ONEITAM (Representing his Lineage), Plaintiff
v.
SUAIN (Representing his Lineage), Defendant
and
NIMINOUN and ARITA, Intervenors, Defendants

Civil Action No. 386

Trial Division of the High Court

Truk District

July 19, 1968

Action to determine ownership of land on Fefan Island, Truk Lagoon. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that plaintiff had lost the rights to certain portions of the land in question, which had been legally established in Japanese times, under the doctrine of open, continuous, hostile and adverse possession but was still entitled to the remaining portions.

1. Truk Custom-Repurchase of Land

   Taking lands as spoils of war and the subsequent repurchase by the losers was common enough under ancient Trukese custom.

2. Custom-Applicability

   Delving into the past of a culture with unrecorded history requires reliance upon legend and lore handed down from one generation to another and interpreted in accordance with the predilections of interested parties and such hearsay has probative value only as to the broad outlines over which there is very little dispute.

3. Custom-Applicability

   The High Court, although accepting legend and lore as a sometime unavoidable necessity, nevertheless, has consistently refused to reach into a distant past to correct any injustices which may have existed.

4. Former Administrations-Official Acts

   The High Court has consistently held many times that it will recognize the official determinations of the Japanese administration.

5. Former Administrations--Official Acts

   The decisions of the Japanese administration in adjudicating the disputes over the eight parcels of land concerned in the case in issue provided the final and lawful determination of the ownership rights to such lands as of the commencement of the American administration and any claim adverse to such decisions must arise from some subsequent rearrangement of rights during the American administration.

6. Real Property-Adjudication of Ownership

   At no time during the American administration have local magistrates had the authority to adjudicate interests in land except to order

temporary possession pending suit in a court, now the High Court, having jurisdiction.

7. Real Property-Quiet Title-Presumption of Ownership

Presumptive rights in land arising from long possession and use, together with delay on the part of the lawful owner in asserting his title, have often been found to be sufficient grounds for taking title from a legal owner and granting it to the user.

8. Real Property-Quiet Title-Presumption of Ownership

Long continued peaceful possession under claim of right is a strong indication of ownership.

9. Real Property-Quiet Title-Presumption of Ownership

An owner of real property may be deprived of his interests because he had not exercised proper diligence in protecting his rights in court.

10. Trust Territory-Land Law-Adverse Possession

A route often used to bar an action to recover real ·property is the doctrine of adverse possession, however, Section 316 of the Trust Territory Code, which established a twenty year statute of limitations on land matters will not go into effect until 1971 because Section 324 of the Code accrued all prior causes of action as of May 28, 1951. (T.T.C., Sees. 316, 324)

11. Trust Territory-Land Law-Adverse Possession

Although the statute establishing a twenty year statute of limitations on land matters may not be applied, the High Court in effect has substituted for it the common-law principles of adverse possession.

12. Trust Territory-Land Law-Adverse Possession

If a person of full age and sound mind stands by, or he and his predecessors in interest together have stood by, for twenty years or more and let someone else openly and actively use land under claim of ownership for that period or more, the person who so stood by will ordinarily be held to have lost whatever rights he may previously have had in the land and the courts will not, and should not, assist him in regaining such rights.

13. Trust Territory-Land Law-Adverse Possession

If a person who believes he owns certain land stands by for many years and raises no objection to someone else using it on the theory that such other person is using it for the person who believes he owns it, the person claiming the ownership should at least obtain some clear and definite acknowledgment of his ownership by word or acts of the user at intervals of less than twenty years and, if he cannot obtain such an acknowledgment,' he should bring the matter to the court for determination before the use has continued for more than twenty years either from the time it began or from the time of the last such acknowledgment.

14. Trust Territory-Land Law-Adverse Possession

Normally, one who has been in adverse possession of land, but not for a sufficient period to deprive the true owner of his interests, is entitled to compensation for improvements made on the property when he is forced to yield possession to the true owner; the amount of compensation to be measured by the value of the land before and after the improvements have been made.

