

GIYAL, and LIGOU, Plaintiffs
v.
GUOT, Defendant
Civil Action No. 47
Trial Division of the High Court
Yap District
February 28, 1969

Action to determine right to possession and use of certain land in Rul Municipality, Yap Islands. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that a *mafen's* right to dispossess a lineage of its land could be exercised only for compelling cause and where there was no valid reason for such an attempt the land remained in the lineage.

1. Yap Land Law-Generally

Causes of action which are derived from American land law are not able to cope with the problems arising from the transfer and inheritance of the complex family or *tabinaw* interests in land found in Yapese custom.

2. Yap Custom-Married Women

Where wife did not perform her traditional obligations to her husband, to the land and to the family group of which her husband was a member, after her husband's death, by her prior conduct of forfeiture, she lost all claim to any interest in the lands.

3. Real Property-Quiet Title-Presumption of Ownership

Consent to use and occupancy of land prevents the occupants from acquiring a vested interest in the land no matter how long occupancy continues.

4. Yap Land Law-Generally

Neither Yapese nor American land custom or law permits a vesting of interest in land merely to avoid hardship upon a claimant against the person or group having superior interests in the land.

5. Yap Land Law-Generally

Sometimes land practices are settled between individuals or between family groups without regard to fixed, continuing Yapese custom.

6. Yap Land Law-"Mafen" Rights

Under the custom *mafen* rights and authority over land is limited to a reversionary interest only without present use rights.

7. Yap Land Law-"Mafen" Rights

The *mafen's* right to dispossess a lineage of its land may be exercised only for compelling cause involving a most serious breach of custom

<i>Assessor:</i>	JUDGE JOSEPH FANECHOOR
<i>Interpreter:</i>	TUUTH
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiffs:</i>	DABUCHUREN
<i>Counsel for Defendant:</i>	FRANK F ALOUNUG

TURNER, *Associate Justice*

This action concerned the right to possession and use of three named parcels of land, together with connected and appertinent pieces and *taro* patches located in Ngariy, Gariy and Ley Villages, Rul Municipality, Yap Islands.

[1] The issue involved was designated at the pre-trial conference as a determination of ownership by means of a quiet title action. The complaint was one for ejectment even though the defendant did not occupy the land. Both theories as to the nature of the action over-simplify the question. Causes of action which are derived from American land law are not able to cope with the problems arising from the transfer and inheritance of the complex family or "*tabinaw*" interests in land found in Yapese custom.

For background discussion of "*tabinaw*" concepts, reference is made to the Supplemental Judgment Order in *MoOlang v. Toruuan*, 3 T.T.R. 219, and to the citations in that opinion: *Duguwen v. Dogned*, 1 T.T.R. 223. Land Tenure Patterns, Trust Territory, Vol. 1, p. 257-268.

For an understanding of the conflicting interests found in this case, we must keep in mind the relationship between the parties and between the witnesses and the parties. They may be briefly stated as follows : —

Giyal-As a nominal plaintiff, being the husband of the real party in interest.

Ligou—Claimant of the lands in question through her maternal grandmother, ThoI.

Guot-Defendant who, with her husband, Moon Nichig, has "gone to the land" for approximately 26 years.

Moon Nichig-Who died in October, 1966, was the husband of Guot and the only son of Magey, who was Thol's brother. Thol adopted Moon Nichig on Magey's death. Moon Nichig, by adoption, was plaintiff Ligou's brother under the custom, and the brother of Ligou's mother, Gamatong, true daughter of Thol and Rrig.

Rrig-Husband of Thol, and "owner" of the land Taranguwal, which was transferred to Thol on Rrig's death.

Moon Niga—A defense witness, son of Bugruw, who was Rrig's sister. This relationship made Moon Niga the *mafen* of the land Taranguwal.

Thol-Who died in Japanese times, transferred the land in question to plaintiff Ligou, and gave Moon Nichig a parcel of land, a *taro* patch and a piece of shell money signifying that he was not entitled to inherit the property in question because he and Guot no longer fulfilled their customary obligations to Thol. In the words of a witness, Moon Nichig "left Thol's house". Thol acquired Taranguwal from her husband, Rrig; acquired Togaanaarou from her mother, Pinen; and acquired Uedeg from Guchol, who adopted Thol. These three parcels and appertinent pieces and *taro* patches went to Ligou on Thol's death (Thol's daughter, Ligou's mother, Gamatong, predeceased Thol).

Burrech-Deceased, was the true brother of Ligou.

The children, not parties, of Burrech, Ligou and Moon Nichig.

The plaintiff's claim to the three parcels rests on theories of inheritance and transfer by gift. Plaintiff was the only surviving adult member "within" Thol's family at Thol's death. Even though Moon Nichig and Burrech also survived Thol, they had been given their token inheritances when they "left the family", i.e., no longer carried out their traditional obligations to Thol.

