

NISIO, IRAPUNG and KANERI, Plaintiffs

v.

OUKA and MASAE, Defendants

Civil Action No. 390

Trial Division of the High Court

Truk District

June 17, 1968

Action to determine ownership of four parcels of land on Fefan Island. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that the evidence supported claims to ownership based upon support of a former owner for a long period of time and claims based on continuous and unopposed possession covering a long period of time.

1. Truk Land Law-Individual Ownership-Care of Owner During Last Illness

Evidence that a person had taken care of former titleholder most of his life and evidence that such person had also taken care of such person's parent for a long period of time showed good reason for the gift of land to such person.

2. Truk Land Law-Evidence of Ownership

A continuous and unopposed possession of land covering a long period of time presents a strong presumption of ownership.

CLIFTON, *Temporary Judge*

This action involves the ownership of four parcels of land on Fefan Island, "WINIPECHE", "UNIFARAF" (sometimes spelled WINIFARAF), "EPINIPAT" and "FANEIS". It was agreed at the pre-trial hearing that all of the parcels excepting Faneis had been owned by Norita, and at said hearing Kaneri and her daughter Nisio claimed to own one-half of Winipeche, one-half of Unifaraf and the whole of Epinipat. However, at the trial they claimed to own all of Winipeche and all of Unifaraf and the pre-trial order was amended to show this. The basis of this amended claim was in part that they had succeeded to one-half of Winipeche and one-half of Unifaraf from Romonou, and therefore that it was as to the other halves only and as to Epinipat that they agreed that said halves and Epinipat had belonged to Norita and had been in her possession.

As may be seen from the pre-trial order, the respective claims of Kaneri and her daughter Nisio and of Ouka and Masae were multiple, that is, each had several theories on which his or her conclusions as to ownership were based. They all agreed that Norita's lineage had died out with the death of Norita and Sapuro. However, Kaneri and Nisio and Masae each in effect claimed to be the nearest relative of Norita and Sapuro-besides which Kaneri and Nisio and Ouka and Masae each claimed that the lands had been given to them by Norita, and Ouka also claimed that in addition to having been given the lands by Norita, he also had been given the lands by Norita's grandson Sapuro. Likewise, each of said parties claimed that after the death of Norita such party took possession of and worked the lands to the exclusion of all others, excepting that Masae

claimed that all of said parties had used the lands, including, of course, herself.

[1,2] The evidence supports the claims of Kaneri and Nisio that Kaneri and Norita each owned one-half of Winipeche-one-half of Unifaraf and one-half of the *taro* swamp on the eastern side of Unifaraf. However, it also supports Ouka's claims that Norita and later Sapuro gave Norita's halves of said parcels to Ouka. It was practically undisputed that Ouka had taken care of Sapuro most of his life and there was much evidence that Ouka had also taken care of Norita and Ketura for a long period of time, all of which showed good reasons for the gift to Ouka. In addition, all of the circumstances regarding possession and as to who worked on the lands substantiate these conclusions. As to Faneis, the evidence might be said to be less strong as to Sipenuk's ownership of Faneis. However the fact that Sipenuk had possession of Faneis, that Kaneri and Nisio then got possession from him and that Irapung succeeded them in the possession of Faneis-and that this continuous and unopposed possession covered a long period of time add to the other facts supporting Irapung's claims a strong presumption of ownership. In regard to this presumption see: *Kanser v. Pitor*, 2 T.T.R. 481. *Naoro v. Inekis*, 2 T.T.R. 232. *Rochunap v. Yosochune*, 2 T.T.R. 16.

FINDINGS OF FACT

1. Romonou was the true brother of Appene (f) and Ka (f).
2. Romonou was the father of Fourup who was the mother of Inecheas, who was the mother of the plaintiff Kaneri. Kaneri, who is still living but who was ill and is unable to hear and so unable to testify, is the mother of the plaintiff Nisio.

3. Appene was the mother of Nieisong, who was the mother of Norita. Norita was the mother of Fatun (m) now deceased and Ketura, who was the mother of Sapuro (m) who died in 1958 or 1959. Ketura died in about 1940 and Nouto died in 1944.

