mangos, coconuts, lemon or lime trees, and betel nut trees. He planted various crops on much of the property and maintained a pig pen on a portion of the property until 1990.

On March 9, 2009, Petrus filed the instant action to quiet title in the property. Following a long and winding procedural history, including an initial trial-level ruling in favor of Petrus, we held that Suzuky adversely possessed a portion of the Lot and remanded the matter for a determination on the size of the parcel actually acquired. On remand, the Trial Division conducted a hearing on the scope of Suzuky’s adversely acquired land. At the hearing, Suzuky testified that he planted and farmed virtually the entire Lot. Petrus testified that he and his agents made use of much of the southern

¹ A more detailed procedural history is set forth in our Order Denying Motion to Remand. *See Suzuky v. Petrus*, Civ. App. 12-043, slip op. at 1–3 (Apr. 25, 2013).

portion of the Lot through farming and an auto repair business. Figure 1 below shows the relative locations of the activities claimed.²

Figure 1



As shown in Figure 1, the Lot (encased by a black border) is shaped like a lower case “d.” Suzuky testified that he did not use the area of the property on which car parts

² Figure 1 was prepared by the Bureau of Lands and Surveys at the request of Petrus. The printed shapes were placed on the map by BLS. The drawings were added by Petrus and Suzuky during their testimonies at the remand hearing.

were stored and that he only began using the portion of the property south of the road approximately six years ago. Petrus, in contrast, claimed he started storing car parts on the property around 1980. He further testified that he gave permission to Suzuky to build his driveway and to a group of Palauan women to farm the southern portion of the land. Suzuky denied receiving permission from Petrus to build the driveway and testified that the women mentioned by Petrus never farmed the Lot.

Following the close of the remand hearing, the Trial Division issued an order granting Suzuky the following property:

Starting on the northern portion of the Lot, closest to Lot 028 A 08, beginning with the triangular point, nearest to what was marked at the hearing as Tank 1, or the northern-most tank on the Lot, marks one boundary of [Suzuky]'s property. [Suzuky]'s property includes all that area running from that point in a southerly direction and inclusive of the area indicating locations of a platform, the banana, bread fruit and mango tree, down to the section of the Lot bounded by the road. [Suzuky]'s property further includes that portion of the Lot indicating the location of Water Tank 2 and the smaller house located to the left of Water Tank 2, and all that area up to the border of lot 028 A 09 as delineated by a straight black line.

[Suzuky]'s property does not include the area inclusive of Water Tank 3 and the house located to the immediate right of Water Tank 3, and does not [include] that portion of the Lot on the other side of the road [in] the area.

Petrus and Suzuky appealed.³

³ Although Suzuky appealed, he never filed an opening brief. We thus dismiss his appeal for lack of prosecution. *See* R. of App. Proc. 3(a).

STANDARD OF REVIEW

“Common law adverse possession presents a mixed question of law and fact.” *Seventh Day Adventist Mission of Palau, Inc. v. Elsau Clan*, 11 ROP 191, 193 (2004). We review mixed conclusions de novo. *Ngiralmaw v. ROP*, 16 ROP 167, 169 (2009).

DISCUSSION

“To acquire title by adverse possession, the claimant must show that the possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for twenty years.” *Petrus v. Suzuki*, Civ. App. 10-044, slip op. at 4 (Nov. 23, 2011) (*Petrus II*). Possession also must be exclusive. *Id.* at 8–9; *see also Arbedul v. Rengelekel A Kloulubak*, 8 ROP Intrm. 97, 98 (1999) (plaintiff failed to show adverse possession when he failed to show exclusive possession). The burden of proof as to each element rests on the party asserting adverse possession. *Id.*

On appeal, Petrus argues that the Trial Division erred by giving “Suzuky parts of the land that he is not occupying, the part of the land that Modesto Petrus gave Suzuky permission to use as his drive way and parts of the land Modesto Petrus and his licenees occupied from the past to the present time.” Petrus also appears to raise an issue as to the visibility of Suzuky’s activities in the northern portion of the Lot. We have previously addressed and rejected Petrus’s arguments concerning the visibility of Suzuky’s activities and the purported permission to build the driveway. *Petrus II*, slip op. at 6–8. Our

opinions have not changed. We thus turn to Petrus's arguments concerning actual and exclusive possession.

