

FRANCISCA, Plaintiff

v.

GREGORIO LADORE, Defendant

Civil Action No. 66

Trial Division of the High Court

Ponape District

April 30, 1957

Action to determine ownership of land in Net Municipality, in which plaintiff claims ownership of land under German land title and defendant claims ownership by virtue of use permit from American Administration and purchase from former lessee of land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that German land title was vacant but that plaintiff had stronger claim to possession.

1. Ponape Land Law—German Land Title—Vacancy in Title

Under German land title on Ponape Island, where no party is lawful heir or transferee, there is vacancy in legal title, and unless and until government designates owner, right of possession is controlled by worth of claims to it.

2. Ponape Land Law—German Land Title—Presumption of Ownership

Party claiming rights to land on Ponape Island under German title has superior right to possession over party claiming under expired lease.

3. Public Lands—Use Rights

Revocable permit from American Administration to use land on Ponape Island permits exercise of only such rights in land as Alien Property Custodian might have and is not a determination of who should succeed to vacant title.

4. Courts—Parties

Where neither Trust Territory nor Alien Property Custodian is party to action, no determination is made as to their rights in land.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Ririnies had only a lease of the land in question with provision that on his death the title holder or his successor would pay Ririnies' widowed family the current value of food crops there.

2. In a three way agreement between Ririnies, the plaintiff Francisca, and Mochimaru, it was agreed as follows:—

(a) Ririnies agreed to give up his lifetime lease in return for 200 yen paid to his father Salli to cover the current value of the food crops on the land.

(b) Francisca agreed to accept this 200 yen as full payment for trees cut down by Mochimaru on the part of Naniep not involved in this action and to lease the land in question to Mochimaru for the remaining term of his oral lease from her of the other part of Naniep, which was to expire about 1950 or on Mochimaru's returning to Japan before that.

(c) Mochimaru agreed to pay for the trees and lease mentioned above, by paying the 200 yen to Salli at Francisca's request.

3. Mochimaru paid the 200 yen to Salli in accordance with this agreement; Ririnies withdrew from the land; and Mochimaru took possession of it.

4. Mochimaru acquired no rights in the land from Ririnies.

5. Mochimaru returned to Japan in 1945.

CONCLUSIONS OF LAW

[1] 1. This action involves land in Not (sometimes spelled Net or Nett) Municipality, Ponape Island, admittedly a part of a larger tract known as Naniep, covered by a title document in the standard form issued by the German Government on Ponape beginning in 1912. Neither party is within the list of relatives entitled to inherit as of right from the last title holder shown by official endorsement on the title document. No determination by or on behalf of the "governor" as to who should succeed has been shown. It appears that there is a vacancy in the legal title. In accordance with the princi-

ples set forth in the Conclusions of Law by this court in a number of cases involving such vacancies, such as *Dieko Plus v. Pretrik*, 1 T.T.R. 7, and *Miako v. Pederen Losa*, 1 T.T.R. 255, unless and until the government interests itself in designating the owner for such land, the right of possession and use of the land is controlled by the worth of the claims to it.

[2] 2. The defendant Gregorio has admitted enough facts to indicate that the plaintiff Francisca is to be treated as the successor to the title to the whole of Naniep, unless and until the government acts on the matter, except for the special claims he makes to the part involved in this action. His main claim is that he bought this part from Mochimaru, who, he claims, bought it from Ririnies. The findings of fact make it clear that all the rights he could have gotten from Mochimaru in the land were under a lease which expired when Mochimaru returned to Japan in 1945, and that this lease came from Francisca.

[3, 4] 3. The defendant Gregorio has also raised a question as to the effect of a revocable permit, which he exhibited, from the American Administration to use this land. From the permit and Gregorio's own statements about it, however, it appears this was only a permit to exercise whatever use rights the Trust Territory or its Alien Property Custodian might have in the land. The facts shown do not indicate any such use rights. Clearly the permit does not constitute a determination as to who should succeed to the vacant title. It is therefore considered as of no significance as between the parties. It should be noted, however, that neither the Trust Territory nor its Alien Property Custodian was a party to this action and that no determination of their rights is made as against them.

4. The facts found and those admitted are considered to show that the plaintiff has strong ground for her claim to the land and that the defendant Gregorio has no valid ground for his claim to it.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties and all persons claiming under them, the plaintiff Francisca who lives in the Maitik Section of Not, is entitled to the possession and use of that part of the land known as Ninlepintau which was formerly cultivated by Ririnies, and constitutes a part of the larger tract known as Naniep, located in the Maitik Section of Not, Ponape Island, subject to the obligations imposed by the system of private land ownership set forth in the standard form of title document issued by the German Government on Ponape in 1912, as heretofore or hereafter modified by law.

2. The defendant Gregorio Ladore, who has been registered in the Paliais Section of Not, but stays much of the time in the Tolekei Section of Not, is permanently enjoined from interfering with the plaintiff Francisca's peaceful possession and use of the land described above.

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

4. No costs are assessed against either party.