

Tauleng v. Palik and Kephass

State Court (Kosrae)
King A.J.
14 June 1988

Land law—agreement to “divide up” land presumption that the land be divided equally.

This was the third civil action involving substantially the same parties and claims concerning a piece of land known as Mwot. The judgment in earlier litigation recorded a settlement whereby the three parties agreed to “meet and divide up the property Mwot among themselves”. The plaintiff now asserted that each lineage line should share equally in the division rather than a straightforward three-way equal division.

HELD:

The Court ordered partition of the land in three separate and equal parcels. In their agreement the parties attempted to lay the dispute to rest and to remove the risk that their own claim might be denied or reduced in size. While less than conclusive, the word “divide” implies equality of the parts. Such an agreement seems fair and equitable.

Counsel:

²⁰ G. Jackson for the plaintiff
A. Aliksa for the first defendant
P. Olier for the second defendant

KING A.J.

Judgment:

This lawsuit was instituted by plaintiff Stanley Tauleng seeking partition of the land called Mwot in the area known as Welung in Tafunsak Municipality, Kosrae.

I.

This is the third civil action involving substantially the same parties and claims toward the land known as Mwot.

A.

³⁰ In the first case, Trust Territory High Court civil action no. 430, Alik Kephass and Stanley Tauleng intervened claiming that they, rather than plaintiffs Shiro and Paul Sigrah and defendants Church Committee of Kosrae Protestant Church and Allen Mackwelung, were the true owners of Mwot.

In a judgment issued on 18 February 1976, Trust Territory Judge Robert Hefner held that Mwot was owned by Alik Kephass and Tauleng.¹ This conclusion was based

upon the "general consensus" that upon the death of one Kusus and prior to a purported conveyance of the land by then King John Sigrah to the Boston missionary group, Mwot had been owned by Kefwes, an ancestor of plaintiff Alik Kephwas.

B.

Mishima Palik had been in the Marshall Islands during the pendency of civil action 430. He returned to Kosrae shortly after Judge Hefner's opinion was issued and promptly filed civil action no. 59-76, naming Alik Kefwes and Tauleng as defendants. In his complaint, filed on 28 October 1976, Mishima Palik contended that he is the son of Palik, who was the only son of Kephwas, the previous owner of Mwot. Mishima Palik acknowledged that the mother of Alik Kephwas was Juliana, the adopted daughter of the elder Kephwas, but he contended that title to land would flow only through Palik since Kosrae is a patrilineal society.

The position of Mr. Tauleng as the parties prepared for trial in civil action 59-76 was not that he was a heir of Kephwas, as Judge Hefner apparently had concluded in civil action 430. Instead, Mr. Tauleng contended that Kephwas had not owned all of Mwot but that four brothers, Ofol, Lupu, Luatis, and Saliknoa had owned another portion. He argued that upon their deaths their portion of Mwot had gone to their adopted son, Kun, and that he, Mr. Tauleng, is the lawful heir of Kun. (See affirmative defence, paragraphs one and four of the amended answer filed by the defendant on 29 June 1977; also see pre-trial order 2, "stipulation", of the pre-trial order, filed 27 September 1978.)

Civil action 59-76 went to trial on 24 April 1979. According to the 27 April 1979 judgment, after plaintiff Mishima Palik rested his case, the Court ruled that he had failed to prove that he was the sole heir of the land in dispute. However, the Court specifically held that Mishima Palik is an heir of Kefwes.

The judgment in civil action 59-76 goes on to say that, "by stipulation the parties agree that the Plaintiff, Defendant and all the heirs of Kefwes including Tauleng shall meet and divide up the property Mwot amongst themselves".

C.

The instant case, civil action 2-83, results from the inability of the parties to agree upon division of the property. Mr. Tauleng has now moved this Court to partition Mwot, giving Stanley Tauleng and all other "heirs of Taulung" no less than 50% of the land. The other parties express willingness to have the land divided into three separate and equal parcels but oppose Mr. Tauleng's claim that he is entitled to a greater portion.

Thus, all parties agree that the judgment in civil action 59-76 grants them rights, and imposes upon them obligations, to divide Mwot among themselves. The only issue is whether Mr. Tauleng should receive more than a one-third share.

II.

The 27 April 1979 judgment says that the parties will "divide" the land among

1 Throughout the various phases of the litigation concerning Mwot, the spelling of names differ. Yet there is no present dispute about the actual identities of the people involved. The people referred to as Alik Kefwes and Taulung in civil action 430 are Alik Kephwas and Stanley Tauleng, respectively, in this litigation. Misima Palik in civil 59-76 is the same person as Mishima Palik in this case.

80 themselves. While less than conclusive, the word "divide" implies equality of the parts. Nothing in the judgment or in the record of civil action 59-76 suggests that Mr. Tauleng was to receive more than one-third of the land. That Mr. Tauleng had understood that the land was to be divided equally is confirmed by his complaint in this case. The complaint says that the parties had stipulated, and it had been "consequently adjudged," that the land would be "equally divided amongst these same parties". Mr. Tauleng's current view that he should get a larger share seems to be a new-found one.

90 The only apparent basis for plaintiff Tauleng's assertion is that Mishima Palik and Alik Kephas both trace their claim to the same source, their status as heirs of Kefwes, while Mr. Tauleng points to another source, the four brothers and their only adopted son, Kun. Mr. Tauleng seemingly believes that each theory, or source, should be given equal weight.

Such a contention cannot be accepted. The record reveals that the claim of the Kefwes heirs was upheld in civil action 430 and is strong. In contrast, the Court's judgment in civil action 430 in favour of Taulung was based upon a mistaken view that Mr. Tauleng was an heir of Kefwes. There is no indication that Mr. Tauleng has ever been put to his proofs concerning his assertion that four brothers also owned part of Mwot and that he is their heir.

Moreover, nothing in the record indicates whether the land the four brothers are said to have owned was larger or small than that owned by Kefwes.

100 It seems possible that, had this matter gone to trial, Mr. Tauleng would have received little or nothing. There is no support in the record for his claim that he should receive 50% of Mwot.

When the parties agreed in April of 1979 to divide the land, each was attempting to lay the dispute to rest and remove the risk that his own claim might be denied or reduced in size. Their agreement appears to have been that each would receive an equal amount. Such an agreement seems fair and equitable.

III.

For these reasons, the Court has ordered that the land known as Mwot in Tafunsak Municipality is to be divided equally among the parties.