

DUGUWEN, Plaintiff
v.
DOGNED, Defendant
Civil Action No. 3
Trial Division of the High Court
Yap District
February 28, 1955

Action to determine rights to land in Ruul Municipality, in which plaintiff claims right to exclusive possession of land as member by adoption of former owner's family, to exclusion of members by blood of former owner's family. The Trial Division of the High Court, Chief Justice E. P. Furber, held that land is owned jointly by family group of which both plaintiff and defendant are members.

1. Yap Land Law—Patrilineal Ownership

Traditional method of land ownership in Yap is by family or household groups which hold right to immediate possession and use but whose possession is frequently subject to rights in persons outside family.

2. Yap Land Law—Patrilineal Ownership—Use Rights

Although member of family or household having use rights in land in Yap may refer to himself as "owner," from Yapese point of view this does not exclude possibility of several others having similar or other rights in same land at same point of time.

3. Yap Land Law—Patrilineal Ownership

Use of term "owner" in regard to piece of land in Yap is misleading.

4. Yap Land Law—Patrilineal Ownership—Use Rights

Under Yap custom, several people may have right to take from particular piece of land without having to make specific arrangement about it between themselves, and they have implied obligation to do so in way which will not upset others having rights in the land.

5. Yap Land Law—Patrilineal Ownership—Supervision

Under Yap custom, it is generally expected that oldest capable male in family, as kind of trustee, will supervise use rights in land with proper regard for reasonable needs of rest of family and subject to family's control, to whose wishes he is expected to yield if contrary to his own.

6. Yap Land Law—Patrilineal Ownership—Use Rights

Under Yap custom, in case of disputes between different persons having right to use same land, it is generally possible for parties to secure help of village leaders in bringing about agreement.

7. **Yap Land Law—Patrilineal Ownership**
Under Yap custom, inheritance of land rights continues largely within patrilineal extended family.
8. **Yap Land Law—Patrilineal Ownership—Use Rights**
Under Yap custom, although former holder of use rights in land may express desire as to disposition of rights on his death, his desire is not absolutely binding, although an important factor to be considered by family in determining future control of land.
9. **Yap Custom—Married Women**
Under Yap custom, married woman is expected to obtain her subsistence primarily from lands in which her husband has rights and from those lands, if any, in which rights have been set off or given to her by agreement of her patrilineal extended family in connection with her marriage.
10. **Yap Custom—Married Women**
Under Yap custom, married woman during marriage often ceases to be member of family group of which she was part before her marriage, and becomes instead associated with her husband's family group.
11. **Yap Custom—Married Women**
Under Yap custom, when woman's husband is absent and she remains his wife, various arrangements are often worked out for her subsistence.
12. **Yap Land Law—Patrilineal Ownership**
Yapese land usage is extremely flexible and matter of land rights within particular family group are normally controlled by family agreements.
13. **Yap Land Law—Patrilineal Ownership—Use Rights**
Under Yap custom, when family is unable to agree on rights in land after seeking advice of local leaders, there is no provision in custom for settling matter other than by fighting.
14. **Yap Land Law—Patrilineal Ownership—Use Rights**
It is duty of court under Trust Territory law to determine matter of rights in land under Yap custom in order to avoid danger of physical conflict or serious injustice.
15. **Yap Land Law—Patrilineal Ownership—Use Rights**
Where both parties to land dispute in Yap have right to use land, they must do so in proportion to their respective needs and as long as they perform their traditional kinship obligations.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff Duguwen has failed to prove any gift or other transfer to her or her father, Guwaazag, of such rights in the land in question as would exclude the defendant Dogned from holding similar rights.

2. At the time of Betin's last illness (in the 1930's) the part of her family related to her by blood and the part related to her only by adoption were living and working together as one extended family and were cooperating in taking proper care of her without any trouble between them.

3. Betin's instructions to those who were staying with her during her last illness indicate a clear desire by her that the part of her family related to her by adoption (now represented by Duguwen) should share in the lands in question as members of her family, but they fail to indicate any desire by her to cut off from inheritance the members of her family connected with her by blood (now represented by Dogned).

4. From the time of Betin's death in the 1930's until the death of Guwaazag on January 21, 1950, both the part of Betin's family related to her by adoption only and that part related by blood continued to work together and use the lands in question together as one family without any trouble between them.

5. Instructions which Guwaazag gave to those who were with him in his last illness indicate a clear desire and expectation by him that the part of the family related to Betin by blood would continue to have an interest in the lands in question after his death.

6. The plaintiff Duguwen is married, but her husband is under treatment at the leprosarium at Tinian.

CONCLUSIONS OF LAW

1. This action involves primarily a dispute as to whether a part of Betin's family related to her by adoption only has obtained exclusive possession of the rights formerly held by her or her mother in certain lands in Yinuf Village, Ruul Municipality, in the Yap Islands, and a counter claim that the plaintiff Duguwen has, at least temporarily, lost any right to use the lands in question without the consent of the defendant Dogned, because Duguwen is married.

