MEKLECHEL REMOKET, Appellant

v.

MERII OLEKERIIL, Appellee

Civil Action No. 382

Trial Division of the High Court

Palau District

November 13, 1967

Appeal from Palau District Court judgment granting each party one-half of amount awarded to defendant in separate action against third party for wrongfully cutting and using trees from land in Airai Municipality. The District Court held that both parties herein are equally entitled to the sum previously received by defendant. On appeal, the Trial Division of the High Court, Associate Justice D. Kelly Turner, held that District Court had no jurisdiction to dispose of money between the parties since Court was thereby determining title to or interest in land, jurisdiction of which is exclusively in Trial Division of the High Court.

Modified and affirmed.

1. Courts-District Court

There is distinction between action relating to claim for money, which is within jurisdiction of District Court, and action which determines interests in land, which is not within power of District Court to decide.

2. Real Property-Forcible Detainer

In statutory forcible detainer actions in United States, right of possession only is involved and title or conflicting interests in land may not be considered by courts.

3. Real Property-Forcible Detainer

Trust Territory law which gives District Court jurisdiction to determine right to immediate possession of land is similar to forcible entry and detainer action, which is regarded as possessory action, in which plaintiff need not be owner of property in dispute and issue of title is not raised. (T.T.C., Sec. 138)

4. Palau Land Law-Lineage Ownership-Use Rights

Where party in Palau has possessory interest in land as *ochell* of lineage, she may sue in District Court for money damages to land for loss of trees.

5. Courts-High Court

Where claim of plaintiff for money damages is based on alleged interest in land superior to defendant's interest, matter is within original jurisdiction of High Court to try title or any interest in land, and not within District Court's jurisdiction, which is limited in land matters to right of immediate possession. (T.T.C., Sees. 123, 138)

6. Civil ~~Procedure~~ Generally

Designation of action is not important smce it is substance that determines nature of action.

7. Courts-High Court

Where complaint asks for recovery of money because of rights in land from which money is derived, action should be brought in Trial Division of the High Court, and District Court has no jurisdiction of subject matter. (T.T.C., Secs. 123,138)

8. Palau Land Law-Lineage Ownership

Under Palau custom, clan does not control lineage properties, with certain exceptions.

9. Palau Land Law-Lineage Ownership

Under Palau custom, party who is bearer of clan title has no control or interest in lineage land nor in money derived from lineage land.

10. Palau Land Law-Lineage Ownership-Administration

Under Palau custom, one who has been granted power to administer clan or lineage land may not pass on that power to another, including descendants, without approval of majority of strong clan or lineage members.

11. Palau ~~Custom-Lineage-e~~-Titles

Under Palau custom, lineage or clan titles generally descend in female line.

12. Palau Land Law-Lineage Ownership-Administration

Under Palau custom, one who administers lineage lands and who is awarded money for damages to such lands holds such money on behalf of lineage, not solely for personal benefit, and money should be divided equally among all lineage members.

Assessor:	JUDGE RUBASCH FRITZ
Interpreter:	HARUO 1. REMELIIK
Counsel for Appellant:	AUGUSTO UCHEL
Counsel for Appellee:	WILLIAM O. WALLY

TURNER, *Associate Justice*

This is an appeal from a judgment in the District Court in' Civil Action No. 1272 brought by plaintiff, Merii Olekeriil, who is the appellee, against Meklechel Remoket, who is the appellant, for recovery of the sum of one hundred forty-nine dollars and eighty cents ($149.80). The District Court held the plaintiff and defendant were equally entitled to the money and, accordingly, entered judgment for seventy-four dollars and ninety cents ($74.90) for each of the parties.

The money over which the suit arose was the amount the defendant in this case recovered as plaintiff' in District Court Civil Action No. 1220 against one Temol Yamanguchi for wrongfully cutting and using two ukall trees from the land known as Beku in Oikull Village in Airai Municipality, Palau District.

Counsel for appellant based the appeal upon two principal propositions : –

1. That the determination of the case required a determination of interests in land and therefore the District Court did not have jurisdiction under the provisions of Section 123, Trust Territory Code, which vests exclusive jurisdiction over determination of interests in land in the Trial Division of the High Court.

2. That the result reached in the District Court, that plaintiff and defendant had equal rights to the land from which the two trees were taken, is contrary to land law under Palauan custom.

Counsel for appellee, although not formally cross-appealing the District Court decision, urged that appellee,

as principal titleholder of the clan, was entitled to exclu_ sive rights in the land and therefore should be granted the entire sum the appellant recovered in her damage action, Civil Action No. 1220, for removal of the two trees.

There was disagreement in the appeal hearing as to whether the land from which the trees were taken was clan or lineage land. This issue was settled, however, by the finding of the District Court that it was lineage land. The District Court held that the land belonged to the lineage Beku, that defendant is *ochell* (born in the female line) of Beku Lineage and therefore has an interest in the land. The District Court also held plaintiff inherited her interests in the land from her mother, Tumakreng, also *ochell* from Beku Lineage.

