OSAKI, Plaintiff
v.
PEKEA, Defendant
Civil Action No. 435
Trial Division of the High Court
Truk District
July 31, 1970

Action to determine ownership of land on Tol Island, Truk District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that from all the evidence defendant's casual and permissive use of the land in question was not sufficient to ripen into title as against the convincing proof of acquisition of the land by plaintiff and its subsequent use by plaintiff's predecessor and plaintiff's extended family.

1. **Trust Territory—Land Law—Adverse Possession**

Adverse possession, under which one can establish ownership by holding adverse possession of land under claim of ownership for the period of the statute limiting the bringing of actions for recovery of land cannot be applied in Trust Territory until 1971 because present twenty year limitation went into effect in 1951 and began to run at that time as to causes of action then existing. (T.T.C., Secs. 316, 324)

Real Property—Quiet Title—Laches

The fact that claimant harvested food for his use on adjoining lands did not establish the "open, notorious, exclusive and hostile possession" required to obtain title by either adverse possession for the statutory period or by laches for an equivalent period.

Real Property—Quiet Title—Laches

Where occupation of land was with consent it was not hostile and adverse.

Courts—Community Courts

Community courts do not have jurisdiction to determine land ownership.

Real Property—Lost Grant

Defendant's casual and permissive use of land in question was not sufficient to ripen into title as against the convincing proof of acquisition of land by plaintiff and its subsequent use by plaintiff's predecessor and extended family.

6. **Courts—Jurisdiction**

When it is possible for parties to resolve their differences in accordance with traditional custom it is desirable that they do so.

7. **Courts—Jurisdiction**

When parties are unable to reach any agreement then it is the obligation of the court to resolve the dispute upon the best evidence presented it.

Assessor:	SABASTIAN FRANK
Interpreter:	ROKURO M. BERDON
Reporter:	SAM K. SASLAW
Counsel for Plaintiff:	FUJITA PETER
Counsel for Defendant:	NAIDARO NAMONO

TURNER, *Associate Justice*

This case was referred to District Court Judge Ichiro Moses as Master to take testimony and make findings. After preparation of the pretrial order, to which the parties agreed by stipulation, and during the course of consideration of a petition by Timas for intervention, the defendant objected to further proceedings before the Master because of his membership in plaintiff's clan. Without passing on the propriety of defendant's claim of disqualification, this court ordered the case returned for trial.

Intervention of Timas was again petitioned at the commencement of trial on the ground he was the owner of a portion of the land Ipat. Upon plaintiff's stipulation that he did not dispute Timas' claim and that plaintiff's only claim to Ipat was to a portion not claimed by Timas but which was claimed by defendant, who also claimed Timas' division, the motion to intervene was denied. Any conflict in ownership of the upper division of Ipat by Timas, not disputed by plaintiff, as against defendant who claims all of Ipat, was held to be a matter for determination between Timas and defendant.

This dispute arose over ownership of the following four parcels of land in Foup Village, Tol Island, Truk District lagoon:—

1. The middle portion of the land known as Ipat claimed by plaintiff who also admitted ownership of the lower division of Ipat by defendant and who also stipulated Timas owned the upper division.

2. The land known as Fauk.

3. The land known as Neachong.

4. The land known as Messa.

FINDINGS OF FACT

1. Inapi, the sister of Chior and Sutok, was the owner of the land Ipat, having acquired it from Rengut when he, with acquiescence of the Achau Clan or Lineage distributed clan land. Inapi transferred the middle portion of Ipat in dispute to Sutok who transferred to Osaki, the plaintiff.

2. Chior, father of defendant, transferred the lower portion of Ipat acquired from Inapi to defendant.

3. Defendant lived on Ipat during the Japanese administration until after World War II when he built a residence on Neachong. Consent to occupancy of Neachong was given by Resapin, younger brother of plaintiff, who plaintiff also represented in this action.

4. Neachong was purchased by plaintiff's predecessor, Sutok, from Iakopus for the sum of 60 *yen* near the close of the Japanese administration but prior to World War II.

5. Commencing in 1942 through 1945 the land Neachong was farmed by three Okinawans and their Trukese wives. Rental payments were made to Sutok.

6. The land Messa was purchased from Ramen by Sutok in exchange for a thatch house with a tin roof.

7. The land Fauk was lineage land transferred, with lineage consent approximately in 1925, by Rengut to Sutok, who gave it to his children, Osaki, Resapin and Ines.

Osaki represents his brother and sister and their families. The defendant's claim that he bought the land from Inapi and that he exercised ownership and control over it since early Japanese times is not sustained by the evidence.

OPINION

Because the land in dispute was lineage land transferred to individual members more than half a century ago and further transferred some 40 years ago during the Japanese administration it is difficult, as is usual in such cases as these, to trace the transfers with clear and certain evidence. The best that the court can do is to accept the probable and reasonable chain of transfer.

The task has been made more difficult in this case by the defendant's claim that he acquired the lands in question by purchase or gift in identically the same manner, for approximately the same consideration and at approximately the same time as claimed by the plaintiff. The court is convinced the defendant has adopted the facts attendant upon the several transfers to plaintiff to establish the defense claim. The findings of fact resolve this conflict.

Defendant, through his counsel in final argument, offered the suggestion that because of his use and occupancy of the land for the 20-year period of the limitation within which suit may be brought by an owner for recovery of his land occupied by another, he has acquired a presumptive right or title by adverse possession.

