

IN RE ESTATE OF TAITANO

**In re Estate of
REGINA METTAO TAITANO, a/k/a ABELINA METTAO,
Deceased**

Civil Appeal No. 326

Appellate Division of the High Court

Mariana Islands District

March 11, 1983

Appeal of a trial court distribution of an estate. The Appellate Division of the High Court, Munson, Chief Justice, held that probate petition claiming rights in an estate due to an interest in land owned by decedent was governed by two-year probate statute of limitations, not by limitations period for recovery of interest in land, and petitioner's cause of action accrued upon death of decedent, when her children asserted claims adverse to petitioner's interest, and therefore trial court's judgment was affirmed.

1. Decedents' Estates—Limitation of Actions

For purposes of statute of limitations, petitioner's cause of action, concerning rights in an estate due to alleged interest in land owned by decedent, accrued when upon decedent's death, children of decedent began to assert adverse claims.

2. Decedents' Estates—Limitation of Actions

Probate petition claiming rights in an estate due to claimed interest in land owned by decedent was governed by two-year probate statute of limitations, and not by twenty-year statute of limitations for actions for recovery of interest in land, or 120 day limit for appeals from Land Commission determinations. (6 TTC §§ 302, 304; 67 TTC § 115)

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Before MUNSON, *Chief Justice*, MIYAMOTO, *Associate Justice*, LAURETA, *Temporary Justice*

MUNSON, *Chief Justice*

On February 18, 1977, Jose Mettao (appellant) filed a petition for probate entitled "*In Re Estate of Regina Mettao Taitano, Deceased*." Probate Case No. 56." In his petition, appellant sought distribution of the estate of his mother Regina Mettao Taitano (also known as Abelina Mettao, and hereinafter referred to as Abelina), consisting of: (1) land received by Abelina from the Trust Territory Government in 1954, in exchange for Lot 1695 on Saipan; and (2) \$56,015 in compensation by the Micronesian Claims Commission for war damage to Lot 1695. On November 18, 1977, Margarita S. Taman (appellee) filed a petition for distribution entitled "*In Re Estate of Regina Mettao Taitano, also known as Abelina Mettao, Deceased*," Civil Action No. 269-77," seeking identical relief. Appellee was the niece of Abelina.

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The two cases were consolidated and tried without a jury in the Trial Division of the High Court, Mariana Islands. The Trial Court granted one-eighth shares in the estate of Abelina to the children and heirs of Antonia Eupelero (hereinafter referred to as Antonia) per stirpes. Antonia was the mother of Abelina, and seven other children. Appellee was the daughter of Antonio, one of Antonia's eight children. The Eupelero family was Carolinian.

Appellant and Abelina's other children claim sole rights in the estate to the exclusion of all other children and heirs of Antonia. Appellant's claim rests upon a September, 1952, Determination of Land Ownership by a Trust Territory Title Officer. The Determination names Abelina alone as the owner of Lot 1695. Appellee uncontestedly contends that in August, 1952, after a noticed public hearing, the Title Officer orally decided that, in accordance with Carolinian custom, Abelina owned the land as trustee for all of Antonia Eupelero's children. The Trial Court ruled for appellee and invalidated the 1952 Determination due to the Title Officer's failure to name Abelina as the "owner in the capacity of Land Trustee for all of Antonia Eupelero's heirs."

We are asked to determine whether appellee's petition below was barred by the twenty-year limitation statute applicable to actions for the recovery of land or an interest in land. That section, Title 6 TTC § 302, states in relevant section:

The following actions shall be commenced only within twenty years after the cause of action accrues:

(b) actions for the recovery of land or interest therein.

Because this is a probate case, we also refer to Title 6 TTC § 304, which states:

Any action by or against the executor, administrator or other representative of a deceased person for a cause of action in favor of, or against, the deceased shall be brought only within two years

after the executor, administrator or other representative is appointed or first takes possession of the assets of the deceased.

Antonia Eupelero died before World War II. Through two marriages she gave birth to eight children, including Abelina. Antonia and both of her husbands were Carolinian. During Antonia's lifetime, all eight children had lived with her on Lot 1695. After her death, all eight children remained in the house until they built another dwelling on the south portion of the lot.

It is uncontested that in January, 1944, Abelina filed a Statement of Ownership, stating that all eight of Antonia's children owned the Lot 1695.

