

EBIL ADELBAI, et at, Appellants
v.
ADELBAI NGIRCHOTEOT, et al., Appellees
Civil Appeal No. 26
Appellate Division of the High Court
January 29, 1968

Appeal from judgment determining ownership of land. The Appellate Division of the High Court, D. Kelly Turner, Associate Justice, held that the disputed land was not lineage land but, as an exception to the general custom, land controlled by the clan which belonged to all clan members who had a voice in its control and use.

Judgment modified.

1. Appeal and Error-Scope of Review-Facts

An appellate court does not weigh conflicting evidence and if there is reasonable evidence in support of the trial court's findings and conclusions, they will not be disturbed.

2. Appeal and Error-Scope of Review-Facts

When a conclusion is made by a trial court without any or insufficient evidence to support it, an appellate court will consider the sufficiency of proof and examine the entire record.

3. Civil Procedure--Burden of Proof

The burden of proof rests with the party seeking affirmative relief.

4. Appeal and Error-Evidentiary Error

Where the affirmative obligation of proof was placed upon the wrong party, it was appropriate for the appellate court to reconsider all of the evidence to ascertain whether the conclusions of the trial court be sustained.

5. Palau Custom-Clans-Membership

The traditional Palauan clan of pre-contact times is composed of family lineages related by blood and members of that type of clan structure may not intermarry and their clan land is subject to ultimate control by the clan as a whole.

6. Palau Land Law-Clan Ownership-Transfer

Clan land could be alienated from clan control through the clan itself being assimilated by another clan when such action was considered advantageous due to declining membership.

7. Palau Land Law-Clan Ownership-Transfer

When "new" member lineages acquired lands within the clan the lineage had exclusive control over such land, the other lineages separately or comprising the remainder of the clan had no control over a lineage land as is the case of clan control in the traditional clans.

8. Palau Land Law-Generally

The generally recognized exception to exclusive land control by lineage is the clan chief's title land and taro paddy.

9. Palau Land Law-Chief's Title Land

Normally chief's title land becomes the residence of the clan titleholder when he assumes the title, even though he may, and usually does, have a home elsewhere.

10. Custom-Generally

There may be, and often are, exceptions to that which is recognized as general custom.

Assessor: HARUO I. REMELIHK
Counsel for Appellants: ITELBANG LUH
Counsel for Appellees: WILLIAM O. WALLY

Before FURBER, *Chief Justice*, TURNER, *Associate Justice*

TURNER, *Associate Justice*

This is an appeal from a judgment involving a parcel of land in Koror, Palau District, holding that the property is owned by the Oteot Lineage of the Ibuuch Clan of which the plaintiffs are members.

The plaintiffs below are appellees here and the appellants were defendants and will be referred to as plaintiffs and defendants.

Plaintiffs brought the action to establish their claim that the property belonged to the Ngermaduleyang Lineage of the Ibuuch Clan. Defendants, one of whom is Ngirausui, who is the holder of the chief's title, *Ngiraibuuch*, of the Ibuuch Clan, claimed in behalf of the clan that the property was chief's title land.

The Trial Division rejected the claims of both parties, holding, contrary to plaintiffs' claim, that Ngermaduleyang was the name of a house site and not the name of a clan lineage. The court also refused to agree with defendants' claim that the property was chief's title land.

The dispute arose between the parties when plaintiff Adelbai commenced building a house on the land. The defendants objected to the construction, claiming a clan member could not use or occupy chief's title land without express consent of the clan chief. Such land, the defendants insisted, is reserved for the use and occupancy of the clan titleholder, in this case, the defendant Ngirausui. See as to chief's title land: *Kisaol v. Charly Gibbons*, 1 T.T.R. 597.

The defendant Ngirausui and his predecessor *Ngiraibuuch* have not and did not live at Ngermaduleyang since World War II when the house built on stone platform was destroyed. It has not been rebuilt. The last *Ngiraibuuch* to live on the property was Sibeklii. Prior to Sibeklii becoming *Ngiraibuuch*, both plaintiff Adelbai and defendant Ngirausui lived at Ngermaduleyang with Klai, their father under the custom, who preceded Sibeklii as *Ngiraibuuch*.

Despite defendants' objections to plaintiff Adelbai's house building project, which did not deter the plaintiff from completing the house, defendants took no affirmative action to halt construction nor oust plaintiff from the premises.

Plaintiff Adelbai initiated the present action and asks to have defendants' claims, made to him during the house construction and prior to this case, held invalid. The suit is, therefore, in the nature of a quiet title action similar to proceedings of that nature employed in United States courts.

