

MITMAD and WIGDAR, Plaintiffs
v.
GARAFEL and FATHOLIY, Defendants
Civil Action No. 40
Trial Division of the High Court
Yap District
August 30, 1968

Action to determine rights to possession and use of certain lands in iRumung Municipality in the Yap Islands. The Trial Division of the High Court, E. P. ,Furber, Temporary Judge, dismissed the action without prejudice to allow bringing of new action to include proper parties and to identify lands in issue.

Civil Procedure-Generally

The matters of the rights of the chiefs of the land in question and the question of whether such rights have been properly exercised could not fairly be decided without the chiefs involved or their present successors being made party to a suit concerning the land.

FURBER, *Temporary Judge*

FINDINGS OF FACT

The plaintiffs have not sustained the burden of proving any ground for relief against either of the two defendants remaining in this action.

OPINION

This action involves the rights to possession and use of various lands, a *taro* patch, and a yam platform, all located

in Wenfaraa Village in Rumung Municipality in the Yap Islands proper. Wenfaraa is a "low class" or "pimilingay" village. Although the point was not raised at the pre-trial conference, it appears from the evidence that the defendants claim that in such a village the rights normally held by the occupants of land under the Yapese system of land ownership are held by the chiefs of lands involved and the occupants are there by sufferance of these chiefs. The defendants still in this action claim to be in possession by permission of the chiefs and one of them states flatly that he would get off one of these lands if the chief of that particular land told him to. It appears that the plaintiffs are in effect trying to either deny or override the rights of the chiefs or obtain a determination that those rights have been improperly exercised. Also, there are so many lands of the same name in Wenfaraa that it has been difficult to tell which land of a given name a party or witness was referring to at a particular time and which chief it was under.

Upon consideration of the whole problem, the court considers that the matter of the rights of the chiefs and question of whether they have been properly exercised cannot fairly be decided without the chiefs involved or their present successors being made parties. To avoid confusion, it is recommended that in any future litigation over these properties the court order a survey by the District Land Office.

Many of the issues originally involved in this action and dealt with in the pre-trial order have been settled. Under all the circumstances, the court considers that justice will best be served by allowing either plaintiff or her successor or successors in interest to bring a new action.

The court has been informed informally that the plaintiff Mitmadhas died and that the plaintiff Wigdar has

succeeded to Mitmad's interest in the action. The court, however, makes no determination as to these matters. This judgment will apply to whoever may have succeeded to the interest of either plaintiff.

JUDGMENT

The above-entitled action is dismissed without costs and without prejudice to either plaintiff or her successor or successors in interest bringing a new action concerning the properties still in issue at the close of the trial in this action, *provided* that in the new action (1) the properties are clearly described, preferably by at least a rough survey, (2) the chief or chiefs of each property are designated and made parties, and (3) if the plaintiff claims any action of any of these chiefs, or of any of their predecessors, was improper or ineffective, the plaintiff specify each action to which she or he objects, as nearly as practicable when it was taken and by whom, and why she or he objects to it.

Time for appeal from this judgment is extended to and including October 30, 1968.