

TAMAGGIMED and EN, Plaintiffs

v.

BATHIN, Defendant

Civil Action No. 27

Trial Division of the High Court

Yap District

November 21, 1963

Action to determine ownership rights in plots of land and taro patch in Map Municipality. Plaintiffs claim rights through transfer by deceased owner, and by virtue of being owner's closest surviving relative, respectively. Defendant claims plaintiffs' predecessors were in wrongful possession since Japanese times. The Trial Division of the High Court, Chief Justice E. P. Furber, held that defendant's claims are based on such old matter that it must be presumed plaintiffs' predecessors in interest have been given rights they purported to have.

1. Real Property—Quiet Title—Laches

Where party's claim to land is based upon old matter, it must be presumed that adverse party's predecessors in interest and possession had been given rights which they purported to have.

2. Yap Land Law—"Kel"

Under Yap custom, where party claims piece of land as *kel*, claim must be based on clearly established intentional wrong.

3. Yap Land Law—"Kel"

Under Yap custom, in order to sanction confiscation of land to redress private wrong, it is necessary that those seizing land explain their actions to village chiefs and elders and obtain at least their tacit consent to seizure.

4. Yap Land Law—"Kel"

Under Yap custom, where party who confiscates land to redress private wrong fails to obtain consent of village leaders and elders, attempted confiscation is invalid and of no legal effect.

5. Yap Land Law—Adopted Child

Under Yap custom, even if individual is fully adopted out of family so that she would normally not inherit from it, express transfer of rights to her son is not prohibited.

6. Yap Land Law—Patrilineal Ownership

Although under Yap custom children of divorced couple go with father and lose right to inherit from mother's family, custom does not go to extent of barring express transfer to children of divorced female member.

7. Yap Land Law—Patrilineal Ownership

Under Yap custom, while giving to children of names that come from particular area or are connected with particular land is important indication of intention with regard to inheritance, this does not prohibit express giving of land rights to such children in other areas or lands than those with which their names are associated.

8. Contracts—Voidable Contracts—Drunkenness

Plying of individual with liquor in order to induce him to make apparent agreement involving repudiation of his previous agreement with others not present is not good under either Yap or American custom, regardless of how drunk person is made.

9. Contracts—Voidable Contracts—Drunkenness

Apparent agreement made by party when he is plied with liquor is not binding upon him and his repudiation of it by bringing civil action is justified.

10. Yap Custom—Traditional Meeting

Under Yap custom, meeting at which only some of parties concerned were represented is of no legal effect in changing previous unanimous decision as to possession of land made by majority of village chiefs of Map Municipality.

11. Yap Custom—Traditional Meeting

Decision of majority of village chiefs confirming gift to individual after discussion by all parties and others in general meeting held in accordance with Yap custom, cuts off any rights other party might once have been considered to have as distant relative of previous owner.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The right to possession and use of the northerly half (roughly) of the land known as Ted was owned by Sawayog, Sr., and was given by him to his son the plaintiff En.

2. The quarter (roughly) of Ted between the northerly half referred to above and the southerly part admittedly owned by the defendant Bathin, and the northerly half (roughly) of the taro patch of Lukan, were owned and used by Tithin and Lukulee as connected with the northerly part of Lukan admittedly owned by them.

3. Sawayog, Jr., did not steal any copra from Bathin about 1961 or from the land Towalbuu and did not violate the "*liu*" (traditional restriction on use of land following a death) placed on Towalbuu following the death of Bathin's wife.

4. Lukulee's attempted gift of the possession and use of all the lands and taro patch in question, except the northerly half of Ted, to the plaintiff En and his wife Lagorong in return for their care of Lukulee was confirmed in accordance with Yapese custom at a meeting of the Magistrate and village chiefs of Map, at which it was unanimously decided En was entitled to possession of all the properties in question, shortly after the ownership of these properties had been discussed by the parties and many others at Maniw, on November 29, 1961.

5. The plaintiff Tamaggimed had been made so drunk that he did not know what he was made to appear to agree to at the meeting in Maniw in May, 1962, except that he and Bathin were not to fight and were to try to be friendly.

6. The plaintiff Tamaggimed and En and their predecessors in interest under an unbroken line of transfers have had the possession and use under claim of right of the lands given by Lukulee to En and Lagorong since at least the beginning of Japanese times.

7. Any use which the defendant Bathin or those claiming under him may have made of any of the properties prior to 1961, either for himself or for others was only occasional and secretive and did not effectively impair the possession of the plaintiff En or his predecessors in interest.

8. The plaintiff En and his wife Lagorong took care of Lukulee the last of her life when all her relatives, including the defendant Bathin, failed to.

