KALO, Appellant

v.

KARAPAUN, Appellee

Civil Appeal No. 59

Appellate Division of the High Court

June 23, 1971

Action to determine ownership of property on Satawan Island, Mortlocks, Truk. The Appellate Division of the High Court, D. Kelly Turner, Associate Justice, held that appellant had no right to land where his claim of ownership had lain idle for thirty-six years.

1. **Appeal and Error—Scope of Review—Facts**

   Normally, an appellate court will not examine the evidence in an attempt to determine whether it more strongly favors one conclusion or another; it is sufficient that there be some evidence supporting the result reached.

2. **Truk Land Law—Mortlock Islands**

   A gift to a child is an exception to customary descent of land and must be established by clear and convincing proof.

3. **Truk Land Law—Mortlock Islands**

   Under the custom, a child does not receive land from the father without consent of all adults of the father's lineage, because a man's child is outside the man's matrilineal lineage.

4. **Real Property—Quiet Title—Presumption of Ownership**

   Normally, absence by a claimant to ownership from land for a long period gives use to a strong presumption of ownership in the user or occupant as against the claimant.

5. **Real Property—Quiet Title—Presumption of Ownership**

   Even when the user is presumably working the land in behalf of the owner, the owner or claimant to ownership is charged with the burden of establishing that the user is working the land in the claimant's name.

6. **Real Property—Quiet Title—Presumption of Ownership**

   A claimant's declaration from the witness stand or by argument on appeal, that the user of the land does so in his, the claimant's name, and has used the land for many years without objection or interference because of claimant's appointment or approval is not sufficient as a matter of law to overcome the presumption of ownership by long and uninterrupted use.

7. **Real Property—Quiet Title—Laches**

   If a person believes he owns land and stands by for many years and raises no objection to someone else using it, on theory that such other

person is using it for person who believes he owns it, person claiming ownership should obtain definite acknowledgment of his ownership by words or acts of user at intervals of less than twenty years, and if he cannot obtain acknowledgment, he should bring matter to court.

Counsel for Appellant: TIMAS B. SELEN
Counsel for Appellee: FLORIAN SEADY, Appearing for Waiver of Oral Argument

Before TURNER and BROWN, *Associate Justices*

TURNER, *Associate Justice*

This is an appeal from judgment for the defendant-appellee entered upon the transcript of testimony and findings of a Master, Ring Puas, involving disputed ownership of two *taro* patches, Monkitiw and Moronpwol, and four lands, Leanean, Lemal, Maroulap, and Likinpuol, all on Satawan Island, an atoll in the Mortlocks, Truk District.

Appellant argued, as ground for appeal, that the Master's findings approved by the Trial Division, were not in accord with Trukese custom. Appellant challenges the result reached and the interpretation of the evidence.

[1] From the record, it is apparent the Trial Division found that the evidence did not support plaintiff's claim and did support defendant's entitlement to the land. Normally, an appellate court will not examine the evidence in an attempt to determine whether it more strongly favors one conclusion or another. It is sufficient that there be some evidence supporting the result reached.

Arriola v. Arriola, 4 T.T.R. 486, sets forth the function of an appellate court in its review of the evidence. The case also collects Trust Territory court citations pertaining to appeals.

However, in the present appeal, the result is challenged as being contrary to custom, which is a mixed question of law and fact. *Lajutok v. Kabua*, 3 T.T.R. 630.

Briefly, the issue arising from application of custom to the facts is that the land in question was used for a number of years by neither the plaintiff's predecessor, his mother, nor by defendant's predecessor, Osi, but by other relatives of the parties who were appointed by Eaol, plaintiff's mother's husband and brother of Osi, defendant's immediate predecessor. The original owner was Sol and the court found he "gave" the lands to his sister who gave them to Eaol, who gave them to his brother Osi, under whom defendant claims.

The appellant insists that Eaol managed the lands and subsequently appointed Osi because he was married to Pirikita, the daughter of Sol and not because he was a member of the lineage of Sol's sister. Under the custom, says appellant, the lands could not be inherited by Sol's lineage and this established the gift to plaintiff's mother as the only explanation of its occupancy by Eaol's brothers.

[2] The custom involved is more persuasive that the land passed from Sol to his sister and descended in her lineage than it was a gift to Sol's child and descended from her. A gift to a child is an exception to customary descent of land and must be established by clear and convincing proof. Plaintiff failed to sustain this burden.

[3] Under the custom, a child does not receive land from the father without consent of all the adults of the father's lineage because a man's child is outside the man's matrilineal lineage. Under the custom then, without proof of a gift to the child, the land passed from Sol to his lineage rather than to his child. See: Fischer, Land Tenure Patterns, Part III, p. 167, et seq.

Fischer says at page 168:—

"As the family actually residing on the land is constituted on a matrilineal basis, the land assigned to a woman tends to be worked by her husband and reassigned on her death to their children,

while the land assigned to a man tends to be reassigned on his death to his sister's children."

Appellant argues the first alternative is applicable here but in doing so, overlooks the prior ownership or "assignment" to the man, Sol, who upon his death assigned to his sister and the children in her lineage, Eaol, Osi and Refilolo. Defendant is their survivor.

[4] Appellant further argues that the persons who used the land were appointed by Eaol to take care of it in behalf of his wife, who was plaintiff's mother, and that they otherwise were not entitled to use the land. The theory that land is occupied and used in behalf of some absent owner occasionally crops up in Truk land disputes when claimants seek to avoid the presumption of ownership in someone who has occupied or used the land for many years without objection or interference. Normally, absence by a claimant to ownership from land for a long period gives rise to a strong presumption of ownership in the user or occupant as against the claimant. There are some sixteen cases following this principle, from *Aneten v. Olaf*, 1 T.T.R. 606, through *Armaluuk v. Orrukem*, 4 T.T.R. 474.

[5–7] Even when the user is presumably working the land in behalf of the owner, the owner or claimant to ownership is charged with the burden of establishing that the user is working the land in the claimant's name. The claimant's declaration from the witness stand, or as in the present case, by argument on appeal, that the user does so in his, the claimant's name, and has used the land for many years without objection or interference because of claimant's appointment or approval is not sufficient as a matter of law to overcome the presumption of ownership by long and uninterrupted use. This court has given the rule of conduct and proof of ownership most likely to overcome the presumption of ownership in the user. It is said in *Nakas v. Upuili*, 2 T.T.R. 509 at 511:—

". . . 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 court for determination before the use has continued for more than twenty (20) years . . . ."

In the present case plaintiff and his parents were absent from Satawan for more than thirty-six years, and five of those years were spent in the Truk lagoon islands where the High Court is located and available to land claimants seeking to establish their claims.

The elements necessary to bar relief upon a stale demand for land are set forth in *Rochunap v. Yosochune*, 2 T.T.R. 16, 20. The court also said in that case the plaintiff's reason for not asserting his claim was an "explanation" that did not "rise to the dignity of a legal excuse." The same can be said of the plaintiff's absence from Satawan as his explanation as to why he did not assert his ownership claim until 1968.

Plaintiff's or his predecessor's failure to dispute the use of the land by defendant's predecessor cuts off claim at this late date. Furthermore, even if this did not preclude plaintiff's recovery, his claim, contrary to his argument, is not supported by customary Trukese land law.

Accordingly, the judgment of the Trial Division is affirmed.