Defendant's mother was the female title bearer of the lineage and she, by a Japanese document admitted in evidence in the District Court, granted rights of administration over the land to the plaintiff's mother. The document also shows, and the District Court so held, the land in question to be lineage land; Ngeseur, defendant's mother, was title bearer of the lineage at the time; Tumakreng, plaintiff's mother, was *ochell* in the lineage, and was administrator of the land for the lineage.

The District Court found that equal rights in the land as between plaintiff and defendant, arose because defendant was the female descendant of the lineage title bearer while the plaintiff was the female descendant of the administrator of the land for the lineage. Plaintiff also is the present female title bearer of the Irikel Clan in which Beku is a lineage. However, it does not appear the District Court found that this fact had any bearing on plaintiff's interests in the lineage land, although plaintiff, as appellee, urged her entitlement to all of the money proceeds derived from the land because of her clan title.

OPINION

[1,2] Taking up the first appeal question-the jurisdiction of the District Court to dispose of the money-we recognize the distinction between an action relating to a claim for money, which is within the jurisdiction of the District Court, and an action which determines interests in land which is not within the power of the District Court to decide. We frequently find cases involving the same technical distinctions in jurisdiction of United States courts in cases involving rights to possession of land by actions known as forcible entry and detainer. In statutory forcible detainer actions, the right of possession only is involved and under that form of proceeding, title or conflicting interests in the land may not be considered by the courts.

[3] The similarity between the Trust Territory Code jurisdictional authorization and the requirements for "forcible entry and detainer" actions is illustrated in 22 Am. Jur., Forcible Entry and Detainer, § 14, p. 917:-

"To be entitled to maintain an action of forcible entry and detainer, the plaintiff need not, undermost statutes, be the owner of the property in dispute, because, as we have seen, such a proceeding is generally regarded to be a possessory action in which the issue as to the title to the property may not be raised, and the action may, in a proper case, be brought against one who has the better right to the possess1on of land."

[4-7] Our situation here is similar. The defendant in the present case had a possessory interest in the land as a member of Beku Lineage as against the stranger who cut the trees. It was proper for her to sue in the District Court for money damages to the land for loss of the two trees. But, as against the plaintiff's claim of entitlement to the money recovered by defendant, plaintiff's claim being based on an alleged interest in the land superior to defendant's interest, the matter is squarely

within the provisions of Section 123 of the Code, giving original jurisdiction to the High Court to try title or "any in interest" in land and within Section 138 of the Code limiting the District Court's jurisdiction in land matters to questions of the right to immediate possession. Plaintiff attempted to get around this jurisdictional limitation by designating her action as a complaint for ejectment. What a pleading may be called is not important, it is the substance that determines its nature. The complaint asked for recovery of money because of rights in the land from which the money was derived. The action should have been brought in the Trial Division of the High Court. The District Court did not have jurisdiction of the subject matter.

Although the appeal is well taken on the foregoing ground, it is not necessary to try the case in the High Court. We will treat the evidence adduced in the District Court as if it were a hearing before a Master and since both sides waived the right to present additional testimony, our decision will be upon a consideration of the entire record in the District Court.

The question to be answered is then, what rights did the parties have in the land Beku, and upon that determination we may decide who is entitled to the money obtained by the defendant in her action for damages to the land.

[8,9] It is a recognized maxim of Palauan custom that a clan does not control lineage properties, with certain exceptions not applicable here. The plaintiff, as bearer of the clan title, has no control or interest in the lineage land nor the money derived from the land.

[10] It also is Palauan custom that one who has been granted the power to administer either clan or lineage land may not pass on that power to another, including descendants, without consultation with and approval of

the majority of the strong clan or lineage members. The plaintiff in this case derived no administrative rights from her mother who during her lifetime had been appointed administrator of the lineage land.

[11] As distinguished from administrative powers, it is the custom, subject, of course, to exceptions, for the lineage or clan titles to descend in the female line. Defendant, the daughter of the lineage title bearer, Ngeseur, was given authority over the land by her mother.

[12] Under Palauan custom, we must conclude the defendant was entitled to the money she recovered for damage to the land, but she held the money in behalf of the lineage and not solely for her own benefit. The plaintiff, as a member of the lineage, is entitled to share in it. How the division shall be made necessarily depends on the number of lineage members. If there are only two living, the plaintiff and the defendant, the equal division granted by the District Court is correct. If there are more than two, the division should be with all lineage members.

JUDGMENT ORDER

It is ordered that:-

1. Beku Lineage members are entitled to share in the money recovered by the defendant in behalf of the lineage, after the defendant has reimbursed herself for the costs incurred in its recovery.

2. Until the majority of the lineage appoints an administrator, the defendant has control of the land in behalf of the lineage.

3. The Irikel Clan and the clan title bearer have no control over Beku until or unless the lineage dies out.

4. The defendant shall disburse the money in equal portions to the lineage members after deducting any costs she may have incurred in obtaining it under Civil Action No. 1220.