CARMEN GUILIS MUNA and ISABEL GUILIS NELSON,
Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, et al.,
Appellees

Civil Appeal No. 287

Appellate Division of the High Court

Mariana Islands District

October 1, 1980

Appeal from determination of ownership of land. The Appellate Division of the High Court, Gianotti, Associate Justice, held that circumstantial evidence sufficiently supported a finding of the trial court that there was a transfer of real property and that there was sufficient evidence that claimant to property had acquiesced in and was bound by the transfer of the property by her sister, and therefore the judgment was affirmed.

1. **Evidence—Circumstantial**

   Circumstantial evidence sufficiently supported a finding of the trial court that there was a transfer of real property.

2. **Real Property—Adjudication of Ownership—Evidence**

   There was no error by the trial court in receiving testimony as to an alleged transfer of real property that occurred prior to 1941, since the transaction occurred at least 35 years before, the jurisdiction allows

transfers of land to be made orally, and the Japanese invasion resulted in the destruction of many of the land documents of that period.

3. **Witnesses—Surprise Testimony**

Admission of surprise testimony by witness was not erroneous where party calling witness had no knowledge of the surprise testimony before trial, and parties whom testimony may have adversely affected could have requested a continuance for time to meet this new evidence, but did not.

4. **Real Property—Transfers Generally**

There was sufficient evidence to support a finding of trial court that claimant to property acquiesced in and was bound by transfer of the property by her sister to another party, where the claimant had testified that she relied upon her sister to file a claim for the property, and she had never attended any meetings of the family regarding family lands, and other evidence also supported the finding.

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Counsel for Appellees: JOHN S. TARKONG, ESQ., *Assistant Attorney General, Office of the Attorney General,* Trust Territory of the Pacific Islands, Saipan, CM 96950

Before NAKAMURA, *Associate Justice,* GIANOTTI, *Associate Justice*

GIANOTTI, *Associate Justice*

This is an appeal from a judgment of the trial court which found that appellants had no interest in a certain piece of real property designated Lot 764 located in Tanapag, Saipan Island. The trial court relying on inferences from available land records and oral testimony found that any interest claimed by the appellants had been disposed of at a prior time.

A review of the facts shows that the plaintiffs-appellants are the daughters of Juan Guilis who died January 3, 1939. Mr. Guilis owned Lot 764 during Japanese times and

leased the property to a Japanese national in the early 1930's and then in 1937 leased the land for about ten years to Nanyo Kohatsu Kabushiki Kaisha, a Japanese corporation.

As the trial court states, from this point on, the history of the land is merged in conflict resulting in this litigation. Defendants-appellees assert the land was sold by Juan Guilis or by one, or both, of his daughters to Pedro Akiyama, and consequently, during the American Administration, the lot was transferred to the Government of the Trust Territory by Maria Akiyama, representing the heirs of Pedro Akiyama.

Appellants point out that there is no specific documentation of any sale from Guilis to Akiyama. Appellants further argue that it would have been impossible for Juan Guilis to have transferred the property between 1940 and 1944 as appellees assert, since he died in 1939. Appellant, Isabel Nelson, denies any reported statements made by her to the effect that she sold the property. Appellant, Carmen Muna, contends there is no evidence at all to show that she ever transferred the property or agreed to a transfer by her sister Isabel Nelson.

The evidence does show that in 1948 during an investigation by the Government of private property owners on Saipan, appellants did not claim Lot 764. In 1954, they likewise did not claim this parcel. While it appears that the trial court gave little if any weight to the testimony of William S. Reyes and Vicente Pangelinan Sablan, their testimony was admitted and was to the effect that Juan Guilis sold the land in question to Mr. Akiyama. There is also evidence of a statement made by Isabel Nelson to Delores Sablan and a document evidently signed by her in 1972 stating that she sold this parcel in 1939 to Pedro Akiyama for 300 yen.

Additionally, the evidence shows that the Akiyama family did in fact claim Lot 764 and that in 1953 Determination of Ownership No. 533 found the property to be owned by the heirs of Pedro Akiyama.

Appellants raised three points in their notice of appeal, namely:

1. That the evidence adduced fails to support the judgment of the Court with respect to a transfer of real property by any member of the Guilis family to Pedro Akiyama.

2. That the Court erred in receiving any evidence as to a transfer of real property by any member of the Guilis family prior to the year 1941.

3. That the Court erred in finding that Carmen G. Muna is bound by any transfer of property to Pedro Akiyama.

Appellants are asking primarily that the court review the evidence in order to determine whether the trial court could make the findings it did.

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. *Kalo v. Karapaun*, 5 T.T.R. 537, 537 (App. Div. 1971).