15. Truk Land Law-German Title Document

A German land document is not necessarily evidence of individual ownership as the German administration on Truk in issuing such land documents did not distinguish between individually-owned land and land controlled by a person as head of a group.

16. Truk Custom-Repurchase of Land

Repurchase of village lands taken as spoils of war returned the lands to clan or lineage rather than to an individual.

17. Truk Land Law-Lineage Ownership-Use Rights

Presentation of "first fruits" by an *afokur* and his children is indicative of "basic rights" in the lineage and possessory and use rights only in the *afokur* and his children.

18. Truk Land Law-Lineage Ownership-Transfers

A certain amount of use of lineage land by *afokur* with the consent of the lineage is to be expected and is in accord with custom, but their rights are strictly dependent on the permission of the lineage and where the lineage members were actively using the land with the *afokur,* the evidence was insufficient to show any transfer of title to the lands.

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TURNER, *Associate Justice*

OPINION

This case involves ownership of eight parcels of land in Monukun Village, Fefan Island, Truk Lagoon, identified as follows:-

Faisewan, Nesarof,_ Nemanou, Neno

Nekurukak, Nanawenau, Faichia, Wichukuchuk

Ownership of these lands has been a matter of dispute between the parties and their families, their lineages, and their predecessors for three generations back to the Spanish administration. The disputes had their origin in a civil war in which the warriors of Kukka and Meiseke Villages defeated Monukun and Saporang Villages and took the lands as spoils of war.

Admittedly, some of the lands held as spoils of war were repurchased by the leaders of Monukun and Saporang. Whether the lands in dispute were included in the lands repurchased or were passed on to the plaintiff's predecessors is the principal disputed question.

**[1]** Taking lands as spoils of war and the subsequent repurchase by the losers was common enough under ancient Trukese custom. (See Fischer Land Tenure Patterns, p. 201.) However, the events of long ago were only the beginning of the disputes over these lands. They continued in one form or another through the German and Japanese administrations into the first ten years of American times.

After a period of relative quiet for another ten years, this action was filed in 1966. It is high time the contentions between the parties be finally laid to rest.

The positions of the several parties briefly is this:-

Plaintiff Oneitam claims in behalf of his family group, who reside on both Uman Island as well as Fefan, that Ponu acquired the eight parcels as spoils of war, that they were not included in the repurchase, that Ponu transferred them to Ruweisom, who gave them to his son Puisu, who was the grandson of Ponu, who gave them to the plaintiff Oneitam, who was the adopted son of Ruweisom.

The defendant Suain claims the eight parcels in behalf of his lineage but recognizes use rights in some of the parcels held by the two intervenors. Nimunoun and Arita, who are children of Teninong, an *afokur* of Suain's lineage.

Suain's predecessor, Kosam, allegedly obtained these lands with the repurchase of other Monukun Village lands.

The intervenor, Nimunoun, claims all of the land in question except one-half of Nesarof and Faisewan, claimed by the intervenor Arita. Both intervenors claim from their father, Teninong, who participated in the repurchase with Suain's lineage, being an *afokur* of that lineage, who acquired these and other parcels as a result of the repurchase.

Consideration of the many elements of Trukese custom which pertain to the claims made in this case might be enlightening, but it would unduly lengthen this opinion and, more importantly, it is not necessary to the ultimate conclusions.

**[2]** Delving into the past of a culture with unrecorded history requires reliance upon legend and lore handed down from one generation to another and interpreted in accordance with the predilections of interested parties. Such hearsay has probative value only as to the broad outlines over which there is very little dispute.

**[3]** This court, although accepting legend and lore as a sometime unavoidable necessity, nevertheless, has consistently refused to "reach into a distant past to correct any injustices which may have existed." *Aneten v. Olaf,* 1 T.T.R. 606.

The dispute over these eight parcels made its first trip to a court in early Japanese times-·the parties are in general agreement it was in 1918-and the decision then made should have settled the matter from then on. It didn't, because Oneitam and Suain's lineage have been in court seven times since the first time.

