ROCHUNAP, Plaintiff

v.

YOSOCHUNE and EIS, Defendants

Civil Action No. 121

Trial Division of the High Court

Truk District

February 5, 1959

Action to determine title to land located on Tol Island, in which plaintiff claims land on grounds that it was owned by his grandfather and should have been inherited by him. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that ownership of land was presumptively in defendant who had possessed it for at least twenty-two years and that plaintiff failed to overcome presumption by clear evidence of his ownership. The Court further held that plaintiff's action was barred as stale claim for failure to have brought it before Court earlier.

1. **Real Property—Quiet Title—Presumption of Ownership**
   Evidence of exclusive possession of property for at least twenty-two years is given greater plausibility than recital of what was told witnesses by persons long deceased.

2. **Real Property—Quiet Title—Presumption of Ownership**
   Presumption of ownership is in party who has long had possession of land in Truk, and anyone challenging ownership has burden of proof in overcoming presumption.

3. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
   Fear of power of individual as reason for long delay in taking action is not legal excuse for failure to take action on claim for land in Truk, since Japanese courts were open to land claims.

4. **Equity—Laches**
In enforcement of equitable right, party must act diligently and expeditiously, on pain of losing right.

5. **Equity—Laches**
In order to bar suit on ground of stale claim, four elements must be present: action by defendant for which plaintiff seeks remedy, delay in asserting plaintiff's rights, lack of knowledge by defendants that plaintiff would bring action, and injury to defendants in event suit is not barred.

6. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**
Failure of party to take action during first years of American Administration in regard to claim for land, although American justice was available to all, makes untenable plaintiff's explanation of inactivity based on fear.

TOOMIN, *Associate Justice*

I. FINDINGS OF FACT

1. The land Nemuene located in Nechocho Village, Tol Island, Truk District, was owned before German times by the Achau Clan. Title was held for the clan by its chiefs, successively Fanimuk, Neti, Onopat, and Masis, ending about 1937.

2. Fanimuk's leadership ended before German times; Neti became the next chief of Achau Clan, until the middle of German times; from then until the end of German times, Onopat was the chief, followed by Masis who continuously led the clan from the end of German times until his death about 1940.

3. Coconut and breadfruit trees were planted under Masis' direction. These were destroyed during World War II, and others were planted after the war by the defendants. The first house built on the land was erected by Masis. In all, five houses were built on the land under his direction, which were then occupied by him and his family, his brothers and his wife's brothers and their

families. He also caused to be erected a large building which was used as a meeting place of Achau Clan, and the office of Tol Municipality of which he was the chief.

4. During all of the time Achau Clan was the owner and in control of Nemuene, all of the production was received and distributed by the chief, except for the period during Japanese times when plaintiff's sister Neisu was married to Ufof, a nephew of Masis, and both were living on the land. During said period they received part of the production, which ended upon the death of Ufof and the subsequent departure around 1937 of Neisu from the land.

5. From 1937 to 1957 all of the production from this land has gone to the descendants of Masis and his sisters, who have been in exclusive possession of the land during that period. Part of the land is occupied by their tenant Wilianter who has a store on the premises and lives there with his family.

6. Taxes levied on the trees by Tol Municipality for the years 1947–1948 have been paid by defendant Eis.

7. Plaintiff has failed to prove by a preponderance of the evidence that the land Nemuene was ever owned by his grandfather Wau, and that it was inherited by plaintiff and the other children of his father Weia, who died during Japanese times.

8. During his lifetime, Masis made a gift of Nemuene to the defendants, to his sisters, and to his and their descendants, to be enjoyed by them as their individual property. Since that time, approximately 1937, they have been in control of the said property.

II. CONCLUSIONS OF LAW

[1] 1. To a large extent the issues in this case are mainly factual, being based on conflicting testimony as to the original ownership, use and possession of the instant property. To a large extent plaintiff's evidence consisted of

a recital of what had been told the witnesses by persons long since deceased, and even in such case was not based on the personal knowledge of the decedent. Much of defendants' evidence was of the same character.

However, greater plausibility is given to the testimony of defendants' witnesses because of the admitted exclusive possession of the subject property for at least the last twenty-two years by defendants and persons in privity with them, and the qualified possession of their ancestor Masis for possibly thirty years prior thereto. True it is that plaintiff claims the possession of Masis was by permission of plaintiff's father given in German times and that they both controlled and enjoyed the production together.

Nevertheless the extent of control exercised by Masis and the Achau Clan appears overwhelming in the light of the admissions that five dwellings were erected by Masis for his family and those of his brothers and his wife's brothers, as well as a meeting house for the clan, and an office for the municipality of which Masis was then chief. No use of even a fractional part of the land is shown by plaintiff.

[2] It must, therefore, be the holding of this court that the burden of proof imposed by law on plaintiff has not been met in this case, and that the presumption of ownership of property arising from defendants' admitted long possession thereof, has not been overcome. 42 Am. Jur. 218, Property, § 41.

2. There is no dispute that no one representing plaintiff's side has been in possession or control of the subject property or receiving any part of its production since 1937. It is also undisputed that during the period 1937 to 1957 defendants and the descendants of Masis have been in exclusive possession and enjoyment of the subject property.

[3] Plaintiff explains the long delay in taking action as being due to fear of the power of Masis during his lifetime and of the succeeding chiefs of Achau Clan thereafter. While this is an explanation, it cannot rise to the dignity of a legal excuse, as the Japanese courts were open to claims of this character, and many claims were adjudicated by Japanese courts and administrators during the Japanese period.

[4] Thus it appears that plaintiff has exposed himself to the well-founded charge that he is attempting here to enforce a stale demand, in violation of the requirement that in the enforcement of an equitable right, a party must act diligently and expeditiously, on pain of losing the right. 19 Am. Jur. 343, Equity, §§ 498 and ffg.

[5] Four elements must be present in order to bar a suit on the ground of stale demand. These are (1) Action by the defendant or the party under whom he claims, which brings about the situation for which plaintiff seeks a remedy; (2) Delay in asserting plaintiff's rights, he having knowledge of the action referred to above; (3) Lack of knowledge by defendants that plaintiff would bring suit to complain of the action in (1) above; and (4) Injury to the defendants in the event suit is not barred.

[6] It appears clearly that all elements are present in the case at bar. And the failure of plaintiff to take any action at least during the first years of the American Administration when American justice was available to all, weakens plaintiff's explanation of inactivity grounded on fear, and makes it untenable. The court is therefore constrained to hold that plaintiff's claim is effectively barred because of the long delay in its enforcement.

III. JUDGMENT

It is therefore ordered, adjudged, and decreed as follows:—

1. As between the parties hereto and all persons claiming through them,

(a) Plaintiff has no right, title or interest in the land Nemuene located in Nechocho Village, Tol Island, Truk District.

(b) Said land and the use-rights therein are owned by certain descendants of Masis, former chief of Achau Clan, and of his sisters represented in this proceeding by defendants.

2. This judgment shall not affect any rights of way over, across, or upon said parcel of land.

3. No costs are assessed in favor of or against any party.