

Roberts v. Molitui Sepetaio, Estate of

High Court, Trial Division

Rees C.J., Tauanu'u Chief Associate Judge, Tuiafono Associate Judge

31 May 1988

Conveyance—construction—intent on conveyor—technical flaws not material.

Separation agreement—agreement to build house on owner's land—no conveyance to that person or his heirs and assigns to build, occupy, or rent in his own right—no perpetual and irrevocable right to the land.

Separation agreement—evidence to remain on land—no licence created.

¹⁰ *Land registered as freehold—individual title of ownership—no communal family right to own—occupation in accordance with custom does not alter title.*

In 1955 the land "Lugavai" at Pago Pago village was registered as individually owned land of Molitui Sepetaio. Some time between 1955 and 1966, Mrs. Sepetaio moved to California to live with her daughter, Nancy Ferra, one of the defendants in this case. Relatives of Mrs. Sepetaio, including her brother, T.S. Muasau, occupied Lugavai between the time she moved to California and her death in 1967. In 1966 a document purporting to be a lease of Lugavai was executed between the "Molitui family" as lessor and "Oka T.S. Muasau" as lessee. Oka T.S. Muasau was also one of the signatories for the lessor. The other two were "Tumua T.S. Muasau" and Milaneta Roberts, the plaintiff in this case. In 1967 another document was executed purporting to be a separation agreement for a building on Lugavai, which was stated as communal land of the Muasau family. T.S. Muasau signed both as senior matai of the Muasau family and as owner of the building. The building was built on Lugavai and was originally used as residence by T.S. Muasau. (The document was later signed—the Court assumes for the purpose of this case—by Molitui Sepetaio.) In 1972 another document was executed purporting to convey the building from T.S. Muasau to plaintiff Roberts and her husband. In 1978 the estate of Molitui Sepetaio was opened as part of an effort by defendant Ferra to lay claim to Lugavai and to the building on it. Plaintiff Roberts and others filed a claim on the building.

³⁰ **HELD:**

- (1) The building on Lugavai is the property of the plaintiff. This is evident from the separation agreement signed by Mrs. Sepetaio in 1967 to allow Mr. Muasau to build on her land, and from Mr. Muasau's intention to convey interest on it in 1972: *l.* 97.
- (2) This conveyance holds despite the technical flaws in the document itself: *l.* 102. The Court must construe the conveyance in accordance with the apparent intentions of the conveyor.
- (3) The separation agreement did not convey anything more to the owner of the building. It certainly did not convey to him or to his heirs and assigns a perpetual and irrevocable right to build, occupy, and rent out further structures: *l.* 106.

- (4) At best, the separation agreement may be evidence only of the conveyance of some right to remain on the land other than a licence revocable at will by the landowner: *l.* 109.
- (5) Land registered individually does not become communal land simply because those occupying it are doing so in accordance with customs and traditions governing communal property: *l.* 115. The fundamental factor is registration. Title holds accordingly.

Editorial Observation:

50 This dispute indicates that families may treat land in accordance with custom but such behaviour will not cause individual freehold land to revert to communal tenure, especially when located in Pago Pago and used now for commercial purposes.

Counsel:

Charles Ala'alima for the plaintiff

John Ward for the defendant

REES C.J.**Judgment:**

For the purpose of this motion we construe the facts in the light most favourable to the plaintiff:

- 60 1. In 1955 the land "Lugavai" in the village of Pago Pago was registered as the individually owned land of Molitui Sepetaio.
2. At some time between 1955 and 1966 Mrs. Sepetaio moved to California to live with her daughter, Nancy Ferra, one of the defendants in this case. Relatives of Mrs. Sepetaio, including her brother, T.S. Muasau, occupied Lugavai between the time she moved to California and her death in 1967, and may also have occupied it before she moved to California.
3. In 1966 a document purporting to be a lease of Lugavai was executed between the "Molitui family" as lessor and "Oka T.S. Muasau" as lessee. Oka T.S. Muasau was not only the lessee but also one of the signatories for the lessor. The other two were "Tumua T.S. Muasau" and Milaneta Roberts, the
70 plaintiff in this case.
4. In 1967 another document was executed, purporting to be a separation agreement for a building on Lugavai, which was represented therein as communal land of the Muasau family. T.S. Muasau signed both as the senior matai of the Muasau family and as the owner of the building.
5. A building was then built on Lugavai. This building was originally used as a residence by T.S. Muasau.
6. The document was later signed (we assume for the purpose of this motion) by Molitui Sepetaio.
- 80 7. In 1972 a document was executed purporting to convey the building from T.S. Muasau to plaintiff Roberts and her husband.
8. In 1978 the estate of Molitui Sepetaio was opened, apparently as part of an effort by defendant Ferra to lay claim to Lugavai and to the building on it. Plaintiff Roberts and others filed a claim on the building (P.R. No. 9-78).
9. At least since the issue was contested in the probate case during 1979, each side in this dispute has known that the other claims the right to occupy the building and denies that the opposing side has any such right.

10. At some time during the 1980s the plaintiff caused the building to be renovated. Although some repairs may have been necessary, it is undisputed that the building is no longer used as a residence and that the renovations were at least partly designed to make the building more suitable for commercial rental.

On these facts we conclude that the building is the property of plaintiff Roberts (and, on the state of the present record, of her unnamed husband). The best evidence on the current record is that Mrs. Sepetaio signed the 1967 separation agreement in order to allow Mr. Muasau to build his own house on her land, and that Mr. Muasau intended in 1972 to convey whatever interest he had in the house. The defendants are correct in observing that there were technical flaws in these documents: the separation agreement purported to describe Lugavai as communal rather than individual land, and the 1972 conveyance referred back to the legally irrelevant 1966 lease rather than to the separation agreement. These flaws, however, are insufficient to invalidate the conveyances or to cause the Court to construe them other than in accordance with the apparent intentions of the conveyors.

On reflection, however, we also conclude that the separation agreement did not convey to T.S. Muasau and his heirs or assigns a perpetual and irrevocable right to build, occupy, and rent out whatever structures they might choose. We decline to rule, as the defendants seem to urge, that a separation agreement involving individually owned land can never be evidence of anything other than a licence revocable at will. We also decline, however, to accept the plaintiff's contention that the Court should treat land as communal even though it has been registered as individual, provided only that it has been "occupied communally". Even if the plaintiff could prove at trial that various relatives of Mrs. Sepetaio had occupied the land before and after its registration as her individually owned land, a holding that the land should be treated for all practical purposes as the communal land of the Muasau family would be tantamount to calling the registration statute a liar to its face.

Such a holding would be particularly ironic in light of the fact that the land has in any case not been treated very communally in recent years: Mr. Muasau conveyed the building on it to his own daughter, who has moved to the United States and rented the building out as a commercial structure. Assuming for the sake of argument that we might conclude at trial that the separation agreement together with surrounding circumstances was evidence of a conveyance by Mrs. Sepetaio of a licence that was not revocable at will for her brother to live on the land, the licence surely lapsed when his assigns began renting the building out as a commercial structure.

Accordingly, we hold that the estate of Molitui Sepetaio has the right to reoccupy the land, including the right to order the removal of the building. We cannot decide on the present record whether the equities of the case are such as to require that the plaintiff be given an option of removing the building or receiving from the estate some compensation for its value. In the event the parties cannot reach a settlement on this issue, either party may move for a further hearing.

The motion for reconsideration is therefore granted. Defendants' motion for summary judgment is granted in part and denied in part, in accordance with the above opinion.

It is so ordered.