

IIILNASIA LIKIDIMUS, Plaintiff

v.

ALIDI LIKIDIMUS, Defendant

Civil Action No. 337

Trial Division of the High Court

Ponape District

March 28, 1969

Action to determine ownership of land in Sokehs, Ponape District. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that under land law in effect land would pass undivided to the oldest surviving son of the owner and would not pass to a woman or by will.

1. Judgments-Summary Judgment

Where factual admission, made by the pleadings and at pre-trial conference, leave no genuine issue as to material fact, the court may properly proceed to determine the issues of law and enter summary judgment thereon.

2. Ponape Land Law-German Land Title--Succession

Section 2. of the German land code specifically prohibited testamentary disposition and provided that the land should pass undivided to the oldest surviving son of the owner.

3. Ponape Land Law-German Land Title--Women's Rights

Women had no right of inheritance prior to Ponape District Order No.8-57, entered February 1, 1957. (Ponape District Order No.8-57)

4. Ponape Land Law-German Land Title--Wills

There could not be any disposition by will prior to Ponape District Order No.9-57, effective April 1, 1957. (Ponape District Order No.9-57)

BURNETT, *Associate Justice*

This is an action to determine conflicting claims as to the land Läfe No.2 located in the Lukunot Section, Sokehs, Ponape District. Following pre-trial conference plaintiff filed Motion for Summary Judgment.

[1] Where factual admissions, made by the pleadings and at pre-trial conference, leave no genuine issue as to any material fact, the court may properly proceed to determine the issues of law and enter summary judgment thereon.

The undisputed facts involved in this action may be summarized as follows: The last registered owner of Läfe, under the standard form German title document, was Sardi, who died about 1943. Plaintiff's father, Christian, was the only son to survive him. Defendant is Christian's elder sister, and claims that, pursuant to Sardi's will, she obtained the land on behalf of all of Sardi's children; that it was his intention the land pass in order of lineage succession, rather than in accordance with the law of inheritance. Christian lived on the land until his death in 1963.

The only issue, clearly one of law, is whether Sardi could legally dispose of Läfe by will in the manner claimed by the defendant. I conclude that he could not.

[2-4] Section 2 of the German land code specifically prohibited testamentary disposition, and provided that the land should pass undivided to the oldest surviving son of the owner. Women had no right of inheritance prior to Ponape District Order No.8-57, entered February 1, 1957, nor could there be any disposition by will prior to Ponape District Order No.9-57, effective April 1, 1957.

As a further consideration the claim made by defendant as to Sardi's wishes would, if given effect, substitute an entirely different system of land tenure for that set out

in the German code. Just such an attempt was rejected by the court in *Miako v. Losa*, 1 T.T.R. 255.

It follows that plaintiff's motion must be granted, and judgment entered for her.

On argument on the motion defendant asserted only that the defendant is widowed, has no land and consequently has rights in the land under Section 3 of the German land code. It is enough to say that such rights, if claimed by the defendant or any other member of the family, are not in issue in this action, and consequently are not disturbed by this judgment.

It is, therefore, ordered, adjudged, and decreed as follows:-

1. As between these parties and all those claiming under them, the land known as Läfe No.2, Lukunot Section, Sokehs, Ponape District, is owned by the plaintiff Ikinasia Likidimus with the same rights and subject to the same obligations as if her name were registered on the German land title document.
2. No costs are assessed against either party.