

NUTER (aka LUTHER), Plaintiff

v.

KOICHI and JOSEPH, Defendants

Civil Action No. 411

Trial Division of the High Court

Truk District

April 28, 1969

Action to determine ownership to land on Fefan Island, Truk District. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that there was substantial evidence to sustain defendants' claim that their predecessor had purchased the land in question and taken possession of it.

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BURNETT, *Associate Justice*

FINDINGS OF FACT

1. Plaintiff Nuter received ownership of the land AUTU in an exchange with August Allers. The evidence was insufficient to support his claim that the exchange was conditioned in any way.

2. Rukan purchased the land from Nuter some time prior to Nuter's departure for Ponape in 1938 or 1939. Defendants and their predecessor, Rukan, have been in open possession of Autu since that time.

OPINION

This action involves conflicting claims to the land Autu, Sapota Village, Fefan Island, Truk District. The foregoing findings of fact effectively dispose of matters at issue in the dispute.

Plaintiff received Autu by exchanging his land Faino for it with August Allers. He explained the reason for the exchange to be his need for land close to the village, since he had married Akos, the sister of Rukan. At the pre-trial conference he claimed they had agreed that, if he ever left

the village, each would take back his original land. On trial, however, he asserted that the agreed condition was that Allers would get Autu back if he, Nuter, ever sold or otherwise disposed of it. I find the evidence in support of plaintiff's claim to be unconvincing for a number of reasons.

Plaintiff's marriage to Akos had ended before his departure to Ponape in either 1938 or 1939. Consequently his asserted reason for requiring Autu, in preference to Faino, no longer existed.

August Allers never at any time made any attempt to reclaim the land, as he would be expected to do if the exchange had been a conditional one, even though Rukan and the defendants have been in open possession since at least 1938.

Urubi, sister of the plaintiff, testified that, as far back as 1949, Rukan claimed possession by reason of purchase from plaintiff. Plaintiff's Exhibit No.1, an undated letter which he claimed to have received from Rukan in 1959, stated Rukan's claim of purchase in unequivocal terms. In spite of this, plaintiff waited until 1966, after the death of Rukan, to file this action. Such delay raises serious doubts as to the truth of his entire story.

In addition I find substantial credible evidence to sustain defendants' claim that Rukan had purchased the land and taken possession of it prior to Nuter's departure for Ponape.

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

1. As between these parties and all those claiming under them, all rights of ownership in and to the land Autu, Sapota Village, Fefan Island, Truk District, are in the defendants Koichi and Joseph, and the plaintiff Nuter has no rights therein.

2. The defendants are awarded such costs, if any, as they may have had which are taxable under the first sentence of Section 265, Trust Territory Code, provided they file a sworn, itemized statement within thirty (30) days after entry of this judgment.