NGIRUHELBAD, Appellant

v.

MERII, et al., Appellees

Civil Appeal No. 13

Appellate Division of the High Court

November 1, 1961

See, also, 1 T.T.R. 367

Appeal from the Trial Division of the High Court, Palau District, involving a land dispute. The Appellate Division of the High Court, in a Per Curiam opinion, held that Palau customary land law was superseded by administrative regulations of Japanese Administration, which would not be set aside by court of subsequent administration.

Affirmed.

1. **Wills—Holographic**

   Where holographic will makes no mention of disputed lands and is filed seven years before death of testator, nuncupative will may supersede it.

2. **Palau Land Law—Individual Ownership**

   Individually owned land had no place in Palau customary law, but was introduced by German Administration.

3. **International Law—Sovereignty**

   All persons and property within territorial jurisdiction of sovereign are amenable to regulation of terms and conditions on which real or personal property within territory may be transmitted.

4. **International Law—Sovereignty**

   Rights and interests in private property, located in territory acquired by conquest, cession or treaty, are defined, held and transmitted under laws of new sovereign.

5. **Trusteeship—Administering Authority—Powers**

   Administering authority has full powers of administration, legislation and jurisdiction over Trust Territory. (Trusteeship Agreement, Article 3)

6. **Trust Territory—Land Law**

   Land law in effect in Trust Territory in 1941 remains in full force and effect except as changed by written enactment. (T.T.C., Sec. 24)

7. **Palau Land Law—Generally**

   Palau custom is not sole criterion to be considered concerning title to land in Palau.

8. **Custom—Applicability**
   Custom in conflict with existing statutory provision is void.

9. **Former Administrations—Applicable Law**
   Same rules of construction which apply to statutes govern interpretation of administrative rules and regulations of Japanese Administration.

10. **Palau Land Law—Japanese Survey—Presumptions**
    Japanese land survey in Palau confirmed individual title to land.

11. **Statutes—Construction**
    Under rules of statutory construction, court looks to law when statute was enacted to see for what it was intended as a substitute, and defects in old law sought to be remedied by new statute.

12. **Palau Land Law—Individual Ownership**
    Purpose of introducing individual land ownership in Palau was to get away from complications of matrilineal clan and lineage systems.

13. **Former Administrations—Redress of Prior Wrongs**
    Present government is not required as matter of right to correct wrongs of any former administration.

Before KINNARE, *Associate Justice*, and PEREZ and DUENAS, *Temporary Judges*

PER CURIAM

This is an appeal from a decision of the Trial Division of the High Court in 1 T.T.R. 367. In the absence of briefs or oral argument, the court has considered the appeal on the record, including the transcript of testimony, and Notice of Appeal.

The appellant contends that the judgment violates well established local customs; that it was based solely on a Resolution of the Palau Congress (hereinafter referred to as "Resolution 2-51") which was never approved by the High Commissioner, and therefore is without force or effect; that the trial court erred in considering a noncupative will when a holographic will was in existence; and that, as appellee Tarkong received other things of value from his foster father's clan, he should not take title to the lands in dispute. Appellant also refers in his Notice

of Appeal to Resolution No. 28 passed by the Palau Congress in April 1957.

Briefly summarized, the evidence indicates that Ngiraterang (hereinafter referred to as "decedent") originally came from Airai, was adopted into a clan in Koror, married the defendant Merii, a Koror woman, and they in turn adopted the defendant Tarkong (hereinafter referred to as "son"). During Japanese times, a land survey was conducted under procedures which included notifying and calling the members of the clan together to decide how pertinent lands were to be registered in the Tochi Daicho "land book". In accordance with these procedures, the two pieces of land in dispute, Irahel and Maulekikt in Koror, were listed, without objection, under decedent's name as individual property. It should be noted here that the "land book" listed properties as lineage owned land, as land owned by a clan, and as individually owned land, making clear distinction between the different categories.

During his lifetime, and shortly before his death in 1948, decedent directed that the two pieces of property above named were to pass on his death to his son as individual property. Decedent notified several people of this, but did not advise his younger brother, appellant herein.

The record in no way supports appellant's first point: "that the judgment was made solely based on Resolution 2-51". Although the resolution was quoted under "Conclusions of Law", the court was careful to point out that, as far as was known at that time, the resolution had never been approved or disapproved by or on behalf of the High Commissioner. Further, the court expressly stated that it was not "passing upon the question of whether all of the above quotation is a correct statement of the law as to land owned by an individual in the Palaus". In clear language, the court limited its holding to "the situation involved in this action". In view of the above we find no merit in this point.

[1] It seems unnecessary to consider at length appellant's point as to the holographic will. It is clear upon the record that this will (if will it was) was made seven years before decedent's death, and made no mention at all of the lands here in dispute. Similarly, the fact that the son received other and different things of value upon decendent's death was not at issue, is not relevant, and certainly has no bearing on this case. As to Resolution No. 28, passed in April 1957, it obviously can have no effect of any kind in this action—the complaint here was filed October 25, 1955.

