

ATY, Plaintiff

v.

SIEUO, Defendant

Civil Action No. 147

TOTIU, Plaintiff

v.

SIEUO, Defendant

Civil Action No. 148

Trial Division of the High Court

Truk District

December 22, 1961

Action for determination of title to land on Wisas Island, in which plaintiff claims that as son of individual landholder, he did not consent to his father's distribution of land as is required by Truk customary law and that he therefore is entitled to equal share of land that was awarded entirely to his brother, and since been transferred to his brother's son. The Trial Division of the High Court, Chief Justice E. P. Furber, held that plaintiff has no interest in land and that individual landholder on Truk Atoll has wide discretion in distribution of land among his children and children of deceased children, as long as he gives reasonable attention to demands and needs of all his children.

1. Truk Land Law—Individual Ownership—Transfers

Under Truk custom, in at least two situations owner of individual land on Truk Atoll may make disposition of land without consent of his children or notice to them.

2. Truk Land Law—Individual Ownership—Transfers

Under Truk custom, consent of all children of individual owner of land, or of all adult children, is not always necessary for transfer of such land.

3. Truk Land Law—Individual Ownership—Distribution Among Children

Under Truk custom, owner of individual land may exercise discretion by selecting particular piece of his individual land for particular child.

4. Truk Land Law—Individual Ownership—Distribution Among Children

Under Truk custom, rule may be that individual landowner may make any division he deems best of his land in Truk Atoll among his children and descendants of deceased children, so long as it is socially acceptable under Truk custom and does not conflict with any disposition he has previously made of rights in land involved.

5. **Truk Land Law—Individual Ownership—Distribution Among Children**
Under Truk custom, owner of individual land in Truk Atoll may give piece of land entirely to one child so long as he has given reasonable attention to demands and needs of other children and descendants of deceased children, taking into consideration lands available for them, and he does not have to obtain affirmative consent of his children before making such gift.
6. **Truk Land Law—Individual Ownership—Transfers**
Although court recognizes value of notice during lifetime of those who hope to share in owner's individual land, such notice is not essential to validity of gift of such land under Truk custom.
7. **Truk Land Law—Individual Ownership—Distribution Among Children**
Although court recognizes that equality of treatment between man's children is goal in Trukese society, this is not absolute requirement and does not apply to man's individual land.
8. **Truk Land Law—Individual Ownership—Distribution Among Children**
Individual landowner under Truk custom is entitled to exercise wide discretion in making distribution of land in manner he deems best.
9. **Truk Land Law—Individual Ownership—Distribution Among Children**
Court will not interfere with or re-adjust distribution of individually owned land in Truk so long as distribution is reasonable from point of view of Truk custom.
10. **Truk Land Law—Individual Ownership—Distribution Among Children**
Anyone objecting to distribution of individual land by landowner in Truk will have burden of showing that it is entirely unreasonable by Trukese standards.
11. **Truk Land Law—Individual Ownership—Distribution Among Children**
Any hardship which results from inequality of distribution of individually owned land in Truk is alleviated by strong obligation of brothers and sisters under Truk custom to cooperate with each other.
12. **Courts—Settlements**
If agreement or settlement of land controversy is reached, even though subject matter of controversy may be beyond jurisdiction of court, Community Court or District Court Judge may reduce it to writing, and his report of settlement agreement, when signed by parties, has force and effect of judgment. (T.T.C., Sec. 164)

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The lands of Puas' extended matrilineal family on Wisas Island were divided during Japanese times under

Neman's leadership, with the assistance of Artie Moses, the chief of Uman, and the consent of all the adult members of the family, into six parts, one being designated "for" each of Puas and his brothers and sisters regardless of whether they were still alive at the time of the division.

2. In this division, the westerly part (consisting of roughly one-half) of Munmoch (described as "Munmoch A" during the trial) was designated as "for" Pilimon, but he had died long before the division without having any children, and this part was retained by the extended matrilineal family as family land.

3. The family has never agreed on the transfer of this westerly part of Munmoch.

4. The defendant Sieuo acknowledged in writing before Taruma, Community Court Judge of Uman, that the plaintiff Aty owned one-half of Munmoch.

5. In the division referred to above, the easterly part (consisting of all of the remainder) of Munmoch (described as "Munmoch B" during the trial) was given to Neman as his individual land.

6. Neman gave this easterly part of Munmoch to his son Suta, who at the time of his last illness gave it to his son, the defendant Sieuo. There is no evidence that the plaintiff Totiu ever consented to either the transfer by Neman to Suta or that by Suta to Sieuo.

7. The plaintiff Totiu has not sustained the burden of proving any completed transfer of any part of Munmoch from Neman to Sos.