The original plaintiff, Adelbai, in addition to his claim of ownership by Ngermaduleyang Lineage, prior to bring-

ing this action, sought to fortify the lineage claim of Ownership by obtaining a quitclaim deed to the property in question and to a taro paddy from grantors disclosed by the evidence not to be strong members of the Ibuuch Clan and some of whom were non-members of the clan. The deed for this attempted conveyance was recorded with the Clerk of Courts for the Palau District on June 11, 1963, in Book 6, pages 5, 6, and 7.

The attempted transfer of the taro paddy was defeated in Palau Civil Action No. 189, brought by the present defendant Ngirausui, against the other plaintiff, Ngilas. That decision held the taro paddy belonged to the Ibuuch Clan and not the present plaintiffs-grantees. Because of that decision, the plaintiff Ngilas was made a party-plaintiff to this action originally filed only by plaintiff Adelbai.

The plaintiffs did not press any claim in this action under the deed. The trial court did not pass upon the validity of the deed, giving as its reason that the plaintiffs' grantors were not parties to this action. However, the prior decision in Civil Action No. 189 disposes of the validity of the deed. Whatever rights plaintiffs may have in the property in question in the present case, such rights are not derived from the recorded deed.

Both sides in this dispute claim their rights are derived from Techochou who, as *Ngiraibuuch* in olden times, acquired the land in dispute as a gift from the Ngetchedong Clan for his house site. A stone platform was built and a house built on the platform in which Techochou and many, although not all, succeeding *Ngiraibuuch* lived with their families. Many of these *Ngiraibuuch* were related to both the plaintiff Adelbai, who is titleholder in the Oteot Lineage in the Ibuuch Clan and defendant Ngirausui, who is titleholder of Ibuuch Clan.

An important element in the case is the undisputed fact that the land-Lot No. 1206 designated by the Japanese survey of 1938-1941-is listed in the *Tochi Daichio*, the land title book summary compiled with this survey, as Ibuuch Clan land under the administration of Sibeklii, who was living at Ngermaduleyang (Lot 1206) at the time of the listing and was the clan *Ngiraibuuch*.

Contrary to the defendants' claim that Lot 1206 was chief's title land, the *Tochi Daichio* listed another parcel, Lot 1334, as the chief's title land of the Ibuuch Clan. Except for Techochou, who later moved to Ngermaduleyang, no *Ngiraibuuch* of the clan has lived on Lot 1334. Many *Ngiraibuuch* did, however, up to and including Sibeklii, live at Ngermaduleyang.

It is evident from the testimony that at the time of the compilation of the *Tochi Daichio* the clan leaders met and agreed upon the listing of clan and lineage lands in the Japanese land book. It is evident that irrespective of the *Tochi Daichio* listing that Lot 1206 has, in fact, been used for many years as clan chief's house site.

The Trial Division's conclusions were:-

1. Ngermaduleyang (Lot No. 1206) was not the name of plaintiffs' lineage. It was not a lineage name, but the name of a house site of Ibuuch Clan.
2. Ngermaduleyang was not chief's title land. Another parcel, Lot 1334, as so designated in the *Tochi Daichio*, was chief's title land.
3. The Ngermaduleyang house site was Oteot Lineage land and since the plaintiff Adelbai was *Dingelius* of Oteot Lineage, he was entitled to control and occupy it.

[1] An appellate court does not weigh conflicting evidence and if there is reasonable evidence in support of the trial court's findings and conclusions, they will not be disturbed. *Hasumi Osawa and Kintoki Joseph v. Ernest Ludwig*, 3 T.T.R. 594. *Kenyl v. Tamangin*, 2 T.T.R. 148.

[2] However, when a conclusion is made without any or insufficient evidence to support it, the appellate court will consider the sufficiency of proof and examine the entire record.

[3] The position of the parties in this action—that is, the plaintiffs' effort to establish a right of occupancy which defendants insist is wrongful—is the reverse of what might be anticipated to be normal procedure, whereby the right of occupancy would be tested by an action to eject the plaintiff Adelbai. The trial court treated the action as if the affirmative burden of proof was upon the defendants, whereas the burden of proof rests with the party seeking affirmative relief, in this case and generally, the plaintiffs *Tasio v. Yesi and Neisech*, 3 T.T.R. 598.

[4] Since the affirmative obligation of proof was placed upon the defendants erroneously, we believe it is appropriate to reconsider all of the evidence to ascertain whether the findings and conclusions of the trial court in denying the claims of both parties, but also granting affirmative relief to the plaintiffs, may be sustained.

