NIPPENA, Plaintiff

v.

ITE, Defendant

Civil Action No. 514

Trial Division of the High Court

Truk District

January 14, 1971

Action to determine ownership of land Neson, Mochon Village, Uman Island. The Trial Division of the High Court, H. W. Burnett, Chief Justice, held that where person held former lineage land as his own individual land upon his death it was inherited by his children.

1. **Truk Land Law—Lineage Ownership—Transfers**

   When for some reason an exchange of land from a father to his child, between two lineages, has not been made and the land is a simple gift from a father to his child, then the child's matrilineal family is not considered to have any title to the land.

2. **Truk Land Law—Lineage Ownership—Transfers**

Where there was a simple gift of lineage land from a father to his child, disposition of the land rested entirely with the donees and there was no obligation to consult with the lineage at any time.

3. **Truk Land Law—Individual Ownership—Distribution Among Children**

Where person held former lineage land as his individual land with full title, on his death it was inherited by his children.

Assessor: JUDGE SOUKICHI FRITZ
Interpreter: SABASTIAN FRANK
Counsel for Plaintiff: SOIEN
Counsel for Defendant: SOICHI

BURNETT, *Chief Justice*

This action involves conflicting claims of title in the land Neson, located in Mochon Village, Uman Island, Truk District. The parties agree that the land was originally owned by the Fesinom lineage, and was transferred, together with the land Neireno, by Fanan, a member of that lineage, to his children, Nito and Nikopotan. Plaintiff is the daughter of Nikopotan, and claims on behalf of the Wito lineage. Defendant, the son of Nito, claims on behalf of the children of Nito.

Little evidence was presented concerning the transfer from Fanan to his children, and plaintiff's testimony on this was conflicting. Her consistent claim was that the land was given to Nito and Nikopotan, and no one else, though at one point she testified that the land was given in the name of their mother, who was of the Wito lineage.

Fanan's gift of the land of his lineage to his children is entirely consistent with custom. See Land Tenure Patterns, Vol. 1, p. 169, which describes the apparently ancient practice of men dividing their shares of lineage land between the lineage and their children. Under some circumstances the lineage may retain some rights in the land, but no such rights have been asserted as to Neson.

There may also be some such transfers which give the children's lineage rights in the land, for example, where there is an exchange of lands between the two lineages. Nothing of the sort appears in this instance, and I find that there was a gift of the land to Nito and Nikopotan, with no rights accruing to anyone else.

[1] "When for some reason such an exchange has not been made (this applies also to those other islands throughout the district where exchange is not customary) and the land is a simple gift from a father to his child, then the child's matrilineal family is not considered to have any title to the land." Land Tenure Patterns, Vol. 1, p. 171.

[2] Disposition of the land rested entirely with Nito and Nikopotan, and there was no obligation to consult with the lineage at any time.

Plaintiff next contends that Nito had no desire to take possession of either Neson or Neireno, but that he insisted they be held by Nikopotan for their lineage. She, and other witnesses, all members of Wito lineage, testified that even at the time of his death he renounced any claim to the land for himself or his children, and agreed that it belonged to the lineage. Following Nito's death, members of the lineage decided that Neson should be held by the Plaintiff Nippena.

Plaintiff's claim is so contrary to long recognized custom of the Trukese people as to be unworthy of belief. That a man should so completely ignore the interests of his children is unthinkable in the absence of clear and compelling evidence.

[3] Defendant's claim can be simply stated and I find it to be consistent with custom and supported by the evidence. Fanan transferred the two lands to Nito and Nikopotan, who later divided them, Nito taking Neson, and Nikopotan taking Neireno which is still held by plaintiff. Nito thus

held Neson as his individual land, with full title; on his death it was inherited by his children, represented here by the defendant Ite.

It is, therefore, ordered, adjudged, and decreed:—

1. As between these parties and all those persons claiming under them, the land Neson, Mochon Village, Uman Island, Truk District, is owned by the children of Nito, represented in this action by his son Ite.

2. Defendant is awarded costs provided he files an itemized statement within thirty days.