

SOHNA ALTEN, Plaintiff
v.
ALISON ALTEN and IGNASIO HINGA, Defendants
Civil Action No. 379
Trial Division of the High Court
Ponape District
June 17, 1970

Motion for summary judgment in action to determine title to property in Lehiak Section of Madolenimw. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that as presumption of validity of Japanese registration of land in question had not been overcome and was proper, there was no material issue of fact and motion would be granted.

1. Judgments—Summary Judgment

The function of a summary judgment proceeding is to determine whether there is a material issue of fact to be tried; if there is none, the court may proceed to determine the controversy as a matter of law.

2. Ponape Land Law—Japanese Survey

A division of land approved by the Japanese surveyors was to be absolute and each holder of a part of a divided lot was thereafter to have as complete control over his part as the owner of the whole would have over the whole if there had been no division.

3. Ponape Land Law—Japanese Survey

Official Japanese land survey on Ponape Island, which began about 1941, was intended to form the basis for the issuance of new title documents, and there is a strong presumption that the determinations made in this survey were correct unless the contrary is clearly shown.

4. Ponape Land Law—German Land Title—Women's Rights

Under the German land law on Ponape women were prohibited from owning land.

5. Ponape Land Law—Transfers to Women

Under the Japanese administration on Ponape land transfers to women, with registration of title in their name, were permitted.

BURNETT, Associate Justice

Plaintiff brought this action, claiming title to the land Likinlong, Lehiak Section of Madolenimw, Ponape District, covered under German Deed No. 229, and to set aside a

sale of a portion of the land by defendant Alison Alten to Ignasio Hinga, who was added as a party defendant by Order of the Court following pre-trial conference. The defendants have moved for summary judgment.

[1] Simply stated, the function of a summary judgment proceeding is to determine whether there is a material issue of fact to be tried; if there is none, the court may proceed to determine the controversy as a matter of law.

As developed by the pleadings, through pre-trial conference, and stipulation of counsel, the facts are clear. Likinlong was originally registered, under German Deed No. 229, in the name of Melia. Melia had one daughter, who was the plaintiff's mother and the wife of defendant. The Japanese survey, conducted in Ponape in 1941 and 1942, divided the land into four lots. Plaintiff was registered as the owner of lots number 473 and 474, and defendant Alison Alten as owner of lots 535 and 536. In 1969 Alison sold lots 535 and 536 to Ignasio Hinga.

[2] The law is equally clear as to the effect to be given, under prior decisions of this court, to a division approved, and title determination made, by the Japanese surveyors.

"The court holds that the natural presumption, under all the circumstances, is that a division approved by the Japanese surveyors was to be absolute, and that each holder of a part of a divided lot was thereafter to have as complete control over his part as the owner of the whole would have over the whole if there had been no division." *Teresita v. Ioakim*, 1 T.T.R. 147, 149.

[3] In *Belimina v. Pelimo*, 1 T.T.R. 210, 213, the court said:—

"The court takes notice that the official Japanese survey of private lands on Ponape, which began about 1941, was carried on with considerable care and publicity, after extended study of land rights on Ponape, that it was intended to form the basis for the issuance of new title documents, and that the government surveyors engaged in it were given broad powers. The court therefore holds that there is a strong presumption that the determinations made in this survey were correct unless the contrary is clearly shown."

Plaintiff alleges, however, that defendant was registered as owner of the lots in question in name only since a woman could not be registered on land documents at the time of the survey. It is therefore his claim that his mother was the real owner, and that he succeeded her on her death, notwithstanding record title in defendant Alison.

I do not consider plaintiff's allegation, that his mother was the true owner, as presenting a material issue of fact which would require trial, for the reason that he is in legal error in stating that women were not permitted registration at the time of the Japanese survey.

[4, 5] It is true that under the German land law, women were prohibited from owning land. A major change was instituted by the Japanese administration, however, in connection with the survey beginning in 1941, at which time land transfers to women, with registration of title in their name, were permitted. Such registration, taking place in the survey of 1941 and 1942, has been found by this court in numerous cases. See for example: *Makdalena v. Ligor*, 2 T.T.R. 572. *Selina Max v. Salpin Sale*, Ponape District Civil Action No. 247, Not Reported.

Accordingly, I hold that the presumption remains that the registration of title to lots 535 and 536 in defendant Alison Alten by the Japanese surveyors, following division of the land between him and the plaintiff was a proper determination. There being no material issue of fact raised which would require trial, defendants are entitled to summary judgment.

It is ordered, adjudged, and decreed:—

1. As between these parties and all persons claiming under them, lots 535 and 536 of the land Likinlong, Lehiak Section, Madolenimw, Ponape District, registered in the District Land Office in the name of Alison Alten, are owned by Ignasio Hinga pursuant to his purchase thereof from

the said Alison Alten, and the plaintiff Sohna Alten has no rights of ownership therein.

2. No costs are assessed against any party.