OPINION

This action involves the ownership rights in four pieces of land and a taro patch all located in Worilee (sometimes spelled Wurilaa) Village, Map Municipality, Yap District. The defendant Bathin claimed in 1961 that the plaintiff En's son, Sawayog, Jr., had stolen copra (actually one coconut) from Bathin's land Towalbuu and had thereby violated the "*liu*" (traditional restriction on use of land after a death) placed on that land after the death of Bathin's wife. Bathin then purported to order the plaintiff En and all of those connected with him off the lands and taro patch in question, of which he and his family had been in open and peaceful possession for approximately ten (10) years following the death of Lukulee, who with her predecessors in interest had been in open and peaceful possession for many years before that of the properties En claims through her. Lukulee had clearly at least attempted to give En and his wife all of the properties in question (except the northerly half of the land known as Ted which En acquired from his father) in payment for the care they had given her. Bathin claimed he was seizing one of these lands, namely Wolgorong, in the exercise of the right of "*kel*", sometimes spelled "*kol*", under Yapese custom. That is, the right to confiscate land to redress a private wrong, and he recognized En's right to repurchase the use of this with shell or stone money if he apologized for his son's alleged stealing of the copra.

As to all the rest of properties, however, Bathin claimed that the plaintiffs and their predecessors in interest had never had any ownership rights, that their possession ever since the death of Ungin (apparently around the middle of Japanese times) had been wrongful, and that he, Bathin, and his father before him, owned all of these except the part of Ted in dispute which Bathin claims to have been taking care of for Buu, the wife of Googur. Why Bathin

failed for so long a time to bring forward these claims as to the lands other than Wolgorong is not at all clearly explained.

The plaintiff Tamaggimed, Lukulee's closest surviving relative, and the one who became the head of the family on her death, was in Ponape when Lukulee died. On his return to Yap he confirmed her gift of the properties she had purported to give to En and his wife and he and En agreed En should continue in possession and "own" the lands to the extent one can under the Yapese system of land ownership, and that Tamaggimed should be the "mafen".

For a brief outline of the main features of the Yapese system of land ownership and the meaning of the term "mafen", see the conclusions of law by this court in *Duguwen v. Dogned*, 1 T.T.R. 223. For further details see Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. I, p. 251-287.

The ownership of all the properties in question was discussed by all the parties and many others in a general meeting November 29, 1961, which was admittedly held and conducted in accordance with Yapese custom. No decision was reached at that meeting, but shortly thereafter the decision set out in the fourth finding of fact above was made by the Magistrate and village chiefs of Map, and En resumed possession. He continued in possession until a further meeting in May 1962 attended by only 15 people including Bathin and Tamaggimed, but to which En and his wife Lagorong were not invited. This meeting included Roboman, the Chairman of the Yap Islands Council, but who according to Bathin's counsel was there as the son of Googur, the husband of Buu, for whom Bathin claimed to be taking care of the part of Ted in dispute. Roboman announced that Bathin would own the properties in dispute because he was older and that if the parties

would not agree to this they could do whatever they wanted. Tamaggimed who had been well plied with beer was then induced to shake hands with Bathin in apparent agreement with this decision, but as indicated in the fifth finding of fact he was so drunk he didn't understand this. After En and Lagorong received word of what had happened at this last meeting, Tamaggimed and En brought this action to clear the matter up.

[1] This court has just dealt at considerable length with the question of the standing of stale or ancient claims to land under general Trust Territory law in the cases of *Kanser v. Pitor and Others*, and *Kanser v. Enita and Others*, 2 T.T.R. 481. The principles there discussed largely control the claims of the defendant Bathin in this action to all the properties concerned, except the land Wolgorong. They are based on such old matter, that it must now be presumed that the plaintiffs' predecessors in interest and possession had been given the rights they purported to have.

[2-4] The defendant Bathin's claim to Wolgorong raises the question of what is necessary for a proper confiscation of land under Yapese custom in order to redress a private wrong. It seems clear that both under Yapese custom and as a matter of common sense the first essential is a clearly established intentional wrong. Here the alleged wrong depended on a statement by a second grade girl to her mother as to where the plaintiff En's son, Sawayog, Jr., obtained a certain coconut and leaf. The child was not called as a witness and there was no indication of how accurate an opportunity she had to determine from what land the coconut and leaf were taken from. On the other hand there was strong evidence that the coconut involved was taken from a tree near to, but outside the land covered by "liu", and from which the plaintiff's son had a

right to harvest. Furthermore, it appears that under Yapese custom, to sanction a confiscation or "*kel*", it is necessary that those seizing the land should explain their actions to the assembled village chiefs and elders and obtain at least their tacit consent. See Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. I, p. 275. There was no intimation that Bathin had done that, with the possible exception of the meeting at Maniw in May 1962 discussed below. The court therefore holds that Bathin's attempted confiscation or "*kel*" of Wolgorong was invalid and of no legal effect.