Puisu went to the Marshall Islands in German times and when he returned in the early Japanese administration, he discovered that while he had been gone, the Opuchin lineage members were using the land in dispute. Puisu sued Kosam

before the appropriate Japanese official stationed on Dub-Ion Island who was empowered "to arbitrate in civil disputes upon application of the parties." See "Civil Affairs Handbook, East Caroline Islands" OPNAV P22-5, 21 February 1944, Section 226.

Puisu established his entitlement to the land and began using it.

Kosam and his group did not abide by the decision after a few years so it again was submitted to the appropriate Japanese officer in 1925 with the same result. Puisu died and when Kosam's group again started using the land, the plaintiff Oneitam assumed the obligation of obtaining an adjudication. The third determination favorable to plaintiff's group was in 1930. For the fourth time the parties, represented by plaintiff and Kosam, were before a Japanese arbitrator in 1943. This was a more formal proceeding in that there were written pleadings and a judgment in behalf of plaintiff.

[4] Anyone of these decisions is sufficient to establish plaintiff's entitlement to the land in dispute. This court has consistently held many times that it will recognize the official determinations of the Japanese administration. In the first High Court Appellate Division decision, *Jatios v. Levi,* 1 T.T.R. 578, the court said:-

> "The present government of the Trust Territory is entitled to rely upon and respect the official acts of the Japanese during their administration of what is now the Trust Territory and is not required as a matter of right to correct wrongs which the Japanese or any other former administration may have committed many years before the United States took over control of these islands."

See also 30 Am. Jur., International Law, p. 207; Trust Territory Code, § 24 (continuing the land law in effect on December 1, 1941, except as changed by statute) ; *Wasisang v. Trust Territory,* 1 T.T.R. 14; *Kanser v. Pitor,* 2T.T.R. 481; *Kanserv. Enita,* 2 T.T.R. 481 (also concerning a land

dispute originating during civil war on Fefan Island); *Nakus v. Upuili*, 2 T.T.R. 509; *Naoro v. Inekis*, 2 T.T.R. 232.

**[5]** The court holds therefore that the decisions (any one of the four) of the Japanese administration in adjudicating the disputes over the eight parcels of land concerned in this case provided the final and lawful determination of the ownership rights to these lands as of the commencement of the American administration. Any claim to these lands adverse to plaintiff's group must arise from some subsequent rearrangement of rights during this administration.

Defendant Suain, as Kosam's successor, litigated his claim to the lands shortly after the commencement of the American administration before the Fefan Island magistrate, Charles Hartmann, generally referred to as Salle. To avoid the precedent of the Japanese decisions against him, Suain relied, in part at least, lipon Teninong's German land document.

Magistrate Salle decided, July 29, 1947 (Exhibit C), that Faisewan and one-half of Nesarof belonged to Echik (from whom intervenor Arita claims) and that all of the remaining parcels except Wichukuchuk were owned by Suain. Plaintiff Oneitam did not abide by this decision and his group continued to gather food from these lands. Suain again went before a magistrate, Enis, who succeeded Salle, who ruled both Oneitam's and Suain's groups could use the lands on condition there was no trouble. This use prevailed until Albert Hartmann became magistrate. He denied further use to plaintiff's group and suggested the plaintiff have the question of ownership decided by the High Court. Plaintiff and his people quit using the land but waited for nearly ten years before filing this action. During that period, Suain's lineage and the two intervenors and their families did extensive development work,

planting cacao and coconuts as well as other crops, including *taro* on Nesarof.

The question therefore arises as to what effect, if any, this land usage and these magistrate proceedings since 1947 have had on the plaintiff's rights which were clearly established up to 1947.

**[6]** As far as the magistrates' "decisions" are concerned, they cannot be given legal force and effect because at no time during the American administration have local magistrates had the authority to adjudicate interests in land except to order temporary possession pending suit in a court (now the High Court) having jurisdiction. *Toris v. Nusio,* 3 T.T.R. 163.

Refusal to recognize an attempted adjudication by a magistrate as anything more than a determination of temporary right to possession would be sufficient to dispose of this case, were it not for the fact defendant's lineage, including the intervenors, cultivated, occupied and harvested several of the parcels in dispute in "open hostility" to plaintiff's group more or less continuously from the beginning of the Japanese administration to the present day, a period of half a century.