It is apparent from the record that appellant's basic contention, the one to which he returned again and again during the trial, is that decedent had neither the right nor the power to dispose of the lands in dispute by the method adopted by him because such a disposition violates Palauan custom whether or not the lands were individually owned. The custom is, according to appellant, that even a person's individual land, if it came from a lineage or clan of which the person was a member, should be controlled after his death by the matrilineal lineage or clan from which the land came, and that the senior members of that group should decide what part, if any, of such land should go to the widow or children of the deceased.

To clarify the issue presented here let us assume, without so holding, that appellant's statement of the law is correct under old Palauan custom. The question then presented is whether or not this old custom still has force and effect.

[2–4] It is recognized that "individually owned" land was a foreign concept that had no place originally in Palauan customary land law. But it may be laid down as a general proposition, subject to certain exceptions not material here, that all persons and property within the territorial jurisdiction of a sovereign are amenable to the

jurisdiction of the sovereign or its courts, and that the sovereign possesses the power to regulate the terms and conditions on which real or personal property within its territory may be held or transmitted. Rights and interests in private property, located in territory acquired by conquest, or by cession, or other treaty are to be respected by the new sovereign, but are defined, held, and transmitted under the laws of the new sovereign. (See Am. Jur., Vol. 30, International Law, § 30, et seq.)

The concept of individual land ownership in the Palaus was introduced in German times (See Land Tenure Patterns in the Trust Territory of the Pacific Islands, Vol. 1, p. 321 and 322) and there can be no question that Germany was in the exercise of sovereign powers over what is now the Trust Territory at that time. Indeed, it was the fact of German sovereignty which was the basis of the action of the League of Nations when a Class C Mandate over the Territory was given to Japan. Article 2 of the Mandate reads as follows:—

"The Mandatory shall have full power of administration and legislation over the territory subject to the present mandate as an integral portion of the Empire of Japan and may apply such laws of the Empire of Japan to the territory, subject to such local modifications as circumstances may require." See Wright's "Mandates under the League of Nations", p. 620.

[5, 6] The Trusteeship Agreement between the Security Council of the United Nations and the United States provides, in Article 3:—

"The administering authority shall have full powers of administration, legislation, and jurisdiction over the territory subject to the provisions of this agreement, and may apply to the trust territory, subject to any modifications which the administering authority may consider desirable such of the laws of the United States as it may deem appropriate to local conditions and requirements."

The administering authority has enacted Section 24, Trust Territory Code:

"*Sec. 24. Land Law not affected.* The law concerning ownership, use, inheritance, and transfer of land in effect in any part of the Trust Territory on December 1, 1941, shall remain in full force and effect except insofar as it has been or may hereafter be changed by express written enactment made under the authority of the Trust Territory of the Pacific Islands."

[7–9] We have set out the chain of authority here to show that old Palauan custom is not, and has not been for more than sixty years, the sole criterion to be considered concerning title to and transfer of land. Administrative determinations or rulings of the various foreign administrations take precedence over local custom. "It is a generally accepted rule that a usage or custom in conflict with an existing statutory provision is void. No custom, however long and generally it has been followed, can nullify the plain purpose and meaning of a statute." (Am. Jur., Vol. 50, Statutes, § 297.) Although the Japanese action was administrative in nature, its interpretation and effect must be governed by the same legal principles as those involved in the construction and interpretation of statutes, as it was clearly the lawful act of a legal government. "The same rules of construction which apply to statutes govern the construction and interpretation of administrative rules and regulations." (Am. Jur., Vol. 42, Public Administrative Law, § 101.)

[10] In this instance, the Japanese Administration, in its land survey of about 1938–40, confirmed individual title to land, free from lineage control. In this survey, the administration made careful provision for proof that the clan or lineage involved had consented to the transfer of particular lands to individual ownership in the manner required by custom for transfer to another group.

[11] To hold, as appellant would have us hold, that the act of the Japanese Government in recognizing and registering individually owned land affected only the use

and transfer of that land during the lifetime of the individual concerned, would be to violate basic rules of statutory construction.

"One of the recognized rules of construction of statutes is to look to the state of the law when the statute was enacted in order to see for what it was intended as a substitute, and the defects in the old law sought to be remedied by the new statute." (Am. Jur., Vol. 50, § 340.)

[12] It seems clear, as stated by the trial court, that the very purpose of introducing the concept of individual land ownership, and the registration provisions implementing the concept, were to get away from the complications and limitations of the matrilineal clan and the lineage system as to such individually owned land.

[13] Therefore, while we might agree with the appellant here that the introduction of the concept, and the fact, of individual ownership of land was a departure from Palauan custom, we hold that this is not a valid objection to it. "The present government of the Trust Territory is entitled to rely upon and respect the official acts of the Japanese during their administration of what is now the Trust Territory, and is not required as a matter of right to correct wrongs which the Japanese or any other former administration may have committed before the United States took over control of these islands." *Kumtak Jatios v. L. Levi*, 1 T.T.R. 578.

We see no error in the judgment of the trial court, and it is affirmed.