FIFITA v MINISTER OF LANDS AND HUAHULU

Land Court
Harwood J
Land Case 5/82

24 January 1984

Land - rights of succession - younger sons of deceased holder's brother not entitled to succeed to tax allotment

Succession - disputed questions to be determined by Land Court not by Minister of Lands

Constitution - no inconsistency between section 111 Constitution and section 76(e) Land Act

The plaintiffs, who were the younger sons of a brother of a deceased holder of a tax allotment, who had died without children, claimed to be entitled to the tax allotment, and wrote to the Minister of Lands. The Minister of Lands did not uphold this claim and decided that the land should be divided into town allotments.

The plaintiffs applied to the Land Court to cancel the registration, and to register the land in their favour, and they argued that the provisions of section 76(e) Land Act, which limited rights of succession to the eldest son, were in conflict with section 111 of the Constitution, and therefore void.

HELD:

Dismissing the plaintiffs claim.

(1) Section 76(e) Land Act (section 82 (e) 1988 Rev. Ed) is not in conflict with section 111 of the Constitution;
(2) Section 76(e) Land Act (section 83 (e) 1988 Rev Ed) limits succession to the eldest sons of the brother of a deceased holder, and does not include younger sons;
(3) Disputes about succession to land are to be determined by the Land Court not by the Minister of Lands.

Statutes considered
Constitution, clause 111
Land Act, sections 76(e) and 81 (section 82(e) and 149 1988 Rev Ed).
Counsel for plaintiffs: Mr Manu
Counsel for defendants: Mr Taumoepeau

Harwood J

Judgment

This case concerns the devolution of a tax allotment at Folaha - Lot 100, Block 78/94 - known as "LOU'MELIE".

When the holder, Hale Latai, died without issue in about 1927 Sione Mo'unga, his younger brother, already had an allotment of his own which he chose to keep. Loumeile became registered on the 28th January, 1929, in the name of the next holder, Malakai Pulumu, who was Sione Mo'unga's young brother. It appears likely that Malakai became the registered holder as the result of a grant and not by inheritance. After he died on 30th June, 1961, his widow 'Ana Malia became registered - on 27th February, 1962 - as the person entitle to a life estate. When she died on 15th July, 1980, there were no children in the direct line of descent from Malakai and 'Ana Malia who could inherit; and the entry relating to her life estate is the last entry recorded in the Register. The Register was produced (Exhibit 1).

On 9th June, 1981, a letter was prepared (produced by the Plaintiffs as Exhibit 2) addressed to the Minister of Lands. It was signed by the First Plaintiff, Ma'u Fifita. It was a short letter which claimed that Ma'u Fifita was the lawful heir to Loumeile and it contained a 'family tree' purporting to trace the line of inheritance to him. It was received at the Minister's office on the 16th September, 1981, being within the limitation period prescribed in section 81 of the Land Act. As a result, the Minister called for a meeting in his office which was duly convened by the Town Officer of Folaha. The Town Officer at the time was Sonasi (the first witness for the defence). He described the meeting in his evidence to the Court as accurately as his recollection now allows. Although it is now 2 to 3 years since the meeting took place and his age is now 73 years I am satisfied that his description was both fair and reasonably accurate, and it is a more detailed description than that given by Sione Fifita (a Plaintiff's witness). In fact, there is no major conflict between the two. Sonasi described the meeting thus:-

"The Minister had wanted to see the descendants of Sione Mo'unga. Sione Fifita came and plenty of others; his office was nearly filled up with the family. The children of Filipe Pulumu were also there, I am sure that Ma'u Fifita was there but I am not sure whether Hale Latai or 'Aisake were there. The Minister thanked us for coming and continued by saying that there was no heir to the allotment of Malakai Pulumu. However, he ssaid, I will give you the allotment and I want to know to whom you want it to be granted. There was then a discussion among them, inside the office, but they could not agree. We were in the office for nearly half an hour. The Minister said about five times that they were not to speak to him but to discuss the matter among themselves. He told me to divide it - he suggested division into two 4 - acre plots, but the family still could not agree on any particular holder. The Minister's final decision at the end was to divide it into town allotments. The reason he changed his decision was because they could not agree, he was disappointed, and Sione Fifita had told the Minister to leave it to him (Sione Fifita) to allocate. After the Minister's final decision the meeting broke up. The subdivision was done later".

Now the Plaintiffs are claiming:

(1) cancellation of the subdivision of 1982;
(2) damages of $3000 for the destruction of coconut trees; and
(3) the entitlement of the 2nd and 3rd Plaintiffs to Loumeile by succession.

The amended defence filed with leave and then re-amended with leave on 18th January, 1984, at the commencement of this hearing, alleges that on the death of Malakai's widow Loumeile reverted to the Crown and sets out the grounds for this contention in paragraph 4. The subdivision of 1982 and the claim for consequential damages are not denied.