[1] 2. The traditional method of land ownership in Yap is by family or household groups which hold at least the right to immediate possession and use, but subject frequently to certain rights in people outside that family, the exact effects of which are very difficult to state in American terms. Two of these rights which are of considerable importance are those of the "gililungun" or "pilung" and the "mafen". Those interested in a much fuller description of Yapese land concepts than is given here are referred to the mimeographed report on "Yapese Land Ownership and Inheritance Customs" by Francis B. Mahoney, former Yap District Anthropologist, a few copies of which are available in the Island Affairs Office at Yap. The "gililungun" is described in a glossary supplied by Mr. Mahoney as, "(lit: 'strong is his voice') eminent domain rights over land because of political authority". So far as the court can ascertain, the term "pilung" is practically interchangeable with "gililungun", although said to be less exact. Both terms are frequently translated as "chief of the land". "Mafen" is described in Mr. Mahoney's glossary in part as, "persons related through the female line in a tabinaw patrilineage, having rights of expropriation without normal usufruct". "Tabinaw" refers sometimes to the patrilineage itself, sometimes to a group

of lands used by the patrilineage, and sometimes to its principal house. "Mafen" is often translated as "the one or ones responsible for the land". In some instances also the "genang", or matrilineal clan, may have certain interests.

[2-6] 3. In ordinary speech, any one of the family or household having use rights in a piece of land in the Yap Islands is likely to refer to it as "my land" and to himself as "owning" it, but this, from the Yapese point of view, does not exclude the possibility of several other people having either similar or other rights in the same land at the same time. The use of the word "owner" with regard to a piece of land in Yap is therefore likely to be misleading. This system of cooperative use of land is so well established that to a Yapese there appears to be no inconsistency or difficulty about several people having the right to "take what they want" from a particular piece of land without having to make any specific arrangement about it between themselves. There is obviously an implied obligation to do this in a way that will not irritate or upset the others having rights in the land, and as a general rule, it is expected that the oldest capable male in the family will exercise supervision over the situation, partly as a matter of family discipline and partly as a matter of what is often referred to as "more right" in the land, but he is expected to do this with proper regard for the reasonable needs of the rest of the family and is often conceived of as more or less of a trustee both for the members of the family participating in the use of the land and for the "mafen". He is theoretically subject to control by agreement of the family and expected to yield to their wishes if they are contrary to his. There are also certain occasions when proper consideration, particularly in connection with feasts, must be shown to those having what may be roughly described as interests outside the family. In case of disputes between different persons having the

right to use the same land, it is generally possible for one or more of the parties to secure the help of the village leaders in bringing about an agreement.

[7, 8] 4. Under Yapese customary law, inheritance of land rights continues largely within the patrilineal extended family, and while the former holder of use rights may during his last illness express a desire as to the disposition of these rights on his death, such desire, even if clearly expressed and established beyond question, is not binding in any absolute way, but is an important factor to be considered by the family in determining the future control of the land.

[9-14] 5. Ordinarily a married woman is expected to obtain her subsistence primarily from lands in which her husband has rights and from these lands, if any, in which rights have been set off or given to her by agreement of her patrilineal extended family in connection with her marriage. Thus, in effect a woman during the period of her marriage often ceases to be a member of the family group of which she was a part before her marriage, and becomes associated instead with her husband's family group. When the husband is absent, however, and she remains his wife, various differing arrangements are often worked out. Yapese land usage is thus extremely flexible and the matter of rights within a particular family group are normally controlled by family agreements. When the family is utterly unable to agree, however, after seeking the advice of such local leaders as may be willing to assist in the situation, there is no provision in the custom for settling the matter other than by fighting. Since that is now prohibited, it appears that under the Trust Territory law it becomes the duty of the court to determine the matter as a last resort in order to avoid danger of physical conflict or serious injustice. In exercising its

powers in such a situation, however, the court is in a position much like that in a case involving custody of children, since the rights are held primarily by the group, which is expected ideally to act as a social and economic unit. The court will therefore limit itself at this time to deciding the basic issues raised by the parties in the hope that once these are decided, the parties will be able to reach an agreement upon a workable plan for use of the land in accord with the general Yapese practice.

[15] 6. Under the particular circumstances of this case, the court holds that the plaintiff Duguwen and the defendant Dogned each have a right to use the lands in question in proportion to their respective needs as long as they both perform their traditional kinship obligations. Any failure to perform these obligations may result in a reduction of the rights of either in the land and the extent of use to which either is entitled may also be affected by a material change in the circumstances of either. Both parties have a strong obligation to make a sincere effort to agree upon a workable plan for use of the land in a way that will be fair to both of them.

7. No determination is made as to the claim advanced by counsel for the plaintiff late in the trial that the gili-lungun and mafen rights in certain of the lands in question have now become merged in the plaintiff Duguwen. The defendant Dogned does not claim to hold these rights and no adverse claimant to them was a party to the action.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all others claiming under them, the rights formerly held by Betin in the lands known as Baaningal, Tunu, Ftrovon, Maging, Chug, Chuai, Taalroua, Zol, Dmechiyou, and Tagel, and the rights formerly held by Leewes in the land known as Tliu,

all located in Yinuf Village, Ruul Municipality, Yap Islands, are now owned by the family group of which the plaintiff Duguwen and the defendant Dogned are members, and until there is some material change in their circumstances, or either one fails in her or his traditional obligations with regard to the land and the family group of which they are members, both parties are entitled to share the benefits and have a corresponding obligation to share the burdens of the care of these lands.

2. Both parties are required to make a sincere effort to agree upon a practical plan for use of the lands under which they will each receive a fair proportion of the benefits, or benefits that are agreeable to both of them. If they are unable to reach such agreement within six months from this date, either by themselves or with the help of such local leaders as either may be able to interest in the matter, either party may ask the court, by written motion, to fix a plan for the division of the use of the lands in accordance with this judgment.

3. No costs are assessed against either party.