OPINION

The principal claims of all three parties in these consolidated actions have been disposed of by the above findings of fact, but the plaintiff Totiu's objection to the transfers of part of the land in question by Neman to Suta and

by Suta to Sieuo raises a question as to how much freedom a person has in dividing up his individual lands on Truk Atoll among his children and the descendants of any deceased child, without getting the consent of all of the children and descendants of any deceased child—at least so far as they are adults.

[1, 2] This court has just held that there are at least two situations in which an owner of individual land on Truk Atoll may make certain disposition of it without either getting the consent of his children or necessarily notifying them of it. The court has thus definitely repudiated the claim that consent of all of an owner's children, or all of his adult children, is always necessary for a transfer of such land. See the opinions of this court in *Arthur Irons v. Rudo*, 2 T.T.R. 296, and *Rieuo v. Nochi*, 2 T.T.R. 291, for a further discussion of this general problem.

In this action Totiu has, among other things, objected to the two transfers referred to above because he did not consent to them. So far as the evidence goes there is no clear indication that he was even notified of either before the death of the donor. Totiu's position as to exactly what is or should be required for such a transfer has not been very clearly stated, but the argument in support of his objection to Neman's transfer to Suta appears to be that in dividing his individual lands on Truk Atoll among his children and the descendants of any deceased child, a man must either divide each piece of his individual land or all of his individual land taken together, equally among his children with one share for the descendants of any deceased child by right of representation, unless he gets the consent of all those concerned who are adults to some other division.

According to the fifth finding of fact, the part of the land in question to which this objection relates had been given to Neman as his individual land in the division of his

family's lands on Wisas Island. Neman had at least two sons—Sos and Suta. Sos died before Neman and long before this division of lands, leaving a son, namely, the plaintiff Totiu, who has survived both Neman and Suta. Neman, in arranging for division of the various lands in which he was interested, gave this particular part of the land in question entirely to his son Suta, but there is uncontroverted evidence that Totiu received other lands from or through his father Sos. The evidence is not clear as to either the exact date of the transfer by Neman to Suta or Totiu's age at that time. It may well be that he was still a minor, but for the purposes of this case, it is believed immaterial whether he was an adult or not.

Both sides have emphasized the statement by Mr. John L. Fischer, the former Anthropologist for the Truk District, in his memorandum dated September 21, 1949, "If the members of a family cannot reach an agreement they will divide the land. The share of each will be equal." Somewhat the same idea, but in more qualified terms, is expressed in Mr. Fischer's article in "Land Tenure Patterns, Trust Territory of the Pacific Islands, Volume 1", p. 177, as follows:

"In the case of a great growth of the size of a lineage or internal dissension, lineages may split and divide their land. The share of each individual, including the children of the women, is supposed to be equal, according to the most commonly expressed opinion. Some say, however, that the elder siblings should get a greater share. Usually it is older brothers who make this statement. It is preferred not to divide actual plots of land if possible and slight inequalities may result from this."

[3] Later, on the same page, however, Mr. Fischer notes that if one of the adult members of the lineage has been voluntarily absent for a long period or for some other voluntary reason has not helped care for the lineage land, it is felt that his share should be considerably smaller

than the rest. It is therefore clear that Mr. Fischer's view was not that all members, even in such divisions, must be treated absolutely equally under all circumstances. These statements by Mr. Fischer are with regard to division of lineage lands, while concerning the division of individual land, he states on page 180 of "Land Tenure Patterns, Trust Territory of the Pacific Islands, Volume 1", as follows:

"Land may be acquired from one's parents at any time from birth of the child to death of the parent. A man (or woman) may give each of his children a separate share of the land or he may simply set aside a certain amount of land for all his children and allow them to divide it or use it in common as they please. In Truk proper it is more common for a father to assign a separate share to each child, while in the low islands it seems more common to assign it to all the children as a group."

He thereby implies that in his view an owner of individual land may exercise some discretion by selecting a particular piece of his individual land for a particular child.

It should be noted that those specific instances which have been brought to the attention of the court in which children have clearly succeeded in stopping a parent from transferring his individual land in Truk Atoll have been cases where a man has tried or wanted to give land to a second or later wife who was not the mother of the objecting children. In some of these instances, where the children had been working the land with their father, it seems probable that there may have been a provisional or conditional transfer to the child or children, as is common in Truk, before the attempted transfer to the wife. The distinction between actual inheritance and transfer by the deceased during his lifetime is one which seems difficult for many Trukese to make even when giving the matter careful study and which is frequently neglected or

disregarded in ordinary conversation, so that it is difficult to determine the exact weight which should be given to a number of the instances cited. See "Property, Kin, and Community on Truk", by Ward H. Goodenough, p. 45, 46. The court however, does not mean to intimate that there may not be some restriction on the transfer by an owner of such land without the consent of his children in the usual situation where the children have lived and worked with their father in the usual way, or in other situations not covered by this case, or the *Arthur Irons v. Rudo*, and *Rieuo v. Nochi* cases, cited in the second paragraph of this opinion. The court leaves that matter to be further clarified either by later court decisions or by legislation.

