UCHERBELAU, Plaintiff

v.

NGIRAKERKERIIL, Defendant

Civil Action No. 179

Trial Division of the High Court

Palau District

November 30, 1961

Action to determine ownership of land in Koror Municipality which plaintiff claims is his individual land, and defendant representative of clan, contends is clan land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that plaintiff has not sustained burden of proving determination in Japanese land survey, listing property as that of clan, is erroneous.

1. **Palau Land Law—Japanese Survey—Presumptions**
   Determinations made in official Japanese land survey of 1938–1941 in Palau Islands, while not conclusive, are entitled to great weight.

2. **Palau Land Law—Japanese Survey—Presumptions**
   Burden is on party who disputes determination made in Japanese land survey in Palau to show that it is wrong.

3. **Palau Land Law—Clan Ownership—Use Rights**
Prior to Japanese land survey in Palau, reference to clan or lineage land as having been "given" to individual actually meant individual was given right to use land.

4. **Palau Land Law—Clan Ownership—Use Rights**
Statements about "giving" of clan or lineage lands in Palau Islands prior to Japanese land survey are not presumed to mean ownership as individual land was given.

5. **Palau Land Law—Clan Ownership—Use Rights**
Statements regarding "giving" of clan or lineage lands in Palau Islands prior to Japanese survey are presumed to mean that individual was given only right to use land as long as he lived and fulfilled his obligations to clan or lineage in question.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The land in question was indicated in the Japanese land survey of about 1926–28, and again in the report of the Japanese land survey of about 1938–41, as property of the Ngeribukel Clan.

2. The plaintiff has failed to sustain the burden of showing that either of these listings was wrong.

3. The land has not been transferred by the Ngeribukel Clan to anyone since the Japanese land survey of about 1938–41.

OPINION

This action involves the ownership of what was quite clearly once clan land in the Palau Islands.

[1, 2] This court has repeatedly held that determinations made in the official Japanese land survey of about 1938–41 in the Palau Islands, while not conclusive, are entitled to great weight and that the burden is on one who disputes such a determination to show that it is wrong. See: *Osima v. Rengiil*, 2 T.T.R. 151. *Basehelai Baab v. Klerang*, 1 T.T.R. 284.

[3–5] In this action the plaintiff relies heavily on testimony to the general effect that the land was "given" to his predecessor in interest before 1927 and has been individual land ever since. Prior to the Japanese land survey of about 1938–41, while there was known to be some individually owned land in the Palaus, this form of ownership was rather unusual and it was common practice to refer to clan or lineage land as having been "given" to an individual when all that had actually been given was the right to use the land. Consequently, statements about the giving of clan or lineage lands in the Palau Islands prior to that survey are not readily to be presumed to mean that ownership as individual land was given. The natural presumption in such cases is that the individual was given only the right to use the land as long as he lived and fulfilled his obligations to the clan or lineage in question. The court will therefore construe such statements to mean this unless the contrary is clearly shown.

In this instance, the court considers that the evidence taken as a whole clearly shows that the land was not given before 1927 to anyone as individual land.

Much of the testimony on behalf of the plaintiff in this action was directed to showing that the plaintiff Ucherbelau was still a member of the Ngeribukel Clan, and there were various indications that he or his counsel felt that the defendant was endeavoring to push the plaintiff out of the clan. The defendant and his counsel both disavowed any such intention or any desire to raise any doubt as to the plaintiff's membership and nothing in this decision is intended to cast any doubt upon it.

JUDGMENT

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

1. As between the parties and all persons claiming under them:—

a. The land known to the parties as Ollaol, and shown on the sketch attached to the pre-trial order in this action as that on which the plaintiff's son's house and part of the defendant's house are, which is part of the land known as Techelbesoi (and includes more than some of the witnesses consider the name Ollaol refers to), located in Ngerbeched Village, Koror Municipality, Palau District, is owned by the Ngeribukel Clan (represented in this action by the defendant Ngirakerkeriil, who lives in Koror), and the plaintiff Ucherbelau, who also lives in Koror, has no rights of individual ownership in it.

b. The plaintiff Ucherbelau, as a member of the Ngeribukel Clan, has a right to maintain his son's house on the part of said land where it now is, so long as Ucherbelau lives and fulfills his obligations to the Ngeribukel Clan.

c. The defendant Ngirakerkeriil has the right to maintain his house on the part of said land on which it now stands so long as he lives and fulfills his obligations to the Ngeribukel Clan.

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

3. No costs are assessed against either party.