

EREANG ARMALUUK, Plaintiff
v.
ORRUKEM, DIBECH WONG, and
TAKADA SPOONS, Defendants
Civil Action No. 383
Trial Division of the High Court
Palau District
December 30, 1969

Action for recovery of property in Airai Municipality, Palau District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where person stands by and lets someone else openly and actively use or publicly claim ownership of land, the person who so stands by a long time will have lost whatever rights he may have had and the court will not assist him in regaining such rights.

1. Palau Land Law-Lineage Ownership-Transfer
Under Palauan custom ownership of land by a lineage or family requires unanimous consent of the senior family members before it may be transferred.
2. Real Property-Sales-Bona Fide Purchaser
Where purchaser testified that District Land Management Office records and seller's assurances caused her to believe land could legally be sold to her she became an innocent purchaser without notice of plaintiff's claim; plaintiff's suit not being filed until six months after purchase.
3. Real Property-Sales-Bona Fide Purchaser
As between two innocent persons, the party whose inaction made it possible for the loss to occur bears the loss.
4. Trust Territory-Land Law-Adverse Possession
The Trust Territory 2.0-year statute of limitations for adverse possession of land does not become operative until 1971 because Section 316 of the Code did not go into effect until May 28, 1951. (T.T.C., Sec. 316)
5. Real Property-Quiet Title-Laches
The doctrine of stale demand is based on the theory that if a person of sound mind stands by for 20 years or more and lets someone else openly and actively use or publicly claim ownership of land, the person

who so stands 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.

<i>Assessor:</i>	JUDGE PABLO RINGANG
<i>Interpreter:</i>	KAZUMOTO H. RENGULBAI
<i>Reporter:</i>	SANAE N. SHMULL
<i>Counsel for Plaintiff:</i>	FRANCISCO ARMALUUK
<i>Counsel for Defendants:</i>	ITELBANG LUII

TURNER, *Associate Justice*

This action was brought for recovery of property in Airai Municipality, Palau District which had been transferred by defendant Spoons to defendant Orrukem in October, 1942, for 300 *yen*, and which on February 2, 1967, was conveyed by warranty deed by Orrukem to defendant Wong for \$1,000.00. This suit was brought July 21, 1967.

[1] The plaintiff's theory for recovery was that the land was inherited from her mother jointly by herself and her brothers and sisters, all of whom died before the transactions involved here, except her brother, the defendant Spoons, and that she did not consent to the sale to Orrukem by Spoons. Under Palauan custom, ownership of land by a lineage or family, requires unanimous consent of the senior family members before it may be transferred. *Medaliwal v. Irewei*, 2 T.T.R. 546. *Rechemang v. Belau*, 3 T.T.R. 552.

The defendants, Orrukem and Wong, attempted to show that either the plaintiff gave her consent or in the alternative it was not required on the theory Spoons was listed in the land survey summary, the *Tochi Daicho*, as individual owner.

The Japanese survey of private lands began in Palau in what is now Airai Municipality in 1938 and was completed in approximately one year. Unfortunately; the *Tochi Daicho* land listing for Airai was lost or destroyed

as result of the war. It is one of the few missing *Daicho* in Palau.

Both sides in this dispute sought to prove by evidence what the *Daicho* showed concerning the land in dispute. The plaintiff called upon her brother, the defendant Spoons, who testified he had been listed in the *Daicho* as the administrator of the land for the benefit of his brothers and sisters and that without his sister's consent he admittedly had no authority to sell to Orrukem.

Approximately a year and a half before the purported sale--early 1941 or late 1940 and after the completion of the Airai survey and *Daicho-Spoons* had leased the land to an Okinawan who had divided it into three garden plots. A map was made by the land office to accompany the lease. No consent was required for an administrator to lease land.

Defendant Orrukem did not see the *Daicho*, but, he says, the land transfer was approved by the land office. The only evidence he had to show this was a Japanese copy of a sale agreement prepared by the *Daishioning*, who served as public scribes and notaries in land matters but who were not employees of the land office. They were obliged, however, to check the *Daicho* and obtain land office survey maps in order to prepare acceptable transfer papers. The defendant claims he also received a deed and map from the seller, but the papers (all but the contract of sale) had been lost when borrowed a few years ago by a prospective buyer from him.

Defendant Orrukem's testimony that the plaintiff had affixed her "chop" as evidence of her consent to the sale is not convincing. However, if Spoons was listed as administrator, the land office would not have permitted the transfer without the plaintiff having given her consent.

The evidence thus presents two speculative alternatives as to what the *Daicho* disclosed and what might have hap-

pened at the time of the sale to Orrukem. This court is unwilling to decide the question on speculation. The proof is inadequate one way or the other.