**[7]** The presumptive rights in land arising from long possession and use, together with delay on the part of the lawful owner in asserting his title, have often been found by this court to be sufficient grounds for taking title from a legal owner and granting it to the user. There are a variety of reasons given for these conclusions.

**[8]** First is the doctrine that long-continued peaceful possession under claim of right is a strong indication of ownership. *Aneten v. Olaf,* 1 T.T.R. 606. *Naoro v. Inekis,* 2 T.T.R. 232.

**[9]** A second approach to the question is found in the doctrine of laches or stale demand whereby an owner is

deprived of his interests because he had not exercised proper diligence in protecting his rights in court. *Rochunap v. Yosochuno and Eis*, 2 T.T.R. 16.

**[10]** A third route often used to bar an action to recover real property is the doctrine of adverse possession. However, Section 316 of the Trust Territory Code, which established a twenty-year statute of limitations on land matters will not go into effect until 1971 because Section 324 of the Code accrued all prior causes of action as of May 28, 1951. *Kanser v. Pitor* and *Kanser v. Enita, 2* T.T.R.481.

**[11,12]** Although the statute itself may not be applied, this court in effect has substituted for it the common-law principles of adverse possession. In the above cited cases, 2 T.T.R. 481, it is said:-

"Roughly and bluntly stated, the effect of the above is that if a person of full age and sound mind stands by, or he and his predecessors in interest together have stood by, for twenty (20) years or more and let someone else openly and actively use land under claim of ownership for that period or more, the person who so stood by will ordinarily be held to have lost whatever rights he may previously have had in the land and the courts will not, and should not, assist him in regaining such rights."

[13] Also in *Nakas v. Upuili*, 2 T.T.R. 509, it is said:-

"To avoid trouble of this sort in the future, it is strongly urged that if a person who believes he owns certain land stands by for many years and raises no objection to someone else using it on the theory that such other .person is using it for the person who believes he owns it, the person claiming the ownership should at least obtain some clear and definite acknowledgment of his ownership by word or acts of the user at intervals of less than twenty (20) years. If he cannot obtain such an acknowledgment, he should bring the matter to the court for determination before the use has continued for more than twenty (20) years either from the time it began or from the time of the last such acknowledgment."

From the time of the first ruling against the plaintiff by the Fefan magistrate in 1947 until suit was filed in 1966 is almost the necessary twenty-year span. However, the problem which confronts the plaintiff is that there is very little evidence of possession by him prior to that time as to some of the parcels.

The most that can be said from the evidence is that both groups gathered food from the land and because plaintiff and most of his group lived on Uman Island, their trips to gather coconut or breadfruit on the Fefan Island lands were necessarily infrequent. Defendant and his group undoubtedly used the land as much, if not more, than the plaintiff until 1954 or 1955 when Magistrate Hartmann by his ruling gave exclusive use and possession to the defendants. Since that time, defendants have built houses on some parcels and have planted the long-term crops of cacao, coconut and *taro.*

The evidence as to which parcels were used by whom is very meager except for the last ten years. Both sides said in effect they used all the land. However, it appears that the parcels now in possession of the intervenor defendants have been used by them and others of defendant Suain's lineage to the substantial exclusion of the plaintiff's group for more than the last twenty years.

Under the doctrine of open, continuous, hostile and adverse possession, the plaintiff has lost the rights legally established in Japanese times to the following four parcels:-

Nesarof
Faisewan
Nemanou
Neno

As to the remaining four parcels there is insufficient evidence to show continuous, open and adverse possession by

the defendants prior to Magistrate Albert Hartmann's decision and the period from that decision to 1968, when suit was filed, is clearly insufficient to deprive plaintiff of ownership.

On three of the four parcels-Nanawenau, Nekurukak and Wichukuchuk-defendants in the last few years have planted cacao and the court considers it to be unfair to deprive them of the benefits of their labor.

