KANSER, Plaintiff

v.

PITOR, ERNA, and PIO, Defendants

Civil Action No. 172

KANSER, Plaintiff

v.

ENITA, TIKITIK, and PIO, Defendants

Civil Action No. 173

Trial Division of the High Court

Truk District

November 18, 1963

Actions for determination of title to land on Fefan Island, in which plaintiff claims land on basis of lineage ownership prior to civil war of 1877. The Trial Division of the High Court, Chief Justice E. P. Furber, held that plaintiff is barred from bringing action as present courts will not correct alleged wrongs occurring during former administration where appeal to authorities of that time was available; doctrine of laches estops plaintiff, and doctrine of lost grant creates strong presumption of ownership in defendants which has not been rebutted.

1. **Former Administrations—Taking of Private Property by Japanese Government—Limitations**

   Fear of Japanese authorities is not legal excuse for failure to bring action under former administration since Japanese courts were open to land disputes.

2. **Equity—Laches**

   Court will not reach into distant past to correct injustices which may have existed.

3. **Contracts—Voidable Contracts—Undue Influence**

   Where out of respect, fear or awe of some traditional leader but without threat of unlawful force, one is persuaded to make agreement and receives benefit of agreement, party to agreement cannot be relieved of consequences of it.

4. **Real Property—Subsequent Holders**

   Heirs and transferees take land subject to agreements and admissions against interest properly made by their predecessors in interest under laws and customs as they then stood.

5. **Former Administrations—Applicable Law**

   Whether any action was legally right or wrong should be decided according to law at time action was taken.

6. **Former Administrations—Redress of Prior Wrongs—Exception to Applicable Doctrine**
   Present administration is not required as matter of right to correct such wrongs as former administration may have done, except in cases where wrong occurred so near time of change of administration that there was no opportunity for it to be corrected through courts or agencies of former administration.

7. **Trust Territory—Land Law**
   Law concerning ownership, use, inheritance and transfer of land in effect on December 1, 1941, remains in full force and effect except insofar as it is changed by express written enactment. (T.T.C., Sec. 24)

8. **Equity—Laches**
   Claim not worthy of presentation during Japanese Administration is not worthy of presentation now unless specifically authorized by enactment of Trust Territory.

9. **Trust Territory—Land Law—Limitations**
   Land claims barred under usual principles of American law are barred under Trust Territory Code. (T.T.C., Sec. 24)

10. **Real Property—Quiet Title—Laches**
    Actions in equity to quiet title should only aid those who have been active in pressing their claims.

11. **Trust Territory—Land Law—Adverse Possession**
    Adverse possession, under which one can establish ownership by holding adverse possession of land under claim of ownership for period of statute limiting bringing of actions for recovery of land, cannot be applied in Trust Territory until 1971 because present twenty-year limitation went into effect in 1951 and began to run on that date as to causes of action then existing. (T.T.C., Secs. 316, 324)

12. **Equity—Laches**
    Doctrine of laches is applicable in Trust Territory and may estop party from bringing action.

13. **Real Property—Quiet Title—Presumption of Ownership**
    Long continued peaceful possession and use of land under claim of right is strong indication of ownership.

14. **Real Property—Lost Grant**
    Where person has held uninterrupted possession of land while exercising rights of ownership, presumption is that land was lawfully transferred to him unless inconsistent facts are proved.

15. **Real Property—Lost Grant**
    Principle of "lost grant" applies in Trust Territory and assumes oral grant of land where persons who heard grant have died or forgotten about it, making it hard to prove existence of grant years later.

16. **Real Property—Lost Grant**
American courts have held that principle of presumption of grant of land may arise from possession for length of time analagous to that of statute of limitations for land actions.

17. **Real Property—Lost Grant**
In Trust Territory, when possession of land extends for thirty to forty years, presumption of grant is very strong and is applied against government.

18. **Real Property—Quiet Title—Laches**
When person of full age and sound mind stands by for twenty years or more and lets someone else openly and actively use land under claim of ownership, person who stands by will lose rights he may have had in land, and courts will not assist him in regaining them.

19. **Real Property—Quiet Title—Laches**
Where neither party claiming land nor any of their predecessors in interest have been in open, active possession for twenty years before bringing action, question of whether claim is barred will be considered separately either at pre-trial conference or by trial of that issue, before court will consider merits of claim.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff Kanser and the defendant Pio have failed to show that either of them, or his predecessors in interest, did not have a reasonable chance to have their claims determined during the periods of either the German or the Japanese Administrations.

2. The defendants Pitor, Erna, Enita, and Tikitik, or their respective predecessors in interest, have been in open and peaceful possession under claim of ownership of the respective pieces of land they claim for 37 years or more prior to the bringing of these actions. This possession was adverse to the claims of all others and was clearly intended to be exclusive and uninterrupted (except for military activities during World War II), and the court finds that it was in fact as exclusive and uninterrupted as can

reasonably be expected in the light of the character and location of the land involved.

