

EI, Plaintiff

v.

INASIOS, Defendant

Civil Action No. 203

Trial Division of the High Court

Truk District

April 9, 1962

Action for determination of title to land on Dublon Island. The Trial Division of the High Court, Chief Justice E. P. Furber, held that although plaintiff had rights in land during German times, his actions since then were inconsistent with land ownership under Trukese custom; since he failed to claim land for so many years, he failed to sustain burden of proof that he had present interest in land.

1. Truk Land Law—Evidence of Ownership

Where complainant had rights in land during German times but his actions since then have been inconsistent with Trukese practice as to land ownership, and he has let matter rest for many years, court may find rights to land belong to another.

2. Real Property—Quiet Title—Laches

If person of full age and sound mind owns land, it is expected that he will assert claim to it in manner clear to anyone openly and peaceably using land.

3. Real Property—Quiet Title—Presumption of Ownership

Long continued peaceful possession and use of land under claim of rights is strong indication of ownership.

4. Trust Territory—Land Law—Limitations

Actions for recovery of land in Trust Territory are subject to limitation of twenty years, except that all causes of action existing on May 28, 1951, are deemed to have accrued on that date. (T.T.C., Secs. 316, 324)

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff has failed to sustain the burden of proof that he has any present interest in the land in question.

2. Neither the plaintiff nor any of his children have shown any sustained interest in this land since German times.

3. The only use which either the plaintiff or any of his children or his own lineage have made of the land since German times has been occasional picking of fruit there and one incident in Japanese times when the plaintiff picked fruit and broke down an adverse sign on the property but did not press his rights in the matter further. Since German times the land has been used by the defendant or those through whom he claims without any use by others sufficient to come to the attention of the defendant or his predecessors in interest except for the one incident in which the plaintiff tore down a sign as set forth above. The land was also replanted by the defendant following World War II, without any protest from the plaintiff until about 1959.

4. The use of the land by the defendant and his predecessors in interest has been openly adverse to the plaintiff's claims at least since early Japanese times.

5. The defendant's father's lineage, at a meeting of the lineage, at least purported to transfer the land in question in 1937 to the defendant.

OPINION

This action involves the ownership of a piece of land in Truk Atoll, which was used during most of the period of the Japanese Administration merely for the growing of breadfruit and coconuts and some farming.

[1] While the plaintiff in this action has shown pretty clearly that he had some rights in the land in German times, his actions since then have been so inconsistent with usual Trukese practice as to land ownership and he has let the matter rest for so many years, that it is difficult to believe that these rights were not either held under the defendant's father's lineage or transferred to that lineage, who actively used the land from early Japa-

nese times until they purported to transfer it to the defendant in 1937.

[2, 3] If a person, of full age and sound mind, owns land, it is to be expected that he will assert his claim to it in a manner that will make it clear to anyone who is openly and peaceably using the land. If he sleeps on his rights for many years and allows others to develop the land over a long period as apparent owners, a court cannot fairly in the public interest be expected to oust such apparent owners. This is especially so where written records of land ownership are scarce. Long continued peaceful possession and use of land under claim of right is a strong indication of ownership. *Aneten v. Olaf*, 1 T.T.R. 606. 19 Am. Jur., Equity, §§ 490-494.

[4] While not applicable to this action, attention of all concerned in similar situations is called to the fact that Section 316 of the Trust Territory Code imposes a limitation of twenty years from the time the cause of action first accrues for the bringing of actions for the recovery of land or any interest therein, except that under Section 324 causes of action which were in existence on May 28, 1951 (the date when this limitation was imposed by Interim Regulation No. 8-51) are considered for this purpose to have accrued on that date.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the part of the land known as Wisenpat, located in the Safei section of Dublon Island, Truk District, which part is shown in the name of "Ammot" on the attached sketch, is owned by the defendant Inasios, who lives in Roro Village, Dublon Island, as his individual land, and the plaintiff Ei, who lives in Penia Village on Moen Island, Truk District, has no rights of ownership therein.

2. This judgment shall not affect any rights of way there may be over the land in question.
3. No costs are assessed against either party.