The Appellate Division of the High Court on appeal from a decision of the Trial Division cannot reweigh the evidence and decide whether in its opinion it should reach the same or different conclusions as the trial judge did as to the facts. The rule which is followed by appellate courts is set forth in the recent case of *Lajutok v. Kabua*, 3 T.T.R. 630 at p. 633, as follows:—

"The findings of the trial court based upon the evidence will not be set aside unless there is manifest error . . . ." *Arriola v. Arriola*, 4 T.T.R. 486, 487 (App. Div. 1969).

Superior appellate courts are, primarily, constituted for the purpose of dealing with questions of law; the consideration of any question of fact by such a court involves a decision on the record without any opportunity being afforded for judging as to the credibility of witnesses except in so far as discrepancies may appear in the testimony in the record . . . . If a judicial mind could, on due

consideration of the evidence as a whole, reasonably have reached the conclusion of the court below, the findings must be allowed to stand. Such findings will not be disturbed when supported or sustained by competent evidence, especially where the evidence is conflicting or where different inferences can be reasonably drawn therefrom. 4 T.T.R. 486, 487–488, citing *Kenyul v. Tamangin*, 2 T.T.R. 648.

The appellate court is expected to make every reasonable presumption in favor of correctness of the decision of the lower court, the burden being upon appellant to affirmatively show error. *In the Matter of Petition of Wisley*, 5 T.T.R. 81, 82 (App. Div. 1970).

Even if the appellate court examined the evidence, there is a burden on the part of appellant to show error. We have examined the evidence and find that there was sufficient evidence for the trial court to find as it did.

. . . Where there is any evidence from which the trial court might properly have drawn its conclusion as to the facts, that conclusion will not be disturbed on appeal. *Ladhore v. Rais*, 4 T.T.R. 169, 170 (Tr. Div. 1968).

. . . Reasonable probability is all that is required of evidence in a civil case to support a factual conclusion. *Ngirchelui v. Rebechong*, 5 T.T.R. 115, 119 (Tr. Div. 1967).

[1] The record in this case shows circumstantial evidence of a sale of this property by the Guilis family. Appellants attempt to explain away this evidence. For instance, Isabel G. Nelson states she was not in Saipan in 1972 at the time she purportedly stated she sold the land in question. However, the credibility and weight of this evidence along with the other evidence was considered by the trial court. All of these matters combined are sufficient to lead the trial court to rule in the manner in which it ruled.

. . . The appellate court must test the sufficiency of proof on the basis of what the trial court had the right to believe, not on what the defendant wishes it believed. *Fattun v. Trust Territory*, 3 T.T.R. 571, 573 (App. Div. 1965).

Even though it is not the function of the appellate court to reweigh the evidence, an examination of the evidence in this matter clearly supports the judgment.

[2] Additionally, we do not find error by the trial court in receiving evidence as to a transfer of real property by any member of the Guilis family prior to the year 1941. First, we are dealing with a transaction that occurred 35–40 or more years ago. Secondly, we are dealing with a jurisdiction where transfers of land can be made orally. Thirdly, the invasion itself resulted in the destruction of many of the land documents that had been made. The passing of many years obviously may make it difficult to specifically pin down actual dates. Fourth, the Government admitted being uncertain of the exact date of sale and of having records showing the sale on various dates between 1940–1944. When it alleged a sale between 1940–1944, it was trying to cover the period covered in its records. It is clear, however, that it also had a record showing a sale by Isabel Guilis in 1939. Obviously, the crucial issue of this case was to determine if there was a transfer between Guilis and Akiyama. It is clear from the record that the Government had no knowledge that Mr. Reyes would testify to a sale by Guilis to Akiyama before 1939 until approximately the time of trial. Mr. Reyes originally was a witness for the heirs of Pedro Akiyama who were involved peripherally in this action.

[3] Furthermore, appellants could have asked for a continuance if they were surprised and required time to meet this new evidence. This they did not do. Therefore, we do not find error in the admission of such evidence.

Finally, with regard to the finding that Carmen Muna is bound by any transfer of property to Pedro Akiyama, we likewise do not find error.

Appellants argue that this conclusion of agreement or ratification by Carmen is based upon a total void in the

record and argue that as a matter of law this cannot be the case. Again, looking at the evidence and the law we are unable to say that this finding was clearly erroneous or an error of law.

Appellants are absolutely right when they say "total void" since there is virtually nothing to show any actions by Carmen consistent with ownership of this property until approximately 1974 or 1975.

[4] While she filed a claim for other property there is no record that she filed a claim for Lot 764. Moreover, she testified she relied on her sister to file a claim. Finally, she testified she never attended any meetings of the family regarding family lands after the death of her father. From this and other evidence the trial court found this indicated acquiescence to whatever her sister, Isabel, intended to do or in fact did with the property if, in fact, she still believed her family still owned the property. While other conclusions may be reached by the evidence, we find there is sufficient evidence and law to support the conclusions drawn by the trial court.

For the foregoing reasons, the judgment of the trial court is AFFIRMED.