UCHELIEI GIBBONS, Appellant
v.
OWANG LINEAGE, et al., Appellees

Civil Appeal No. 39
Appellate Division of the High Court
May 22, 1970

Trial Court Opinion—3 T.T.R. 560

Appeal on action for ejectment. The Appellate Division of the High Court, Robert K. Shoecraft, Chief Justice, held that as an action of ejectment could not be considered as a substitute for an appeal from a land title determination, trial court was without jurisdiction to consider the action as an independent action for relief from judgment or to make a finding as to determination of ownership.

Judgment modified and affirmed.

1. **Evidence—Statements of Counsel**

Statements of counsel, unless made while testifying under oath, are not evidence and may not be considered as such.

2. **Trust Territory—Land Law—Determination of Ownership**

Appeal is the proper procedure prescribed for bringing a Land Title Officer's determination before the High Court and a determination of ownership under Office of Land Management Regulation No. 1, unappealed from, has a standing similar to a judgment between the parties. (Office of Land Management Regulation No. 1)

3. **Trust Territory—Land Law—Determination of Ownership**

An action for ejectment can in no way be considered as a substitute for appeal from a Land Title Officer's determination of ownership. (Office of Land Management Regulation No. 1)

4. **Judgments—Res Judicata**

Public policy and the interests of litigants require that there be an end to litigation which, without the doctrine of res judicata would be endless.

5. **Judgments—Res Judicata**

Doctrine of res judicata rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigated, or had an opportunity to litigate, the same matter in a former court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent.

Counsel for Appellant: JOHN O. NGIRAKED
Counsel for Appellees: WILLIAM WALLY

Before SHOECRAFT, *Chief Justice*, BURNETT, *Associate Justice*, CLIFTON, *Temporary Judge*

SHOECRAFT, *Chief Justice*

OPINION OF THE COURT

This is an appeal from the judgment entered in Palau District Civil Action No. 370, 3 T.T.R. 560:—

"1. That Owang Lineage of the Ikelau Clan is the owner of the land Isau, Koror, Palau District, being designated Lot 902 in the *Tochi Daicho,* and that Rose Kebekol may administer the land in behalf of the lineage.

2. That Aís, the son of Techiau Ngiraikelau, is the owner of the land Malk, Koror, Palau District, being designated Lot 1062 in the *Tochi Daicho.*

3. That the Isau Lineage and the defendant Ucheliei Gibbons have no rights, title or interest in either parcel of land except as may be derived from the above named owners."

Appellant, Ucheliei Gibbons, was made a party defendant in the original action as a result of a pre-trial order entered in the case. On trial of this matter, the original plaintiff and defendants stipulated that neither side had a claim against the other, and that both would support the *Tochi Daicho*, the Japanese land summary listing of the two parcels in dispute. Ucheliei Gibbons is the sole appellant herein, and her basic contention is that this matter was previously settled by the judgment entered on March 29, 1966, in the Trial Division of the High Court, Palau District, in Civil Action No. 319 (not reported in T.T.R.). The defendants in Civil Action No. 319 are the plaintiffs in Civil Action No. 370 with which this appeal is concerned, and the judgment in Civil Action No. 319, in effect, confirmed Determination of Ownership No. G-8, filed November 13, 1956, that the land known as Isau (Lot 902) is owned by the Isau Lineage and may be administered by Ucheliei Gibbons.

This action was a complaint for ejectment of the defendants from the land designated as Lot 1062 in the *Tochi Daicho*. In addition to praying for ejectment of the defendants, plaintiffs prayed "and that they could discuss any differences between them and Ucheliei Gibbons concerning the land Isau." The complaint makes no other reference to the land Isau. However, at the pre-trial conference the court entered an order for joinder of Ucheliei Gibbons on the ground that Lot 902 had been adjudged, in Civil Action No. 319, to be the property of the Isau Lineage and the said Ucheliei Gibbons named administrator thereof, and that the said Lot 902 was indirectly involved in the present action for ejectment of the defendants from Lot 1062. It is noted that the judgment

entered on March 29, 1966, in Civil Action No. 319, made no mention of Lot 1062.

