

PERETIU, Plaintiff

v.

KARIMINA, RUFINA, TEIRENG, and FUSAKO, Defendants

Civil Action No. 345

Trial Division of the High Court

Trnk District

May 3, 1968

Action to determine ownership of land on Fefan Island, Truk Atoll. The Trial Division of the High Court, E. P. Furber, Temporary Judge, held that where there is a great lapse of time without any protest by purported landowner against open possession of others every presumption must be made in favor of the transaction transferring land which the purported owner seeks to upset.

1. Real Property-Quiet Title-Laches

After a lapse of 35 years without any protest against the open possession of the land by others every reasonable presumption would be made in favor of the exchange transferring such land which a plaintiff was seeking to upset.

2. Truk Land Law-Lineage Ownership-Transfers

While land owned by a Trukese lineage cannot be transferred without the unanimous consent of the members, and a lineage is not barred from disposing of its land just because it has among its members some small children.

3. Truk Custom-Lineage

A young child in acquiring benefits from his lineage is bound by all proper actions taken by the then adult members of the lineage during his minority.

4. Real Property-Improvements

Where one had no reasonable basis for believing he was entering land as a matter of right, he acquired no rights in his planting on the land and was not entitled to any compensation for any improvement he may have made.

FURBER, *Temporary Judge*

FINDINGS OF FACT

1. The plaintiff Peretiu has not sustained the burden of proving that he or any of his lineage ever owned any of the areas of the land in question marked (1), (3), (4), (5), and (6) on the sketch attached to the Amended Memorandum of Pre-Trial Conferences and Order.

2. Title to the areas shown as (1), (3), (4), (5), and (6) on said sketch was adjudicated early in Japanese times (before the exchange referred to in the next finding of fact), and determined to be in Ako and Sokkun under whom the defendants Fufina, Teireng, and Fusako claim. These defendants, or their predecessors in interest, have been in open, peaceful and unopposed possession of the respective areas claimed by them from that time until about the time of the commencement of this action.

3. In the 1920's the plaintiff Peretiu's older sister ~~Ti-~~ pun and her husband Konman, with the acquiescence of all the adult members of the plaintiff's lineage, arranged with one Nikim an exchange of the area shown as (2) on said sketch for other land not in dispute in this action. Nikim and those claiming under him were in open, peaceful and unopposed possession of said area shown as (2) from that time until just a few years prior to the bringing of this action.

4. At the time when the plaintiff Peretiu purported to arrange with Ieto for the re-exchange of the lands Peretiu believed to be involved in the above exchange, Peretiu knew, or should have known, that the defendant Karimina, and not Ieto, had succeeded to Nikim's interest in said area shown as (2).

OPINION

This action involves the ownership of land and taro swamp on Fefan Island in Truk Atoll.

The plaintiff Peretiu is seeking to upset an exchange which was made by his lineage at a time when he was a small boy, some 35 years or more before the bringing of this action. As shown by the findings of fact, he has also claimed that a much larger area was involved in the exchange than the evidence shows. The findings of fact are conclusive as to plaintiff's rights in the areas shown on the sketch attached to the said Amended Memorandum of Pre-Trial Conferences and Order as (1), (3), (4), (5), and (6).

[1] As to the area shown as (2) on the sketch, this is an extremely stale claim and is governed by the principles discussed in *Kanser v. Pitor*, 2 T.T.R. 481. *Naoro and Pios v. Inekis H.*, 2 T.T.R. 232. *Rochunap v. Yösochune and Eis*, 2 T.T.R. 16. After the lapse of time shown to have existed here without any protest against the open possession of Nikim and his daughter Karimina after him every reasonable presumption must be made in favor of the exchange which the plaintiff now seeks to upset.

[2, 3] While it has been stated numerous times that land owned by a Trukeselineage cannot be transferred without the unanimous consent of the members, the court considers it clear that under Trukese custom this must be construed to mean consent of all adult members, and that a lillage is not barred from disposing of its land just because it has among its members some small children. In this instance, if the defendant Karimina is correct in her estimate as to the date of the exchange, the plaintiff would have been about two years old at the time. While the exact date of this exchange has not been firmly established, the court considers it clear that it happened at the latest before the plaintiff was 10 years old, and holds that such a child in acquiring benefits from his lineage, is bound by all proper actions taken by the then adult members of the lineage during his minority.

Peretiu's attempted re-exchange with Nikim's stepson, Ieto, appears to be a clear attempt to defraud the defendant Karimina who had openly succeeded to her father Nikim's rights in the area shown as (2) years prior to the attempted re-exchange. Without expressing or implying any determination as to the effect of this attempted arrangement between Peretiu and Ieto, the court holds that it is completely invalid and of no effect as against the defendant Karimina.

[4] The plaintiff has so deliberately interfered with the long established peaceful possession of the respective defendants that the court holds that he had no reasonable basis for believing he was entering as a matter of right, and that he has acquired no rights whatever in his plantings on the land or taro patch and is not entitled to any compensation for any improvement he may have made. *Alonso Narruhn v. Saru Sale*, 3 T.T.R. 514.

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 land known as Nesuk, including the taro patch on it, and the adjoining parts of the land known as Unomoi (considered by some to be a division of Nesuk and by others to be an entirely separate land), all located in Muen Village on Fefan Island, Truk District, are owned as follows:-

a. The part of the taro patch shown as (1) on the sketch attached to the Memorandum of Pre-Trial Conferences and Order in this action, is owned by the defendant Teireng as his individual property.

b. The part of the land shown as areas (3) and (4) on said sketch is owned by the defendant Fusako as her individual property.

c. The part of the land, including a small portion of taro patch, shown as area (2) on said sketch is owned by the defendant Karimina as her individual property.

d. The land shown as area (5) on said sketch and the part of the taro patch shown as area (6) on said sketch are owned by the defendant Rufina as her individual property.

e. Neither the plaintiff Peretiu nor the lineage descended in the female line from his mother, for which lineage he makes claim in this action, has any rights of ownership in any part of said land and taro patch and neither he nor said lineage has any right to harvest from or care for any of the things he has planted there.

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

3. Each defendant is awarded such costs, if any, as he or she may have had which are taxable under any part of Section 265 of the Trust Territory Code, provided he or she files a sworn itemized statement of them within thirty days after the entry of this judgment. No costs will be allowed any defendant who fails to file such statement within that time.

4. Time for appeal from this judgment is extended to and including July 1, 1968.