Since the plaintiff Adelbai presented his claim on the theory the land was owned by Ngermaduleyang Lineage, it is difficult to find support for the conclusion the land belonged to Oteot Lineage, even though plaintiff is the titleholder of that lineage.

It occurs to us we should accept the *Tochi Daichl'o* ownership designation for both Lot No. 1334, listed as chief's title land, and Lot No. 1206, listed as clan land, or we should reject both Japanese designations. It appears to be erroneously inconsistent to accept one *Tochi Daichio* listing against the defendants and reject the *Tochi Daichio* listing in favor of a contrary finding for the plaintiffs in the absence of compelling evidence to justify such distinction.

If, however, we say Lot No. 1206 was neither chief's title land, as claimed by the defendants, nor Oteot Lineage land as held by the trial court, but was, in fact, clan land as listed in the *Tochi Daichio*, we are confronted with a question of Palauan custom relating to landholdings in a clan constituted in accordance with the Ibuuch Clan organization.

[5] There are two general types of clan organization recognized under Palauan custom. The traditional clan of pre-contact times is composed of family lineages related by blood. Members of this type of clan structure may not intermarry and their clan land is subject to ultimate control by the clan as a whole.

Land Tenure Patterns, p. 296, et seq., describes land control in Palau this way:-

"In aboriginal Palau, land was divided into public domain and clan lands

"Clan lands (*chetemel a keblil*) comprised most of the private lands These included home sites, taro paddies, woodlots and palm forests. Clan lands were assigned to member lineages, the *talungalek*, each of which had its principal house site that generally bore the name of the lineage. . . .

"It would appear that the lineage could not of its own action alienate any of its lands without prior approval by the adult membership of the clan; and with the extinction of any of the member lineages, lands used by the extinct lineage reverted to clan control and reassignment to other lineages within the clan.

"The clan lands included two parcels of especial importance. These were the house site of the clan chief (*omesolel a blai*) and the chief's title taro paddy (*Ikul a dui*), which went with the title of clan chieftainship ideally occupied by the senior male member in matrilineal descent. . . . It is still important for clan prestige to maintain a house on the chief's title land, although in a number of cases, the residence of the clan chief, though not on the traditional house site, serves this purpose."

This recitation as to traditional clans whose members are related by blood does not consider the alternative clan

organizations made up of lineages from separate origins, not related by blood but only under the clan. Such is the Ibuuch Clan.

[6] This form of clan organization is mentioned in Land Tenure Patterns at p. 301, 302.

"Another means whereby land could be alienated from clan control was through the clan itself being assimilated by another clan when such action was considered advantageous due to declining membership"

Ibuuch Clan is now entirely composed of "new members". These members are "new" in the sense used in describing clan structure, since some clans, such as Ibuuch with only new members, consist of new members whose ancestors and predecessors have been in the clan for seventy years or more, since Spanish times.

[7] The trial assessor prepared a study of new member clans entitled "Migratory Analysis in Palau", detailing the organization of clans consisting of some or all new members, referred to as "*beches el yars*" (literally, new sails) as distinguished from the old or original clan members referred to as "*mechut el yars*" (literally, old sails). The new members of a clan, not related by blood to other lineages in the clan, could intermarry with members of other lineages within the clan. More importantly to the present case, when new member lineages acquired lands within the clan, the lineage had exclusive control over such land. The other lineages separately or comprising the remainder of the clan had no control over a lineage land as is the case of clan control in the traditional clans.

[8, 9] The generally recognized exception to exclusive land control by the lineages is the clan chief's title land and taro paddy. The question confronting us in this case is whether there are any other exceptions under the custom to exclusive lineage control. The trial court appeared

to believe not, since it assigned the control of the land in question to the Oteot Lineage even though plaintiffs did not claim control through Oteot Lineage, which conclusion also was contrary to the clan's own determination listed in the *Tochi Daichio*. Normally, but not always, the chief's title land becomes the residence of the clan titleholder when he assumes the title, even though he may, and usually does, have a home elsewhere.

An example of this situation is found in the present case. The defendant Ngirausui, is the holder of the clan title, *Ngiraibuuch*, and lives at Ngermechoet. He gives as his reason that the house on Ngermaduleyang was destroyed during World War II and has not been rebuilt. However, when the defendant Ngirausui was younger, he lived at Ngermaduleyang when Klai was *Ngiraibuuch*. In fact, plaintiff Adelbai Ngirchoteot and defendant lived at Ngermaduleyang together, when Klai was *Ngiraibuuch*. When Klai died, his family, including defendant, left Ngermaduleyang to live elsewhere. Sibeklii, who was living at Oteot, became *Ngiraibuuch* and moved to Ngermaduleyang.