3. Any use which defendant Pio's group may have made of any of the lands within 37 years of the bringing of the actions was only occasional and secretive and did not effectively impair the exclusive possession of the other defendants.

OPINION

The primary dispute in this action is as to the disposition made of eight pieces of land located in Sapeour Village on Fefan Island, Truk District, following the civil war of 1877 on that island. It is clear that the lands in question were owned before that war by the plaintiff Kanser's group. All of the defendants claimed that the rights of the plaintiff Kanser's group were cut off when the lands were conquered and seized as spoils of the civil war of 1877. The defendant Pio has a different theory from the other defendants as to the disposition of three of the lands so taken. His claim turns on the existence or non-existence of certain alleged transfers in the distant past. The court is satisfied from the weight of the evidence that these lands were all spoils of war in 1877, but considers that this fact is immaterial to the result of these two actions.

This court and the Appellate Division of the High Court have discussed in several opinions this matter of trying to go back into the dim past and endeavoring to have the courts of the present administration rectify alleged wrongs which occurred during the German or Japanese Administrations or prior thereto, but apparently these principles are not clearly understood yet in the Truk District.

[1, 2] The plaintiff Kanser and the defendant Pio have made a great point of being afraid of the authorities during the period of the Japanese Administration. Such

fear seems clearly to presume that they felt their claims would not be considered good, and amounts to little more than a fear of the law then in effect. This court has already held in the case of *Rochunap v. Yoschune and Eis*, 2 T.T.R. 16, that such a fear "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." The Appellate Division of the High Court also dealt with this point in its opinion in the case of *Aneten v. Olaf*, 1 T.T.R. 606, in which it stated as follows:—

> "What better indication of ownership can there be than evidence that the appellee group treated this land as being owned by them? The appellant group contends that this was accomplished by force and fear, but we cannot assume that the German and Japanese Administrations would not have corrected any injustices or that we have facilities which will reach into a distant past to correct any injustices which may have existed."

[3, 4] The plaintiff Kanser has further claimed that some women members of his group were pressured into agreements by men which the women did not really like, but the only instance of any physical force or threat of force shown, was one alleged beating way back in German times. If that was unlawful, there was plenty of time to have corrected it before the period of the American Administration. Agreements, even though they may be unpleasant, made as a result of lawful pressures are enforceable. Where out of respect, consideration, or possible general fear or awe of some leader in a position of traditional authority, but without any use or threat of unlawful force, one is persuaded to make an agreement and gets the benefit of it and also of such leader's aid, guidance, cooperation, or goodwill, the person making such an agreement cannot fairly expect to be relieved of the consequences of it. Those who claim by inheritance or transfer from

others must be content to take subject to any agreements or admissions against interest properly made by their predecessors in interest under the laws and customs as they then stood.

[5, 6] Over ten years ago in its conclusions of law in the case of *Wasisang v. Trust Territory*, 1 T.T.R. 14, this court held that whether any action was legally right or wrong should be decided according to the law at the time the action was taken, and that in accordance with general principles of international law, the present administration of the Trust Territory is not required as a matter of right to correct such wrongs as the former administration may have done, except in those cases where the wrong occurred so near the time of the change of administration that there was no opportunity for it to be corrected through the courts or other agencies of the former administration. These conclusions were expressly concurred in by the Appellate Division in 1954 in the case of *Kumtak Jatios v. L. Levi*, 1 T.T.R. 578.

[7–9] Trust Territory Code, Section 24, states that the law concerning the ownership use, inheritance, and transfer of land in effect on December 1, 1941, shall remain in full force and effect except insofar as it has been or may hereafter be changed by express written enactment made under the authority of the Trust Territory of the Pacific Islands. Consequently, it should be apparent that if a claim of ownership of land based on anything that occurred during or prior to the Japanese Administration was not worth presenting during that administration, it ought not to be worth presenting now, unless it has been specifically authorized by some express written enactment under the authority of the Trust Territory of the Pacific Islands. The court considers it clear that the Japanese Administration of the Trust Territory was no more sympa-

thetic to old claims than American courts are generally. In fact there are many indications the Japanese were less sympathetic to such claims, but so many of their matters were handled administratively it has been difficult as yet to determine exactly what standard they applied. The court holds, however, that at least those land claims barred under usual principles of American law must be held to be barred under Section 24 of the Trust Territory Code.

[10] In addition to the general rule of international law that our courts should not try to rectify wrongs which may have occurred under former administrations, there are several closely related principles barring the giving of effect to ancient claims, even when there has been no change of administration. The basic idea is that courts in handling what are called "equity" matters, such as these actions for determination of ownership of land commonly referred to as "quieting title", should only aid those who have been vigilant (that is, active in pressing their claims) and should refuse relief to those who have not made proper effort to press their claims. 19 Am. Jur., Equity, §§ 480 and 481.