The primary question for decision by this Court is the question of inheritance. The relevant facts of the case are not in dispute. I have no doubt that the decision depends, as the Defendants allege, solely upon a correct interpretation of section 76(e) of the Land Act. Before I deal with that section I should first mention that it was contented on behalf of the Plaintiffs that there is a conflict between section 76(e) of the Act and section 111 of the Constitution. This is said to be so to the extent that s.111 contains the sentence: "And failing direct heirs the property shall revert to the eldest brother of the owner of the property beginning with the eldest brother of the owner of the property beginning with the eldest and his heirs in succession to the youngest and their heirs in accordance with the law of inheritance.", thus implying that, as long as there are any heirs of a brother, there must be a possibility of succession down to the last surviving heir in the direct line of succession from that brother - whereas s.76(e) of the Land Act (which constitutes "the law of inheritance" mentioned in the Constitution) contains the sentence: "If the deceased holder's eldest brother be dead without leaving any male heir of his body then the holder's next eldest brother shall succeed or if he be dead the eldest male heir of his body and so on taking the deceased holder's brothers in succession in order of their ages", thus, it is said, improperly limiting the chair of succession to two links only, namely a deceased holder's brother and "the eldest male heir of his body". In my judgment, the only "law of inheritance" to which the Constitution refers must be such law as is subsequently passed by Parliament on the subject of inheritance, and section 76(e) clearly forms a part of that law. Thus that part of section 111 of the Constitution must be read "in accordance with" the law subsequently passed by Parliament on that subject. It follows that there can be no conflict if Parliament chooses to limit, in certain circumstances (as seen in s.76(e) and also incidentally (f) it seems), the chain of inheritance to two links only.

I am quite satisfied that s.76(e) of the Act does in fact limit the chain of inheritance to, on the one hand, the holder and his brothers and, on the other hand, to only the "eldest" male heirs of their bodies. Parliament must be taken to have included the word "eldest" purposefully. It is not permissible for the Court to give any wider interpretation when the meaning is so clear. Applying s.76(e) to the facts of this case, on the death of the widow Loumeile could not pass by inheritance beyond the eldest male heir of Sione Mo'unga, namely, Taniela Fifita. Unfortunately, by the 15th July 1980 when 'Ana Malia died, both Sione Mo'unga and Taniela Fifita had predeceased her. The evidence of the third Plaintiff, 'Aisake Fifita, was that Taniela Fifita died in 1946; and the evidence of his witness Sione Fifita was that Sione Mo'unga died in about 1936. Although both those witnesses gave evidence of the fact that several of the close members of their families now living have no allotment at all, regrettably they cannot inherit Loumeile as a matter of law, because they are too remote, and they are in any event not parties to this case. Both the present claimants to Loumeile are in fact younger sons of Taniela Fifita, and therefore their claim under s.76(e) is also too remote.

In my judgment, these two Plaintiffs are not entitled to the inheritance of Loumeile and it must follow that the other claims, for cancellation of the subdivision of 1982 and

for damages, cannot be sustained.

Before leaving this case, however, I wish to make certain observations. Firstly, even though as it turns out the Minister was correct in his conclusion that there were no lawful heirs to Loumeile, I can understand the apparent perplexity of the Plaintiffs which gave rise to this case. I have been unable to find any law in existence that empowers the Minister to decide upon a claim made under section 81 whatever the practice may be. On the contrary, it seems to me that, in the absence of any express mention of such a power in section 19 of the Act and having regard to the significance of section 127 (1)(b) which sets out the particular power of this Court to decide matters of disputed title, there must be an element of risk taken by the Minister if he does so decide upon a claim as the evidence given in this case suggests. Moreover, his decision was never apparently communicated in writing to the Plaintiffs. Secondly, bearing in mind that the writ in this case was served in April 1982, I am somewhat surprised to learn that since then the development of the allotment by subdivision, clearing, and the building of houses and roads, has nevertheless continued whilst the question of title has been 'sub judice'. Thirdly, it has been found necessary by both sides in this case to apply at a very late stage to amend, and to further amend, their respective pleadings. The fact that leave was given by the Court on each occasion it was applied for must not be taken as an indication that leave will readily be granted in other cases coming before the Court. Fourthly, once Notice of Trial has been given in good time (as it was in this case) requests made for an adjournment on the date of hearing are to be deplored unless absolutely necessary for reasons beyond the control of the parties and their advisers. I am far from convinced of the existence of any such necessity when such an application was made at the commencement of this case, and in future I shall require more convincing reasons than were then given. Fifthly, it is to be noted that notwithstanding the absence abroad of the first and second Plaintiffs their lawyer, Mr Manu, agreed that the Court should proceed to hear this case in their absence. In my view his decision was both appropriate and correct in the circumstances and the third Plaintiff, 'Aisake Fifita, should not leave this Court in the belief that, had his co-Plaintiffs been present and given evidence, the result would have been different. He would be wrong to do so. As I have already indicated, the Plaintiffs' claim in this case has at all stages been based on undisputed facts and fell to be decided entirely as a question of law; that being so, their claim has not been prejudiced by the absence of Ma'u of Hale Latai.

For the reasons given earlier the Plaintiffs' claim fails and there will be judgment for the Defendants.