There is a solution that offers itself without dependence on the lost *Daicho*, the lost deed, the lost lease, or the maps or without reliance upon the administrative procedure followed in the Japanese land office, which mayor may not have been, but probably was, followed in this case. This resolution of the problem depends upon the application of land law which has been followed for many years in both the Trust Territory courts and the United States courts. There are two principles which may be applied.

[2] First, is the effect of the transfer in 1967 of the land from Orrukem to Dibeck Wong. She testified District Land Management office records (admittedly not conclusive) and Orrukem's assurances caused her to believe the land could be legally sold to her. She became an innocent purchaser without notice of the plaintiff's claim. The plaintiff's suit was not filed until six months after she purchased.

[3] The court, therefore, considers who must suffer a loss as between two innocent persons. The plaintiff did nothing about her brother's purported sale to Orrukem and even though she did not consent to the sale, her inaction made it possible for loss to occur, as between herself and the defendant Wong.

In the case of *Ngirkelau v. Trust Territory*, 1 T.T.R. 543, this court relies upon the rule quoted from the United States Supreme Court decision of *Eliason v. Wilborn*, 281 U.S. 457, 50 S.Ct. 382. Also see: *Asanuma v. Pius*, 1 T.T.R. 458.

There is still another equally persuasive principle of law applicable to this case that relieves the court from the uncertain evidence as to what the *Tochi Daicho* showed. It is the principle of "stale demand".

The survey and *Daicho* listing in Airai was completed in 1939 when the defendant Spoons took control of the land. Shortly thereafter the land was leased to an Okinawan who built a house on it and cultivated vegetable gardens until the "end of the war, probably around 1945 or 1946" when all Okinawans and Japanese were repatriated.

In 1942, the land was purportedly sold to Orrukem and he thereafter collected annual rental from the Okinawan.

The plaintiff, who lived in and around Koror, during this time testified she knew nothing about this and "saw no house or gardens on the land". Nor did she seek out her brother to learn what was going on.

In 1955-56, the Palau land office began surveys and investigation in connection with payment of rentals for water pipeline easements from the Airai dam to Koror which included the land in question. A public meeting was announced and held in Airai. The plaintiff lived in Koror but claimed she knew nothing about this. The public understanding at the meeting was that Orrukem owned the land in question, the land office depicted his ownership on the pipeline maps and, more importantly, paid rental to him, as owner, from 1947 until 1967 when payments were suspended for reasons other than this ownership dispute.

Twenty-five years after Orrukem purportedly purchased from Spoons, he sold, by warranty deed, to Dibeck Wong. The plaintiff and her family lived in Koror most of that time. The only time she evidenced an interest in or claim to the land was after it had been sold to Wong in 1967.

[4] The Trust Territory 20-year statute of limitations for adverse possession of land does not become operative until 1971 because Section 316 of the Code did not go into effect until May 28, 1951. *Kanser v. Pitor*, 2 T.T.R. 481.

[5] The doctrine of stale demand is based on the theory that if a person of sound mind stands by for 20 years or

more and lets someone else openly and actively use or publicly claim ownership of land, the person who so stands 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. 3 Am. Jur. 2d, *Adverse Possession*, §§ 1, 2, and 3. *Wia v. losef*, 1 T.T.R. 434. *Naoro v. Inekis*, 2 T.T.R. 232, at 237, quotes from and relies upon *Fletcher v. Fuller*, 120 U.S. 534, 7 S.Ct. 667.

The court holds the plaintiff displayed indifference to her interest in the land for too many years to now be entitled to relief upon the highly speculative evidence presented in this case.

Although no claim was pressed by the plaintiff against her brother because of the sale of the land, the court believes that in the interests of settling all issues between the parties and thereby avoiding further litigation, that the plaintiff is entitled to recover in money the value of her one-half interest in the land in question together with interest at the legal rate on that amount from the time of the sale to Orrukem. There is sufficient evidence before the court to permit an award in dollars although payment to Spoons was made in *yen*. The court accepts Orrukem's testimony that the *yen* in 1942 in Koror had approximately the same purchasing power as the dollar does today.

JUDGMENT

Ordered, adjudged, and decreed:-

1. That the plaintiff be and she hereby is denied recovery of the land in dispute.

2. That the defendant Dibeche Wong be and she hereby is declared the owner of the following described parcel of land in Airai Municipality, Palau District:-

All of the 2069.6 *tsubo* of land, more or less, bounded on the north by Ucherbelau's land, on the east by Ngira-

chel'eang's land, on the south by Ngiramesubed's *taro* patch, and on the west by Uong's land.

3. That the plaintiff shall have and recover from the defendant Takada Spoons the sum of \$150.00 together with interest on said amount at the rate of six (6%) percent per annum from November 1, 1942, until paid.

4. This judgment shall not affect any rights-of-way over the land in question.

5. No costs are assessed.