4. Ka was the mother of Nienipung, of Esepu (m) and Tongeni (m). The latter two died without issue. Nienipung was the mother of Rokun (m) whose children were Reichiou (m) Karuko (f) and Kariko (m) who are alive, but who are not parties to this action and who have made no claims as to the land involved herein.

5. As to the land Winipeche, Romonou was the owner, partly as a result of a division of property, of the east one-half of Winipeche. It was transferred by him to Fourup, who transferred it to Inecheas, who in turn transferred it to Kaneri. Kaneri and Nisio have held possession of said one-half since early Japanese times.

6. As to the land Unifaraf, likewise, partly as a result of a division of property, Romonou was the owner of the north one-half of the dry land part and the south one-half of the *taro* swamp which is on the eastern part of Unifaraf. Romonou transferred said portions of Unifaraf to Fourup who transferred them to Inecheas, who transferred them to Kaneri. Kaneri and Nisio held possession of the said portions of Unifaraf since early Japanese times, but as to the said south one-half of the *taro* swamp, this was transferred by Kaneri and Nisio to Neuo also known as Wino, and Singnes, who since said transfer have held possession of the same.

7. As to the west one-half of Winipeche and the south one-half of the dry land part of Unifaraf and the north one-half of the *taro* swamp on the eastern side of Unifaraf, and the whole of Epinipat(not including the land Faneis), said parcels of land were owned by Appene, partly as a result of a division of property. Appene transferred the

said parcels to Nieisong who transferred them to Norita. At about the time of the death of Ketura, Norita gave them to Ouka because Norita requested Ouka to take care of Sapuro, and also because he had kept Norita, Ketura and Sapuro in his home, had built Norita a house on the land of Sanoman for the use of Norita and Ketura when Ketura was ill, and because Ouka had provided food and other needs for them up until the time of the death of Norita. That Ouka took care of Sapuro as he was requested to do by Norita and supplied Sapuro with all of his needs, including his tuition and other expenses at school and caring for him when he was sick up until the time of the death of Sapuro in about 1958 or 1959.

8. That after the death of Norita and just before the death of Sapuro, Sapuro gave Ouka all of his property including the parcels of property mentioned in paragraph 7, above. That Ouka has had possession of and has worked all of the said parcels so given to him by Norita and by Sapuro from the time of the death of Norita until the time of a court order made by the District Court.

9. As to the land Faneis, the said land was owned by Sipenuk, who transferred it to Kaneri and that Kaneri and Nisio transferred the same to Irapung. Faneis was in the possession of Sipenuk from early Japanese times up until the time of its transfer by him and after that time it was in the possession of Kaneri and Nisio until they transferred Faneis to Irapung. Irapung has been in possession of the said Faneis since the time of its transfer to her up to the time of the making of a court order for immediate possession by the District Court.

10. That it is *not* true that Norita gave or promised to give any of the parcels of land involved in this action to Kaneri or Nisio or to Masae or Anis, the mother of Masae.

11. That it is *not* true that Norita or Ketura or Sapuro or any or either of them were cared for or provided for

by Kaneri, Nisio, Anis, or Masae, except that Norita, Ketura and Sapuro made occasional calls on or visits to Kaneri and Nisio and Anis and Masae and members of their respective lineages without any promises or obligations therefor.

JUDGMENT

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

1. As between the parties and all persons claiming under them the lands hereinafter described, located on Fefan Island, Truk District, are owned as follows:-

a. Kaneri is the owner of the east one-half of the land Winipeche and the north one-half of the dry land part of the land Unifaraf.

b. Neuo, also known as Wino, and Singnes who were represented in this action by Kaneri and Nisio are the owners of the south one-half of the *taro* patch or swamp which is on the eastern part of Unifaraf.

c. Ouka is the owner of the west one-half of the land Winipeche and the south one-half of the dry land part of Unifaraf and the north one-half of the *taro* patch or swamp on the eastern part of Unifaraf-and also is the owner of the whole of the land Epinipat, excepting or not including the land Faneis.

d. Irapung is the owner of the land Faneis.

2. None of the parties to this action has any right to harvest or take fruit or produce of any kind except that the owners of the lands as above stated may harvest or take fruit or produce from the property owned by him or her as above decreed.

3. This judgment shall not affect any rights-of-way existing on any of the lands herein involved prior to the commencement of this action.