

UPUILI, Plaintiff

v.

TERUTA, Defendant

Civil Action No. 512

Trial Division of the High Court

Truk District

March 6, 1972

Action concerning land on Tol Island, Truk District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that as plaintiff did not have any interest to land in question he could not transfer any interest to defendant.

1. Real Property—Sales—Generally

A vendor of land cannot transfer an interest in land in which he has no interest or ownership.

2. Real Property—Sales—Generally

A vendor can, as against third persons having superior legal interests convey only such interests as he himself has and the purchaser takes subject to the interest of such third person; that is the purchaser acquires no greater legal interest than the vendor possesses.

Assessor: OLAF W., *Associate Judge of the District Court*
Interpreter: ROKURO BERDON
Reporter: NANCY K. HATTORI
Counsel for Plaintiff: YOSCHUNE
Counsel for Defendant: KINDIN

TURNER, *Associate Justice*

This action involves the land Fanau on Tol Island, Truk District. The principal issue was whether Fanau, on which was located an Au tree which was the source of the name of the land and ivory nut palm trees, was a part of the land Onout and was included in the sale of the land Onout to the defendant.

The plaintiff, Upuili, owned the land Onout and gave it to his son Aka. Plaintiff also was in control of the land in question, Fanau, which was lineage property.

Aka sold Onout to defendant. After the defendant paid the purchase price of \$203.00, he entered onto Fanau and cut leaves from the ivory nut trees. Plaintiff warned defendant not to cut the leaves and when defendant ignored the warning, Upuili brought this action to establish or quiet his title to Fanau and the ivory nut trees.

Teruta presented several defenses. He said that Aka, his vendor, had told him the trees were on Onout and it was all right to cut them. This statement, Aka denied and the denial was more credible than Teruta's excuse.

The defendant also claimed he bought "all the land", meaning both Onout and Fanau. In support of this theory he called Sosuwe, the owner of Masuk, the land adjoining

Fanau, who testified his land adjoined Onout and that he had never heard of the land Fanau. These statements even contradicted defendant's own testimony concerning Fanau and simply were not believable.

Finally, defendant insisted he bought Fanau from the plaintiff and that the suit was brought to recover the "balance" of the purchase price. Defendant quoted plaintiff as allegedly saying the suit would be dismissed if he paid the purchase price. Asked what the balance of the price was, the defendant couldn't remember the amount.

In the face of both plaintiff's and Aka's denials that either of them sold Fanau to defendant, the defenses offered were not acceptable under the believable evidence. The only factual theory, if supported by evidence, upon which defendant might be entitled to the land on which the ivory nut trees stood was that it was included within the boundary of the land Onout.

[1] But even if this were true upon the facts the defendant would not be entitled to Fanau nor to the ivory nut trees as a matter of law. The law in Truk and the United States is well settled that a vendor of land cannot transfer an interest in land in which he has no interest or ownership. There have been prior cases in Truk depending upon similar law. *Akos v. Orem*, 3 T.T.R. 504. *Kaminanga v. Sylvester*, 5 T.T.R. 312.

Both of the foregoing cases involved attempts to twice sell the same property. The court held that when the first sale was completed there was no interest remaining in the vendor to permit a second sale. In the present case, there was no attempt to twice sell the land, but instead a purported sale by the vendor, Aka, of land, Fanau, which he did not own.

[2] The rule of law denying the defendant's theory of his right to either Fanau or the ivory nut trees is found at 55 Am.Jur., Vendor and Purchaser, 650:—

“. . . a vendor can, as against third persons having superior legal interests . . . convey only such interests as he himself has and the purchaser takes subject to the interest of such third person . . . the purchaser acquires no greater legal interest than the vendor possesses.”

The same rule was followed more than a century ago by the United States Supreme Court in *Sampeyreoc v. U.S.*, 7 Pet. 222, 8 L.Ed. 665, 672:—

“. . . it is incontestable that a grantor can convey no more than he possesses. Hence, those who come in under the holders of a void grant can acquire nothing.”

The defendant got neither Fanau nor the ivory nut trees, when he purchased Onout from Aka because neither the land nor the trees were a part of Onout and Aka owned only Onout and not Fanau nor the trees. The defendant did not purchase Fanau nor the trees from the plaintiff. The evidence clearly shows there was no transaction between them. The plaintiff's suit was to settle the disputed title, not to recover the unknown balance of a purchase price.

Ordered, adjudged, and decreed:—

1. That Upuili, the plaintiff, has the right of control and possession of the land Fanau and the ivory nut palm trees thereon located between the lands Onout and Masuk, Tol Island, Truk District.

2. The defendant, Teruta, has no right, title or interest in the land Fanau and the ivory nut palm trees located thereon and the land and trees were not included within the land, Onout, purchased by defendant from Aka.

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

4. Plaintiff is entitled to recover his costs in accordance with the law.