The defendant Ngirausui testified the reason for the change was :- .

"We knew the property belongs to the man who bears the title. It was for the title bearer."

[10] This occurred prior to the Japanese survey. It is apparent that the designation of the disputed parcel as "clan land" in the *Tochi Daichio* at the time of the survey is an exception to the general custom that clans of independent lineages control land through lineages only, except for the chief's title land and taro paddy. It appears the actual practice within this clan was not in accordance with general custom. It is acknowledged that there may be, and often are, exceptions to that which is recognized as general custom.

Barnett in his "Palauan Society" at p. 93, 94 says:-

"Proprietorship followed devious courses due to intrigue, the lack of female descendants, and the youth or incompetence of heir. . . . There was a tendency for controls to be given to a single individual, both because he wished to enhance his position and because his dependents wished to see their resources concentrated."

The variations which may exist in land inheritance and control are also set forth in Land Tenure Patterns at p. 314:-

"Within the lineage and the clan, it is the members in matrilineal descent, collectively called the *ochel*, or the *tedlach* (literally 'one womb'), who *ideally* carry greater weight in the formulation of intragroup decisions and in the control of their collective wealth than those in the patrilineal descent, the *ulechel*, or those members without previous affiliations, as castaways, called the *ultechakl*. . . . The functioning of the system, however, presents a confused picture, even to Palauans,. . . ."

The "confused picture" is well illustrated in the present case by the testimony of some witnesses that there were seven lineages in the Ibuuch Clan (the witness Tellei so testified at transcript page 1) and by others that there were only three or four lineages in the clan (the defendant Ngirausui testified to four lineages at transcript page 69). Further confusion arises when we see from the testimony the clan elders met and decided to have the disputed land listed as "clan land" even though this may have been contrary to the general custom that in a clan of non-related lineages the lineages, rather than the clan, control the lands except for the chief's title house site and chief's taro paddy.

We conclude that exceptions to the general custom developed by actual practice in the clan are recognized and frequently occur.

Examining all of the evidence both as to practice in the Ibuuch Clan, with its separate lineages, as well as the general Palauan custom, it is evident the disputed land, Nger-

maduleyang, is not lineage land as held by the Trial Division but is, as an exception to the general custom, land controlled by the clan.

If the disputed land is not treated as clan land, then the only other conclusion to be reached is in accordance with defendants' claim that it is chief's title land, because it is quite evident it has been used as a residence and burial site for many Ibuuch Clan chiefs from Spanish times to at least World War II. However, nowhere in the record, nor in Palauan custom, is there any indication that any clan has two formally designated chief's title house sites. Under the circumstances, the disputed land should be considered as clan land. This, of course, does not preclude the clan members from meeting and resolving the question to their own satisfaction as to which of the two parcels, Lot 1206 or Lot 1334, should be considered chief's title land. This the clan may do, because of our conclusion that the trial court erred in determining the disputed parcel was a part of the Oteot Lineage lands.

Applying the Ibuuch Clan practice, as an exception to general Palauan custom, we are unable to point to any evidence to sustain the assignment of the disputed land to a lineage-Oteot or any other in the Ibuuch Clan. As clan land, it belongs to all clan members, who through their lineages, have a voice in its control and use.

The plaintiff Adelbai has built a house on the land under a claim of right which is not sustained by the evidence. He may use the land by occupying the house only with clan permission and upon such conditions and subject to such obligations to the clan as the clan may impose.

As to the plaintiff Ngilas who is using part of the disputed land for a garden, the same result is applicable to her, except it has been indicated the defendants have no objection to the use made by Ngilas.

ORDER MODIFYING JUDGMENT

The judgment of the trial court is modified in conformity with this opinion as follows : -

1. As between the parties and all persons claiming under them, Lot No. 1206, located in Korol' (*Tochi Daichio* reference), is the property of the Ibuuch Clan and the appellants and appellees, as individuals, have no rights therein save such rights as may be accorded them by agreement of the majority of the clan members expressed through the clan lineages.

2. If the use and occupancy of the land by the appellees has not been resolved within six (6) months from the date of this decision, either party may apply to the Trial Division of the High Court for an order appropriate to the mandate of this decision.

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

4. Costs are not awarded to any of the parties.