[1] What was said in 1963 in *Kanser v. Pitor*, 2 T.T.R. 481 at 487, is equally applicable to the defendant's claim:—

"The doctrine of adverse possession, under which one can establish ownership by holding adverse possession of land under claim of ownership for the period of the statute limiting the bringing of actions for recovery of land or rights in it, does not yet itself apply in the Trust Territory, but will in 1971 under the terms of the present law. The reason is that our twenty (20) year

limitation on the bringing of land actions, now contained in Section 316 of the Code, did not go into effect until May 28, 1951, and only began to run on that date as to cause(s) of action then existing, because of the provision in Section 324 that such existing causes of action shall be considered for this purpose to have accrued on that date."

This court went on to say in *Kanser* that "the doctrine of laches or stale demand" does apply if the circumstances would have warranted the application of the principles of law for the acquisition of title by adverse possession. The principle relied upon in *Kanser* does not apply, however, to the facts in this case.

Plaintiff's testimony shows that he, his family including brother and sister and their children, plus their predecessor Sutok "worked" the land from the time of its acquisition during the Japanese administration. Such use was interrupted during World War II when the land was farmed for food for Japanese troops. After the war, plaintiff and those he represents, continued their use of the land until serious dispute as to ownership arose with the defendant in recent times (during the 1960's).

[2] Defendant's occupancy of Ipat prior to the war was consistent with his ownership of a portion of it. That he did not own all of it was demonstrated in several instances by his testimony and that of his witnesses (including his wife who asserted an ownership in herself). The fact he also harvested food for his use on adjoining lands does not establish the "open, notorious, exclusive and hostile possession" required to obtain title by either adverse possession for the statutory period or by laches for an equivalent period. *Laurance v. Tucker* (Or.), 85 P.2d 374, 378.

[3] After the war defendant's occupancy of Neachong was with consent of plaintiff's group and therefore was not hostile and adverse. The evidence shows that he and his

group worked together with plaintiff's group on Neachong.

The possession demonstrated here is similar to and susceptible to application of the rule of the Federal Court in *U.S. v. Fullard-Leo*, 133 F.2d 743, relating to the U.S.-Hawaii claim to Palmyra Island as against claim of private ownership established by adverse possession. The court said:—

"While there was some evidence of possession, there is no proof that it was adverse, exclusive or uninterrupted within the meaning of the rule."

It is noted that possession of three of the four parcels in dispute was interrupted by Japanese or Okinawan occupancy during the war. This, of course, was absent any consent of either plaintiff or defendant. Plaintiff, however, did collect rental for the Okinawan farming of Neachong and defendant claims to have collected damages for trees cut down by the Japanese.

The primary argument in behalf of defendant's claim was his assertion he collected payments by the Japanese for trees cut on three of the four parcels in dispute. This would have asserted a claim of ownership during the war if the evidence had demonstrated the payments were for trees cut from the lands in question. It does not. Defendant's assertion that he received two payments amounting to 200 *yen* without any indication of how many trees were cut and where they were cut from is entirely inadequate to sustain an ownership claim.

[4] Subsequent attempts to assert ownership in recent years do not establish the period necessary for either laches or adverse possession. Even this evidence, by the defendant's own statement, did not sustain ownership. This evidence related to defendant's conviction for malicious mischief for burning trees on Ipat in 1962. The judgment was in the Tol community court which does not have jurisdiction to determine land ownership. However, a crim-

inal conviction of an accused for burning trees on his own land is altogether improbable.

[5] From all the evidence it must be concluded defendant's casual and permissive use of the land in question is not sufficient to ripen into title as against the convincing proof of acquisition of the land by the plaintiff and its subsequent use by the plaintiff's predecessor and the plaintiff's extended family.

[6, 7] Defendant's counsel argued that because this litigation involved a dispute between family members and that the plaintiff and defendant are brothers under the custom even though they are not of the same lineage this court should not rule in the matter so that the parties could settle their claims out of court. When it is possible for parties to resolve their differences in accordance with traditional custom it is desirable that they do so. This court has stated this proposition many times in its decisions. It also as been stated that when the parties are unable to reach any agreement then it is the obligation of the court to resolve the dispute upon the best evidence presented it. It is obvious this was a matter properly before this court for decision. Plaintiff and defendant have been "feuding" for 10 years. Defendant burned trees on plaintiff's land. Plaintiff pulled up trees defendant planted. Evidence also shows partisans of the two sides have engaged in public disorder probably stemming from a boundary dispute. It is high time defendant's claims be terminated and plaintiff's right to peaceful enjoyment of the land sustained in this court, rather than reliance on lineage or family action.

JUDGMENT

1. The plaintiff Osaki and all those claiming under him are hereby declared to be the owners of the middle division of the land Ipat, the land Fauk, the land Neachong and the land Messa in Foup Village, Tol Island, Truk District.

2. The defendant Pekea and those claiming under him have no ownership interest in the above-named lands except that he has a right of occupancy until it is revoked on the land Neachong.

3. That the defendant is the owner of the houses on the land Neachong and is entitled to remove them when and if he and those claiming under him no longer occupy the land.

4. That the judgment shall not affect any rights-of-way that may exist over said lands.

5. No costs are assessed.