[2] Plaintiffs do not rely solely on inheritance but also by express transfer from Thol for services performed for

ThoI. In addition, plaintiffs' evidence showed that the defendant Guot did not perform her traditional obligations to her husband, Moon Nichig, to the land and to the family group of which Moon Nichig was a member. For this latter reason, the court accepts plaintiffs' theory that after Moon Nichig's death defendant, by her prior conduct of forfeiture, lost all claim to any interest in the lands. Since the children of Moon Nichig and Guot (who are now adults) were not parties to the action, the court makes no determination as to them and their interests are subject to determination by the plaintiffs' lineage in accordance with traditional Yapese practice. Land rights are vested in the "*tabinaw*" or extended family group and they may decide what interests Moon Nichig's children have in the lands in question, if any.

[3] Defendant's primary claim to the lands was based upon her use of the lands with her husband from the time of ThoI's death and that this use Over a long period established rights in the nature of those arising from adverse possession, or because of the true "owner's" laches in failing to assert his rights against the possessor and user. It is clear, however, that defendant and her husband used the lands with the express consent of plaintiffs. Such consent to use and occupancy prevents the occupants from acquiring a vested interest in the land no'matter how long occupancy continues. Here, the consented use was for the life of Moon Nichig. Upon his death, plaintiffs asked defendant for the return of the lands.

Defendant apparently believed she was obliged to give up the use to plaintiffs, but because of the intervention of Moon Niga, the *majen* of only one of the three parcels, the defendant refused to relinquish her use of the lands.

[4] The dispute was then submitted, in accordance with traditional practice to the magistrate and chiefs of Rul

Municipality. A hearing was held and they found in favor of plaintiffs' entitlement to the land. Again, Moon Niga, attempting to exercise control far beyond the scope of his traditional relationship of *mafen* to one of the three parcels, refused to accept the decision of the municipal leaders. He insisted it would impose a hardship on the defendant to give up the use of the lands. Neither Yapese nor American land custom or law permits a vesting of interest in land merely to avoid hardship upon a claimant against the person or group having superior interests in the land.

When the defendant accepted the advice of the *mafen*, contrary to the decision of the municipal leaders, the plaintiffs brought the matter to this court for determination.

[5] The court recognizes that sometimes land practices are settled between individuals or between family groups without regard to fixed, continuing Yapese custom. The point is illustrated in Land Tenure Patterns, p. 253:-

"As in many other matters of social procedure, Yapese land usage remains extremely flexible and many questions of ownership must be resolved with relation to the merits of the individual case. There is no single body of customary law which can automatically answer all land questions"

[6, 7] As applied to this case, there is no doubt but that under the custom *mafen* rights and authority over land is limited to a reversionary interest only without present use rights. The *mafen's* right to dispossess a lineage of its land-as attempted in this case-may be exercised only for compelling cause involving a "most serious breach of custom". (Land Tenure Patterns, p. 262.)

In this case, the evidence shows that the *mafen* of one of three parcels sought to dispossess the owning lineage of all three parcels without any valid grounds under the custom except solely for the asserted reason it would impose a hardship upon the defendant and her grown children to have to give up the use of the lands. Furthermore, the

rnafen failed to support his conclusion by any evidence that a hardship would in fact be imposed upon the defendant by relinquishing use and occupancy to those entitled to use and occupy the lands.

Neither Yapese custom nor American principles of equity and justice can justify the result sought by the defendant and those who supported her claim. Moon Niga attempted to exercise authority he didn't have and demonstrated utter indifference to traditional practice by refusing to accept the decision of the municipal leaders. There is nothing in the record of this case which would warrant sustaining defendant's position.

JUDGMENT

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

1. As between the parties and all persons claiming under them, rights in the lands known as follows:-

(a) Taranguwal, plus ten pieces of connected land and twelve *taro* patches, all located in Ngariy Village, Rul Municipality, Yap Islands, and

(b) Togaanaarou, plus thirty-two pieces of land connected to it and twenty *taro* patches, all located in Gariy Village, Rul Municipality, Yap Islands, and

(c) Uedeg, plus nine pieces of land connected to it and twenty *taro* patches, all located in Ley Village, Rul Municipality, Yap Islands, belong to the plaintiff Ligou and her lineage.

2. That the defendant Guot has no right of use and occupancy to the above-described lands and shall not interfere in any way with the use and occupancy of the plaintiff Ligou and her lineage.

3. That no determination is made as to the interests in the land above-described of Guot's children since they were not parties to the action. Their interests, if any, shall be

determined in accordance with accepted Yapese land tenure practice.

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

5. No costs are assessed against any party.