This basic idea is applied more specifically in the doctrines of "adverse possession", "laches or stale demand", "estoppel", and "presumption of grant" (sometimes called the "doctrine of lost grant"). For detailed explanations of these see:

3 Am. Jur. 2d., Adverse Possession, §§ 1, 2, and 3.

19 Am. Jur., Equity, §§ 489–503.

20 Am. Jur., Evidence, § 236 (especially the notes to this section in the 1963 Cumulative Supplement).

44 Am. Jur., Quieting Title, §§ 65 and 66.

[11] The doctrine of adverse possession, under which one can establish ownership by holding adverse posses-

sion of land under claim of ownership for the period of the statute limiting the bringing of actions for recovery of land or rights in it, does not yet itself apply in the Trust Territory, but will in 1971 under the terms of the present law. The reason is that our twenty (20) year limitation on the bringing of land actions, now contained in Section 316 of the Code, did not go into effect until May 28, 1951, and only began to run on that date as to cause of action then existing, because of the provision in Section 324 that such existing causes of action shall be considered for this purpose to have accrued on that date.

[12] The doctrine of laches or stale demand, however, does apply. It was discussed and relied upon in the case of *Rochunap v. Yoschune and Eis*, 2 T.T.R. 16, where all the elements necessary to work what is called an "estoppel" were found to exist although that term was not used there.

[13–15] The related principle that long continued peaceful possession and use of land under claim of right is a strong indication of ownership, also applies and was discussed and relied upon in the cases of *Ei v. Inasios*, 2 T.T.R. 317, and *Naoro and Pios v. Inekis H.*, 2 T.T.R. 232. In the latter action the doctrine that long continued, uninterrupted occupancy and use raises a presumption of lawful origin, was expressly touched upon. This is just another way of stating the "presumption of grant" or "doctrine of lost grant". The theory is briefly that where it is shown that a person has held uninterrupted possession of land while exercising rights of ownership, it may fairly be presumed that the land was lawfully transferred or "granted" to him unless facts inconsistent with that are proved. In England and the United States it has long been required that such a transfer must be in writing, which is itself often referred to as a "grant". Thus the term "lost

grant" means that the person holding the land, or his predecessor in interest, presumably had such a written paper granting him the land, but has now lost the paper. In the Trust Territory where transfers of land were usually made orally and still may be, the term "lost grant" may not have much meaning by itself, but the principle is perhaps even more important in view of the limited number of written records. If there was no paper setting forth the grant, of course it could not be lost, but the persons who heard the oral grant may have died or forgotten about it so that it will be just as hard to prove years later as it would if the grant had been a paper which was lost.

[16, 17] It is regularly held in American courts that this principle of presumption of grant may arise from possession for a length of time analagous to that in the "Statute of Limitations" for land actions—that is, in the written law of that particular area limiting the bringing of actions for land. In the Trust Territory this would mean twenty (20) years. When the possession extends for thirty (30) to forty (40) years or more, the presumption becomes even stronger and when the possession is very long continued the presumption is even applied against the government.

[18, 19] Roughly and bluntly stated, the effect of the above is that if a person of full age and sound mind stands by, or he and his predecessors in interest together have stood by, for twenty (20) years or more and let someone else openly and actively use land under claim of ownership for that period or more, the person who so stood by will ordinarily be held to have lost whatever rights he may previously have had in the land and the courts will not, and should not, assist him in regaining such rights. In the future, any one claiming the ownership of land of which neither he nor his predecessors in interest have

been in open and active possession within twenty (20) years before the bringing of the action, can expect that the issues in his action will be separated and the question of whether his claim has been barred will be considered first and disposed of either at the pre-trial conference or by trial of that issue, before the court will go into the merits of any rights he may have had in the land based on things that happened more than twenty (20) years before the bringing of the action.

JUDGMENT

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

1. As between the parties, all of whom live on Fefan Island, Truk District, and all persons claiming under them, the lands named below, all located in Sapeour Village, on Fefan Island, Truk District, are owned as follows:—

a. Neither the plaintiff Kanser nor the defendant Pio nor any of those whom either of them represents in these actions, has any rights of ownership in any of the said lands.

b. The defendant Pitor, or the group he represents descended in the female line from Ema and Pungun, owns the lands known as Winirar, Neom, Foukot, and Noru.

c. The defendant Erna owns the land known as Neopwech.

d. The defendant Enita owns the lands known as Nepuna and Fanemech.

e. The defendant Tikitik owns the land known as Nukuwen.

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

3. The defendants Pitor, Erna, Enita, and Tikitik are awarded such costs, if any, of these actions as they may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided they

file a sworn itemized statement of them within thirty (30) days after the entry of this judgment. Otherwise no costs will be allowed. The costs herein awarded are assessed one-half (1/2) against the plaintiff Kanser and one-half (1/2) against the defendant Pio.