

MESAITA, Plaintiff

v.

FUPI, Defendant

Civil Action No. 595

Trial Division of the High Court

Truk District

March 15, 1972

Action to determine right to land on Namoluk Island, Truk District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that Master's determination that land in question was lineage land, was correct and as such the land could not be transferred or exchanged without the consent of all adult members of the lineage.

1. Truk Land Law—Lineage Land—Transfers

Where land is owned by a lineage, a transfer to the child of a member is not presumed, but must be established by clear and convincing evidence.

2. Truk Land Law—Lineage Land—Transfers

Any transfer or exchange of lineage land must be consented to by all adult members of the lineage.

TURNER, *Associate Justice*

Hearing was held before Ring Puas, Associate Judge of the District Court, as Master on May 28, 1971, on Namoluk Island, Truk District. Hearing on the Master's report and

recommendations was set for March 14, 1972, but neither of the parties nor their counsel, all from the Truk outer island of Namoluk, appeared. Accordingly, this judgment is entered on the transcript of testimony before the Master, the findings and recommendations of the Master.

This litigation arose when the defendant proposed to exchange one-half of the land, Lepulinkapit, located on Namoluk Island, for one-half of the land, Leor. Defendant intended to build her home on Leor because of problems which had arisen between her and the plaintiff. The plaintiff and defendant are mother and daughter under the custom, defendant being the daughter of plaintiff's sister, Mata.

The testimony was in direct conflict as to whether Sita gave the land in Japanese times to the plaintiff or to Mata, mother of the defendant. The Master found it unnecessary to resolve the question and found that the land was lineage land. With this conclusion, we agree.

[1] The finding that the land in question which defendant proposed to exchange for other land was lineage land resolves the question as to whether defendant had the right to exchange it or not. The evidence does not clearly establish, as is required by Trukese customary land law, that this lineage land was transferred to either plaintiff or defendant as their individual property.

This court said in *Kinara v. Tipa*, 2 T.T.R. 8, 11:—

“Where it is clear that the land is owned by a lineage, a transfer to the child of a member is not presumed, but must be established by clear and convincing evidence.” *Nitoka v. Neseper*, 2 T.T.R. 12, 15.

[2] Having concluded that the land in question had not been divided or separated from other lineage land by any of the predecessors of both plaintiff and defendant and it therefore remained and is now lineage land, it follows as a matter of well settled customary land law that any trans-

fer, or in this case an exchange, of lineage land must be consented to by all adult members of the lineage. *Nusia v. Sak*, 1 T.T.R. 446. *Nitoka v. Neseper*, 2 T.T.R. at 14. *Narruhn v. Sale*, 3 T.T.R. 514.

In the present case, the parties are members of the same clan and closely related. Plaintiff's objection to defendant's proposed exchange is proper.

The Master found that although the defendant did not have the right to exchange the land in question without the consent of the plaintiff and other lineage members, she was entitled to the right of exclusive occupancy and control of the land and that she is obliged to take care of the land in behalf of the lineage. The basis of this finding rests upon the occupancy and control of the land by plaintiff's mother, Mata, during her lifetime and the subsequent care of the land by Teip, until his death, in behalf of defendant who at the time of her mother's death was too young to care for it.

After Teip's death, trouble arose between plaintiff and defendant when plaintiff exercised control over the land and refused to recognize defendant's interest in the land. This conflict, which is contrary to custom whereby lineage members peaceably exercise joint use of lineage land, in the opinion of the Master could best be settled by ordering possession and control to be held by defendant. With this conclusion, this court agrees. This may not, however, prevent plaintiff and other lineage members from gathering food and copra from the land even though defendant is given exclusive occupancy rights.

Ordered, adjudged, and decreed:—

1. That the findings, conclusions and recommendations of the Master, Associate Judge of the District Court Ring Puas, are approved.

2. The land, Lepulinkapit, is lineage land of *Weniker* clan.

3. That defendant Fupi shall and hereby is granted right to exclusive occupancy of the land and shall take care of it in her own behalf and in behalf of other lineage members including plaintiff and her husband.

4. Plaintiff and her husband, Olingar, may not occupy the land nor shall they interfere with Fupi's occupancy, but they may gather food and make copra on the land after giving Fupi notice.

5. This judgment shall not affect any rights-of-way over the land.

6. Time for appeal shall be extended for ninety (90) days from date hereof.