[4, 5] It appears to the court from its study of the problem that the correct rule, in a situation like that involved in this case, may well be that a man may make any division he deems best of his individual lands in Truk Atoll among his children and the descendants of his deceased children, so long as it is socially acceptable under Trukese custom and does not conflict with any disposition he has previously made of rights in any of the lands involved. Without deciding at this time, however, whether that is so, the court holds that the owner of individual land in Truk Atoll may give a particular piece of such land entirely to one child so long as he has given reasonable attention to the demands and needs of his other children and the descendants of any deceased child, taking into consideration all lands available for them, either from the man himself or from his lineage or from his children's lineage, and that he does not have to obtain the affirmative consent of his children and the descendants of any deceased child, or such of them as are adults, before making such a gift of a particular piece of his individual land.

[6] The court recognizes in the case of such a gift, the great value of notice during the donor's lifetime to those who may have reasonably hoped to share in the land—or to all of them who are reasonably available—as a matter of evidence, but holds, as in *Arthur Irons v. Rudo*, cited above, that such notice is not essential to the validity of the gift if it is otherwise satisfactorily shown and meets the requirements indicated above.

[7-11] The court also recognizes that equality of treatment between a man's children is considered a desirable goal in Trukese society, but holds that this is not an absolute requirement and does not apply to a man's individual land considered alone apart from other lands he may be able to control or that may already be owned by some of his children or available to them in all probability. Furthermore, it is hardly to be expected that, in distributing particular pieces of land or rights in particular pieces among a man's children, exact equality in value or size can be achieved. The court believes that an owner is entitled under Trukese custom to exercise a wide discretion in making such distribution in the manner he deems just under the circumstances in his particular case. The court will, therefore, not interfere or try to re-adjust any such distribution so long as the distribution is at all reasonable from a Trukese point of view. Anyone objecting to such a distribution will have the burden of showing that it is entirely unreasonable by Trukese standards. It should be noted that any hardship that might otherwise result from an inequality in distribution is alleviated in most cases by the strong obligation of brothers and sisters under Trukese custom to cooperate and assist each other and their children. Consequently, if one member of such a group is in need and has fulfilled his traditional obligations, another member will ordinarily permit the member in need to make some temporary use of the other's

land, or to use it with the owner, as Sieuo claims he has done in this case by allowing Totiu to make two copra cuttings on land Sieuo claims as his individual land.

The court accordingly holds that Neman's transfer of the part of the land here in question to his son Suta passed the ownership of that portion to Suta free and clear of the claims of Totiu. That being the case, the court can see no sound basis for Totiu's objection to the transfer of this part of the land by Suta to his son Sieuo, considered apart from Neman's transfer.

[12] For the benefit of those endeavoring to settle their land problems with the assistance of a District or Community Court Judge, as it appears from the evidence in this case Aty and Sieuo tried to at one time, attention is invited to the provisions of Section 164 of the Trust Territory Code concerning the conciliation jurisdiction of District and Community Courts. Under that section if an agreement in settlement of a controversy is reached—even though the subject matter of the controversy may be beyond the jurisdiction of the court for other purposes—the judge may reduce it to writing and his report of the settlement agreement, when signed by the parties, has the force and effect of a judgment. This report should of course be filed by the District or Community Court Judge with the Clerk of Courts like any other record of his court.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the land known as Munmoch, located in Wisas Island, Uman Municipality, Truk District, is owned as follows:—

a. The westerly part, consisting of approximately one-half, is owned by the extended matrilineal family con-

sisting of the descendants in the female line of Puas and his brothers and sisters, represented in this action by the plaintiff Aty, who lives in Nepon Village, Uman Municipality, and is its present head.

b. The easterly part, consisting of all the remainder, and also approximately one-half, is owned by the defendant Sieuo, who lives in Sapotiu Village, Uman Island, as his individual land.

c. The plaintiff Totiu, who lives in Sopou Village, Uman Municipality, has no rights of ownership in any of Munmoch and has no right to use any part without the consent of the owner or owners, although as a relative he may reasonably expect to be allowed some use of either part of Munmoch provided he clearly recognizes the rights of the owners as set forth above and cooperates fully with them.

2. If the plaintiff Aty and the defendant Sieuo are unable to agree within three months from the date of this judgment on the exact location of the boundary line between the two parts of Munmoch, either may apply by motion in this action for a determination of the line.

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

4. No costs are assessed against any party.