On August 20, 1952, Trust Territory Title Officer John Wood sent written notice in English and in Chamorro to all eight of Antonia's children that a hearing to determine title to Lot 1695 would be held on September 2, 1952, at the Land and Claims Office. Because some of the children were off-island, only Abelina and four other children received actual notice and attended the hearing.

It is undisputed that after the hearing, Title Officer Wood orally informed the attending parties that title would be granted to Abelina as trustee for all eight of Antonia's children; and that Abelina said nothing in objection to this disposition. Nevertheless, the written Determination stated only that Abelina was the "owner," without indicating that she held as Land Trustee for all of Antonia's heirs. The written Determination was filed with the Clerk of Courts and remained undiscovered until 1977.

Two other transactions relating to Lot 1695 occurred between 1952 and Abelina's death in October, 1976. In 1954, Abelina signed a Land Exchange Agreement with the Trust Territory Government. The agreement exchanged Lot 1695 for two other parcels on Saipan. In 1976, Micronesian Claims Commission Decision No. 5128 awarded Abelina \$56,015 for war damage to Lot 1695.

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Abelina stated that she intended to divide the award with Antonia's other heirs in recognition of the heirs' interest in Lot 1695.

In 1977, appellee and other heirs of Antonia discovered that the written 1952 Determination did not list Abelina as Land Trustee in accordance with Title Officer Wood's oral decision. They promptly filed a petition for partial distribution to them of Abelina's estate. The Trial Court initially held for petitioner-appellee in May, 1979. It vacated this judgment when respondent-appellant persuaded the court that for good cause respondent-appellant's attorney had not received notice of the trial. After retrial in July and August of 1979, the trial court again rendered judgment to petitioner-appellee. The judgment struck down the written 1952 Determination and gave one-eighth shares in the estate to each of Antonia's eight children and to the issue of those children by representation.

Appellant declined to contest the trial court's factual findings or legal conclusions. The asserted basis for reversal is that 6 TTC § 302 barred appellee's petition or, in the alternative, the Land Commission's Determination was not appealable in 1977, relying on 67 TTC § 115 that states:

"A determination of ownership by a Land Commission shall be subject to appeal by any party aggrieved thereby to the Trial Division of the High Court at any time within one hundred twenty days from the date of said determination . . ."

Appellant contends that appellee's cause of action accrued in September, 1952, and that therefore the petition was time-barred as of September, 1972, or alternatively one hundred twenty days from the Land Commission's Determination.

[1] We do not agree. Rather than being an action to recover interest in land, this is an action in probate to which 6 TTC § 302 and 67 TTC § 115 do not apply. In this action,

with respect to the land at issue, appellees merely seek distribution to the entire family of what the Land Title Officer had already determined was theirs, namely, the land which Abelina held in trust for them. There was nothing to "recover" since the interest of Abelina was not adverse to that of appellee.

The appellee's cause of action accrued either on: (1) Abelina's death in 1976, when appellant began asserting sole rights to war claims compensation money; or (2) in 1977, when appellee learned about the content of the written 1952 Determination.

The fact that the Land Title Officer caused the name of Abelina Mettao alone to be typed on the Determination of Ownership is of little consequence. Instead, that was apparently not at all uncommon in respect to land held in Carolinian families. The Eupelero family was Carolinian. Richard G. Emerick notes in *Land Tenure in the Marianas, Land Tenure Patterns, Trust Territory of the Pacific Islands*, pp. 225-26:

"It has already been noted that the Carolinians of Saipan continued to operate within their traditional land tenure pattern The land is kept intact for the use of members who may build houses on it and cultivate sections of it but among whom ownership of the land is never divided. It is the matrilineal lineage then which owns and controls [sic] the land. *For administration purposes, the name of the oldest female member of the lineage has always been entered as owner.*" (Emphasis added.)

Abelina Mettao was the oldest female child of Antonia Eupelero and Juan Mettao.

[2] Appellee's cause of action occurred not when the Land Title Officer issued his Determination, as the nature of Abelina Mettao's ownership was clearly understood at that time. We find that the appellee's cause of action accrued only upon Abelina's death in October of 1976, when her children—represented by appellant herein—began to assert claims adverse to those of appellee.

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Because this is a probate case rather than an action to recover land, Title 6 TTC § 304 controls. Petitioner-appellee timely filed her cause of action within two years of Abelina's death.

Accordingly, Judgment of the Trial Court is Affirmed.