I. Actual Possession

Unless an adverse possessor enters under color of title,⁴ his actual possession is determinative of the boundaries of the land acquired. 3 Am. Jur. 2d Adverse Possession § 256. "There is no fixed rule by which the actual possession of real property by an adverse claimant may be determined in all cases, because the determination of what constitutes possession of property for purposes of adverse possession depends on the facts in each case, and to a large extent on the character of the premises." *Id.* § 18. Generally, "[t]he standard to be applied to any particular tract of land is whether the possession comports with the ordinary management of similar lands by their owners." *Id.* § 22. "However, something more than mere occasional use of the land is needed to establish adverse possession, even if the disputed land is wild" *Id.* § 21. Petrus contends that Suzuky never was in actual possession of the northernmost portion of the Lot and the portion of the Lot on which the car parts were stored.

As to the northern triangle, Suzuky testified that, absent the areas used for car part storage, he planted trees and plants (including crops) on the Lot as a whole. When asked to identify the portions of the Lot he cultivated, Suzuky diagrammed an area which

⁴ Color of title "is that which gives the semblance or appearance of title, but which is not title in fact—that which, on its face, professes to pass title, but fails to do so because of a want of title in the person from whom it comes or the employment of an ineffective means of conveyance." 3 Am. Jur. 2d Adverse Possession § 123

included the northern part of the Lot. Given that the surrounding area is used as farm land, we conclude that the planting of trees and crops comports with the ordinary management of similar lands and that, therefore, Suzuky actually possessed the northern triangle. *See* 3 Am. Jur. Adverse Possession § 22.

Turning to the southern portion of the Lot, Suzuky testified that he did nothing with the areas used for car-part storage. Because actual possession of property requires some level of activity, we conclude that Suzuky was not in actual possession of the car storage area. *See* 3 Am. Jur. Adverse Possession § 21.

II. Exclusive Possession

“There cannot be a concurrent possession of land under conflicting claims of right. . . . If two or more persons are in possession of real estate, ordinarily none has the exclusive possession necessary to establish adverse possession.” 3 Am. Jur. 2d Adverse Possession § 71. Petrus submits that Suzuky failed to show exclusive possession of the areas of the Lot used for car storage and of the areas allegedly used by farmers with the permission of Petrus.

First, insofar as we have concluded that Suzuky did not have actual possession of the portion of the property used for car storage, we need not consider whether he had exclusive possession of such land. As to the portion of the Lot allegedly farmed by people other than Suzuky, there is no evidence that anyone (other than Suzuky) used the Lot for farming during the adverse possession period. Indeed, Suzuky testified to the

contrary. Thus, we conclude that the Trial Division did not err in its conclusion that Suzuki had exclusive possession of the portions of the Lot purportedly used for farming by Petrus's designees.

CONCLUSION

For the foregoing reasons, the decision of the Trial Division is **AFFIRMED in Part and REVERSED in Part**. The portion of the Lot acquired by Suzuki shall encompass the area of the Lot running south from the triangle north of Tank 1 to the beginning of the portion of the Lot used for the storage of Petrus's car parts, as delineated by the solid red line on the map found in Appendix A.

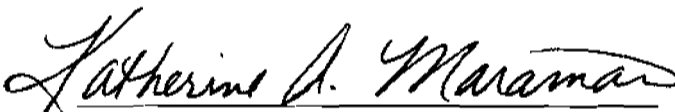
SO ORDERED, this 28th day of August, 2013.



ARTHUR NGIRAKLSONG
Chief Justice



HONORA E. REMENGESAU RUDIMCH
Associate Justice Pro Tem



KATHERINE A. MARAMAN
Part-Time Associate Justice

Appendix A