[5] In disparagement of the rights claimed by the plaintiffs and their predecessors in interest, the defendant Bathin has made some very broad claims as to the effect or extent of Yapese custom. He claimed first that the plaintiff Tamaggimed could have no rights in the lands of the family his mother had been born in because she was adopted out of family or kidnapped and her name changed. There was some controversy as to her exact status or type of alleged adoption or its near equivalent, but here Tamaggimed is not relying on inheritance in the strict sense. He has shown a straight transfer of rights to him and Tithin by Ungin, which he agrees under Yapese custom also included Lukulee as Tithin's half sister without her being specifically mentioned. Assuming even that his mother was fully adopted out of the family so that she would not normally inherit from it, the court is clear that the custom does not go so far as to prohibit an express transfer of rights to her son and holds that the transfer here was effective to pass whatever rights Ungin had that he could transfer.

[6] Second, Bathin claimed neither Tithin nor Lukulee could pass any rights in the lands of their mother's family because she had been divorced from their respective

fathers. While the court recognizes that when there is a divorce in Yap the children usually go with their father and lose the right to inherit from their mother's family, unless the family has died out except for such children, here as pointed out above the plaintiffs are not relying on inheritance in the strict sense, but on an express transfer. The court is clear that this custom about inheritance does not go to the extent of barring an express transfer by a family to children of a divorced female member of it.

[7] Similarly, while the giving to children of names that come from a particular area or are connected with particular land is an important indication under Yapese custom of intention with regard to inheritance, the court is clear that this does not prohibit the express giving of land rights to such children in other areas or lands than those with which their names are associated.

[8-11] Bathin's final claim is that his rights were vindicated at the meeting at Maniw in May 1962 and that the decision made there, agreed to by Tamaggimed, should prevail over the decision, which he refuses to recognize, of the Magistrate and village chiefs of Map following the general meeting of November 29, 1961. This meeting of May 1962 appears to have been a sorry affair. There has been no showing of any discussion as to the basis for Bathin's alleged confiscation or "kel" of Wolgorong or any attempt to get a general expression of opinion even from the limited number there. Persistently, if not deliberately, plying a man with liquor and inducing him to make an apparent agreement involving repudiation of his previous agreement with others not present, is not good under either Yapese or American custom, regardless of just how drunk the person is made. In view of the fifth finding of fact above, the court holds that any agreement Tamag-

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gimed may appear to have made at that meeting is not binding upon him, that his repudiation of it by bringing this action was justified, and that the alleged decision, with only some of the parties invited or represented at the meeting, was of no legal effect in changing, weakening, or revoking the unanimous decision of the Magistrate and village chiefs of Map set forth in the fourth finding of fact above, and that Lukulee's gift confirmed by Tamaggimed and this decision of the Magistrate and village chiefs after discussion by all the parties and others in a general meeting held in accordance with Yapese custom, cut off any rights Bathin might previously have been considered to have in those lands as a distant relative of Lukulee.

For American views on alleged agreements made under such circumstances as Tamaggimed's was shown to have been at this meeting of May 1962, see 12 Am. Jur., Contracts, § 144, 29 Am. Jur., Insane and Other Incompetent Persons, § 82.

It should be noted that neither Buu nor Googur were parties to this action. Therefore the judgment does not purport to bind them.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the lands and taro patch referred to below, all located in Worilee (sometimes spelled Wurilaa) Village, Map Municipality, Yap District, are owned as follows:—

a. The defendant Bathin, who lives in Worilee Village, has no rights of ownership in any of them.

b. The plaintiff En, who also lives in Worilee Village, has the right to possession and use of the northerly one-half (roughly) of the land known as Ted, and none of the other parties have any rights in it.

c. The plaintiff En (with his wife Lagorong) has the right to possession and use of the lands known as Bilemudur, Orou, and Wolgorong and the one-fourth (roughly) of Ted between the southerly part admittedly owned by defendant Bathin and the northerly one-half (roughly) referred to above, and the northerly one-half (roughly) of the taro patch of Lukan, and the plaintiff Tamaggimed, who lives in Worwoo Village, Rull Municipality, Yap District, is the "*mafen*" of all of these.

d. All of the above rights are held subject to the Yapese system of land ownership and nothing herein contained is intended to imply that any of the plaintiff En's rights of possession and use are necessarily exclusive. It is to be presumed that En's rights described above are held by him as part of a family group. No issue was raised in this action as to the extent of this group and no determination is made in regard to it, except that it does not include the defendant Bathin.

2. This judgment shall not affect any rights of way there may be over any of the properties in question.

3. The plaintiffs Tamaggimed and En are awarded such costs of this action as they may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code. If they had any such taxable costs beside the One Dollar (\$1.00) fee for filing the complaint and the Two Dollars Fifty Cents (\$2.50) trial fee shown by the Clerk's records, they are to file a sworn itemized statement of them within thirty (30) days after entry of this judgment. Otherwise only the Three Dollars Fifty Cents (\$3.50) costs mentioned above will be allowed.