

SARI SHONIBER, Appellant
v.
HERBERT SHONIBER, Appellee
Civil Appeal No. 58
Appellate Division of the High Court
June 23, 1971

Trial Court Opinion—4 T.T.R. 333

Appeal from entry of summary judgment. The Appellate Division of the High Court, D. Kelly Turner, Associate Justice, held that entry of summary judgment was proper where both issues of fact suggested by the appellant were not applicable to the case as a matter of law.

1. Ponape Land Law—German Land Title—Succession

Where land in question was held under the standard form German Land Deed the German law of inheritance which allowed inheritance from his natural father by an adopted child applied and not the local custom prohibiting inheritance by a natural son who had inherited from his adoptive parents. (1 T.T.C. Sec. 102)

2. Ponape Land Law—German Land Title—Wills

Land in Ponape could not be transferred by will under the German land

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code and only a limited transfer under special conditions was permitted under the Japanese administration.

Counsel for Appellant: YASUWO JOHNSON
Counsel for Appellee: EDWEL SANTOS

Before TURNER and BROWN, *Associate Justices*

TURNER, *Associate Justice*

This is an appeal from a summary judgment entered in behalf of the plaintiff-appellee and declaring him owner, as against the defendant-appellant, of a parcel of land in Porakied, Kolonia, Ponape District.

The land was held in 1912 under the standard form German Land Deed, No. 304/305. The deed has been lost but the parties agree the last registered owner was Namwei Shoniber, who died about 1947, and that Ernest Shoniber was the eldest son of Namwei and the appellee, Herbert, was the eldest son of Ernest.

Under Ponapean land law, beginning with the German administration, ownership and inheritance were governed by the written title document. Under that law, there is no doubt, nor issue between the parties, that the plaintiff is the present owner of the land in question.

Appellant, however, relies upon a special circumstance which, he claims, does not make German law applicable in this case. Plaintiff's father, Ernest, the oldest son of Namwei, was adopted "out" of the Shoniber family and inherited land from his adoptive parents.

Ponapean custom, appellant argues, prevents a child from inheriting from his natural father when he has inherited from his adoptive parents. Appellant urges summary judgment was improper because he was thus denied an opportunity to prove the applicable custom.

Assuming there once was a land custom as appellant claims it to be, its proof would not affect this case because

it is governed by the German land law. Customary law is carried forward into the American administration by 1 T.T.C., Secs. 101 and 102. Among other things, 1 T.T.C., Sec. 101 says customary law shall remain in effect "except" (omitted by the revised Code) when changed by statutory or other law. The land law applicable to this case and in the Trust Territory is 1 T.T.C., Sec. 105 which provides the "law in effect" on December 1, 1941, shall continue in effect until changed.

The land law in effect in Ponape on December 1, 1941, was not the law of local custom but was the German administration law set forth in the 1912 land title documents.

The first reported decision of the High Court, dated January 31, 1951, *Kilara v. Alexander*, 1 T.T.R. 3, says:—

"The land law, as far as private ownership is concerned, as stated in the standard form of German title document issued in Ponape is still in effect outside of any changes that may have been made by the German Authorities during their regime, the Japanese Authorities during their regime, or the American Authorities since the American occupation."

The Appellate Division approved the *Kilara* decision in *Kehler v. Kehler*, 1 T.T.R. 613.

Local custom could not be an issue in this case because it had been superseded by the German land code. Appellant suffered no loss when summary judgment cut off his offer to prove local custom.

The trial court was bound to apply the German law of descent to the land in question. The German law designated inheritance in order of priority to the oldest son. Whether that son also inherited other lands from his adoptive parents makes no difference because he is entitled to inherit from his natural father under the German land law. Nothing in that law prevents inheritance from the natural father merely because there also was an inheritance from adoptive parents.

[1] The holding in *Ladore v. Ladore*, 1 T.T.R. 21, adopts this rule and the trial court followed the decision. The German law of inheritance and not local custom prohibiting inheritance by a natural son who has inherited from adoptive parents, if there was once such a custom, governs the descent of land in Ponape.

Appellant also suggested in his argument that summary judgment was improper because it prevented him from proving a will whereby the original owner, Namwei, transferred the land to a younger brother of Ernest, the oldest brother, who had been adopted. This proposal, similarly to the argument relating to proof of local custom, also fails as a matter of law.

[2] Land in Ponape could not be transferred by will under the German land code and only a limited transfer under special conditions was permitted under the Japanese administration. It was not until 1957 that legislation changed the German law. Any will by Namwei would have been effective, if valid, on his death in 1947. At that time the applicable law precluded transfer by will.

Both issues of fact suggested by appellant—the effect of customary law and the effect of a will—were not applicable to the case as a matter of law. Assuming the facts were as appellant suggests, they would not affect the decision because they were not applicable. Because both suggested issues were decided adversely to appellant in accordance with applicable law, there were no relevant issues of fact and summary judgment was appropriate.

Judgment affirmed.