The opinion of the trial court states, "Upon plaintiff's motion, the court proceeded with trial of the present case, as an independent action to obtain relief from the judgment in No. 319, upon the grounds of mistake, newly discovered evidence and misrepresentation of an adverse party (the present defendant Gibbons who was the plaintiff in No. 319) in accordance with Rule 18(e), Rules of Civil Procedure." 3 T.T.R. at 563, 564. Nowhere in the record does such a motion appear, any indication that a hearing was held on it, nor is there any testimony or other evidence in the record establishing the above mentioned grounds. The only mention is the following statement found on page 1 of the Transcript of Evidence: "The court cited Rule 18(e) of the Rules of Civil Procedure, stating that this rule also permitted the court to entertain an independent action to relieve a party from judgment if filed within a year from entry of judgment, and that this action had been timely filed."

[1] The court then directed counsel for plaintiff to proceed by first taking up the grounds that gave the court jurisdiction to consider relief from the judgment in Civil Action No. 319. In his opening statement counsel stated that their (plaintiff's) basis for the stipulations in Civil Action No. 319 had been that if Isau was to be given to the then plaintiff (appellant herein), Malk be given to the Owang Lineage. We have been unable to find any evidence in the record establishing the stated grounds for relief pursuant to Rule 18(e) and, of course, statements of counsel, unless made while testifying under oath, are not evidence and may not be considered as such.

The trial court sets out that no appeal was taken from Determination of Ownership No. G-8, but proceeded, nevertheless, to hold that the title determination was er-

roneous and that the judgment in Civil Action No. 319 compounded the error. Although we cannot predict what might have been the result if the trial court had been able to reach the merits of this case, or had confined the trial to Lot 1062, we must conclude that the trial court was without jurisdiction to consider the present action as an independent action for relief from judgment, or to make a finding as to Determination of Ownership No. G-8.

Section 13 of Office of Land Management Regulations reads as follows:—

> *"Sec. 13. Determination of Ownership, effect.*
>
> Unless and until the decision of the District Land Title Officer is reversed or modified by the High Court, the legal interests of persons designated as owners shall be as shown on the determination of ownership, ..."

[2, 3] Section 14 of the same regulation provides that any person concerned may appeal from a District Land Title Officer's determination of ownership to the Trial Division of the High Court at any time within one year from the date that the determination is filed in the office of the Clerk of Courts. Determination of Ownership No. G-8 was filed in the office of the Clerk of Courts, Palau District, on November 13, 1956, and no appeal was taken from that determination. Appeal is the proper procedure prescribed for bringing a Land Title Officer's determination before the High Court and a determination of ownership under Office of Land Management Regulation No. 1, unappealed from, has a standing similar to a judgment between the parties. See *In Re De Castro*, 3 T.T.R. 446, *Rudimch v. Chin*, 3 T.T.R. 323. The present action can in no way be considered as a substitute for appeal.

[4, 5] The parties in the instant case are the same parties involved in Civil Action No. 319; this court adopts the holding of the court in *Tuchurur v. Ruchuld*, 2 T.T.R. 576, that "Public policy and the interests of litigants alike

require that there be an end to litigation which, without the doctrine of res judicata would be endless. The doctrine of res judicata rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigated, or had an opportunity to litigate, the same matter in a former court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent."

A careful review of the Transcript of Evidence leads us to the conclusion that the evidence amply supports the finding of the court with respect to Lot No. 1062.

In view of the above, the judgment of the trial court is modified by setting aside and nullifying paragraphs numbered 1 and 3 of said judgment which read as follows:

"1. That Owang Lineage of the Ikelau Clan is the owner of the land Isau, Koror, Palau District, being designated Lot 902 in the *Tochi Daicho,* and that Rose Kebekol may administer the land in behalf of the lineage.

3. That the Isau Lineage and the defendant Ucheliei Gibbons have no rights, title or interest in either parcel of land except as may be derived from the above named owners."

As so modified, the judgment of the trial court is affirmed.