**[14]** Normally, one who has been in adverse possession of land, but not for a sufficient period to deprive the true owner of his interests, is entitled to compensation for improvements made on the property when he is forced to yield possession to the true owner. 3 Am. Jur. 2d, Adverse Possession, § 236. The amount of compensation is measured by the value of the land before and after the improvements have been made. 37 Am. Jur., Improvements, § 3, et. seq.

The nature of the improvements and the land use by the parties, plus the fact no evidence was offered as to the value of the cacao trees, makes it impossible for the court to fix a cash value. The parties themselves may solve the problem by agreement, but if they do not, the only way the court can provide compensation to the defendant lineage is to give it the right to harvest the cacao beans so long as the trees planted by them continue to bear. Plaintiff and his group are entitled to occupancy of these lands if they so desire and, of course, have the exclusive right to harvest the other fruits such as breadfruit and coconuts.

Having determined plaintiff has lost his rights to Faisewan, Nesarof, Neno and Nemanou, a determination must be made as to the conflicting claims of the defendant Suain's lineage and the two intervenors.

The intervening defendants claim ownership from their father Teninorig, but the evidence and the custom relating to an *ajokur's* rights indicate that all Teninong had was use and possession -rights and that Suain's lineage holds

the "basic ownership" even though it was the continuous possession of Teninong and his children which deprived the plaintiff lineage of their ownership. We hold that it was possession in behalf of the defendant lineage rather than as individual owners for several reasons.

**[15]** First, Teninong's German land document is not necessarily evidence of individual ownership. See Land Tenure Patterns, p. 167. Also, it is said in *Kono v. Mikael*, 2 T.T.R. 466:-

"The Court has several times before taken and here again takes judicial notice that the German administration on Truk in issuing such land documents did not distinguish between individually owned land and land controlled by a person as head of a group."

**[16]** Secondly, the probability is that the repurchase of Monukun Village, lands returned the lands to clan or lineage rather than to an individual. See Land Tenure Patterns, p. 20l.

**[17]** Thirdly, the intervening defendants admittedly presented "first fruits" to Suain. This is indicative of "basic rights" in the lineage and possessory and use rights only in the *afokur* and his children. See Land Tenure Patterns, p. 173.

**[18]** Finally, the evidence is insufficient to indicate lineage approval of the transfer to Teninong as owner. In *Nusia v. Sak*, 1 T.T.R. 446, it is said:-

"A certain amount of use of lineage land by 'afokur'. (issue of male members of the lineage), with the consent of the lineage, is to be expected, and is in accord with custom, but their rights are strictly dependent on the permission of the lineage, extending no further than the particular permission granted.

"In the present case, where the lineage members were actively using the land with the "afokur', the evidence is considered dearly insufficient to show any transfer of title to the lands!'

The evidence in the present case not only shows use by the lineage, but more importantly, the disputes over owner-

ship were carried on exclusively by the plaintiff and his predecessors with Kosam and then Suain representing the defendant lineage. Teninong and his children, the intervening defendants, were never parties to the litigation.

It must be concluded the intervenors occupy and work the land as members of the lineage and not as individual owners.

JUDGMENT

It is ordered, adjudged, and decreed:-

1. That as between the parties and those claiming under them, plaintiff and his lineage are the owners and are entitled to immediate possession and use of the lands known as Faichia, Nanawenau, Nekurukak and Wichukuchuk.

2. That as between the parties and those claiming under them, the defendant lineage, represented by Suain, shall have the right to harvest cacao from plaintiff's land as long as the cacao trees planted by them shall continue to bear fruit unless the parties change this right by agreement.

3. That the defendant lineage, represented by Suain, is the owner of the lands known as Faisewan, Nesarof, Neno and Nemanou.

4. That the intervenor Arita and those claiming through her, have the right to occupy and use, as members of the defendant lineage, one-half of Nesarof and the parcel known as Faisewan.

5. That the intervenor Ninunoun and those claiming through her, have the right to occupy and use, as members of the defendant lineage, the land known as Neno and Nemanou.

6. This judgment shall not affect any rights-of-way there may be over the lands in question.

7. No costs are assessed against any party.