

SERHA IRONS, Plaintiff
v.
PETRUS MAILLO, Defendant
Civil Action No. 227
Trial Division of the High Court
Truk District
June 21, 1966

Action to determine title to land in Moen Municipality, in which deceased owner orally willed his individual land to plaintiff, and later made second oral will in which third parties were named to succeed deceased in same land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that, in accordance with Trukese practice, deceased's directions during his last illness superseded any previous will of his land to plaintiff.

1. Truk Custom-Wills

Under Truk custom, deathbed will of family land supersedes any previous wills, written or otherwise.

2. Truk Custom-Wills

Under Truk custom, wills of family land do not have same authoritative force as valid will in United States, but require consent of family either before or after death.

3. Truk Custom-Wills

Under Truk custom, even though deceased's statement of his wishes regarding succession to family land over which he has control is clear, it may not control.

4. Truk Custom-Wills

Truk custom, whereby testator may make later change in will of family land without consent of person whom he has previously designated to receive land, applies also to will of testator's individual land.

5. Courts-Costs

Where plaintiff in good faith brings action to determine ownership of land in Truk, plaintiff will not be charged with additional costs which may be granted in cases where action is groundless, even though evidence to refute plaintiff's claim is strong. (T.T.C., Sec. 265)

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Theodore Geierow, otherwise known as Karl Heinrich Theodor Gierow, and as Carl Girow, left two wills-

an informal one dated July 1, 1908, and a more formal one bearing the stamp of the German Administration at Ponape dated October 1, 1908. Both of these left Ruwo Island to his adopted children Serha (sometimes spelt Sarah and sometimes Cera), Edward (sometimes spelt Eduard), and Michuo, otherwise known as Alfred (sometimes written Alfret), subject to a life estate in his widow Ema.

2. Partly as a result of efforts of the plaintiff Serha to protect her interests in the island in the face of persistent demands by a creditor of Edward, partly for debts incurred by Ema and others on Ruwo which Edward had assumed, Ruwo Island was divided between Serha, Michuo, and Edward, with the consent or acquiescence of all three of them and the assistance and approval of the Japanese Administration.

3. Michuo acquired Edward's one-third upon promising to pay the debts of Edward mentioned above and did pay them without the assistance of the plaintiff Serha except for her forbearance to press a claim against Edward and Michuo for a share in copra which they had cut on the island during the previous years without her participation.

4. Prior to his last illness, Michuo told Serha and her daughter Lucy, and each of them separately, that when all three of these adopted children died, Lucy would have Ruwo since Serha was the only one of the three of them who had a true child, and urged them not to pay any attention to anything they might hear from others as to his intention to make any other disposition of his interests in the island.

5. During his last illness and while his mind was clear, but in absence of Serha and Lucy, Michuo gave clear and express oral directions that his two-thirds of Ruwo (including the third acquired from Edward) should go to Samurai and Iangau, and should be administered on their behalf by his blood brother, the defendant Petrus Mailo.

OPINION

This action involves the ownership of two-thirds of the Island of Ruwo, one of the group known as Northeast Islands, located on the northeastern part of the barrier reef of Truk Atoll in Moen Municipality, Truk District. It is admitted that the other one-third is owned by the plaintiff Serha.

The above findings of fact dispose of the plaintiff Serha's claim to be entitled to the whole of Ruwo Island as the survivor of the three adopted children to whom it was devised by their father by adoption. The court holds that the division set forth in the second finding of fact terminated whatever form of tenancy these three children held under prior thereto and gave each of them one physical third of the island as his or her individual land, and that Edward's transfer of his one-third to Michuo was valid. Much land in Truk District is often transferred to heirs before death by agreement within a family, but it is clear that Michuo's statements about Lucy's eventually having his part of Ruwo did not even purport to constitute present transfers.

[1-3] The action therefore raises squarely the question of whether an oral will under Trukese custom by an owner of individual land can be changed by him without the consent of or notice to the person or persons whom he has previously designated to receive his land. In the much more common situation of a Trukese will of family land, it appears to be well and clearly established that a deathbed will will supersede any previous wills, written or otherwise. Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 207. It is recognized that such wills of family land do not have the same authoritative force as a valid will in the United States, but require the consent of the family either before or after the death.

Thus, even though a deceased's statement of his wishes is clear, in the case of family land, it may not prevail.

[4] This matter of a will being subject to change by a testator, however, is so well imbedded in Trukese practice that the court finds no good reason to apply a different principle to a will of a man's individual land and holds that Michuo's directions during his last illness superseded any and all previous wills of this land, just as a valid will in the United States may be superseded by a later one.

[5] The defendant Petrus Mailo has moved for allowance of the additional costs which may be granted in the discretion of the court under the second sentence of Section 265 of the Trust Territory Code on the apparent basis that this action was so groundless that it should not have been brought. It is clear, however, that Michuo either deliberately misled Serha as to his intentions concerning the disposition of his land or else changed his intentions. It is considered that his assurances to her gave her at least enough basis for wishing in good faith to have this matter determined by the court so that she should not be charged with more costs than usual, even though the evidence of Michuo's final disposition was strong. Therefore, the defendant's motion for additional costs under the second sentence of Section 265 is denied.

The affidavit filed in support of that motion so merges costs taxable under the first sentence of Section 265, those taxable under the second sentence, and certain expenses not taxable at all under that section, that it is impossible to determine from it just how much is taxable under the first sentence. Therefore, a new affidavit will be required showing specifically the costs taxable under the first sentence before any costs will be taxed.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the two-thirds of the Island of Ruwo, located on the northeastern part of the barrier reef of Truk Atoll in Moen Municipality, Truk District, which two-thirds were worked by Michuo from about 1937 until the time of his death, are owned by Samurai and Iangau, who live in Moen Municipality, the defendant Petrus Mailo, who also lives in Moen Municipality, is entitled to administer them for the benefit of Samurai and Iangau, and neither the plaintiff Serha Irons, who lives in Udot Municipality, Truk District, nor her daughter Lucy, who also lives in Udot Municipality and for whom the plaintiff also makes claim in this action, has any rights of ownership in these two-thirds.

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

3. The defendant Petrus Mailo is allowed such costs as he had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided he files a sworn itemized statement of these, separate from any other charges, within thirty (30) days after the entry of this judgment; otherwise no costs will be allowed.