

AO (PAUGA) v LEOTA (PU 'A) AND THE BISHOP
AND PRESIDENT OF THE CHURCH OF THE
LATTER DAY SAINTS (THIRD PARTY)

Supreme Court Apia
3, 4, 18 August 1978
Nicholson CJ

LAND LAW (Samoan freehold land) - ss 15, 16 Land and Titles Protection Ordinance 1934 - Samoan registered as owner of freehold land deemed to be holding it as an individual and not as Samoan customary land - Immaterial whether land acquired with intention that it should be the family home or that the purchase money may have been collected from the family - Such property subject to all other incidents of freehold ownership, including succession - Occupants of such land therefore licensees at will of the owner who is entitled to revoke their licenses at any time.

COURTS (Jurisdiction) - Land and Titles Court - s 16 Land and Titles Protection Ordinance 1934 - Jurisdiction to find Samoan freehold land is held in accordance with Samoan usages and customs.

The plaintiff being the registered owner of certain freehold land occupied by the defendant as a member of his extended family was held entitled to an injunction restraining defendant from trespassing on the land.

ACTION for an injunction to restrain the defendant from trespassing on certain land.

Injunction granted.

Drake for plaintiff.
Enari for defendant.
Va'ai for third party.

Cur adv vult

NICHOLSON CJ. This is an action for an injunction to restrain the defendant from trespassing upon the land.

The history of the matter is complicated, but I find the facts of the case are as follows.

The land in question is described as freehold land situated at Lauli'i in the district of Tuamasaga described as parcel 166/78 Flur XII, Upolu, being part of Court Grant 634 and part of the land registered in Vol. 10 Fol. 89 of the Land Registry of Western Samoa. The plaintiff, Pauga Ao, is the registered proprietor of the land in question.

In or about the year 1929, the plaintiff's family under the leadership of the then holder of the title Pauga, who was the older brother of the plaintiff, was in occupation of the land in question,

and also parcels 164/78 and 191/78, apparently in the belief that these were their family lands. At that time, the family was approached by one Vaelua, the registered proprietor of the land, who advised them that they could either purchase the land from him for £100, or vacate the land.

The title holder then approached the Mormon Church, which owned land in the vicinity, for the assistance of the Church to save the land for the family. Because of the faithful services rendered by the plaintiff to the Church as a missionary, the Church agreed to assist the family and loaned £100 and by way of security took a conveyance of the land to itself against repayment. Initially, this arrangement was carried out by conveyance of the land to the title holder Pauga and one Siatuvai, a representative of the Church, jointly, on the 25th September, 1929. Later, a conveyance to the Church's representative Willard Smith, as sole registered proprietor occurred, apparently to satisfy the internal procedures of the Church in respect of this loan. These were simple conveyances, and not conveyances by way of mortgage, according to the title memorials and the documentary evidence adduced.

On the 7th March, 1934 the Church's representative Mr Willard Smith executed a letter addressed to the then title holder acknowledging receipt of £40 as accepted in full repayment of the loan in respect of parcel 164/78. The effect of this was that parcel 166 and parcel 191 still remained in the name of the Church as security for the balance of the loan. The letter in question acknowledged that the title holder was entitled to take a transfer of parcel 164 at any time into his own name, but in fact he never did so. In 1936, the plaintiff became a co-holder of the title Pauga with his older brother, and in 1955 the older Pauga died leaving a widow to whom he was lawfully married and who is still alive and residing on the land in question as part of the family.

In or about the year 1960, the plaintiff approached the Church with a view to repaying the balance of the loan. The agreement was made to the effect that the land would be turned back to the family for a total of £120 rather than £100. In the intervening years, however, the Church had erected a chapel on parcel 164, the parcel which the Church had acknowledged in 1934 was now the property of the late Pauga. The plaintiff and the Church reached an agreement that the Church should retain title to parcel 164, and that in exchange a different parcel 177/171 should be transferred to the plaintiff. This parcel comprised a worked-out quarry. This transaction was duly carried out, the plaintiff paying the balance of £80. He then became the registered proprietor of parcel 166/78 and 191/78 and of parcel 177/171.

The defendant is the adopted son of the late Pauga. He was adopted by Samoan custom and no formal Court adoption order was ever made. From about the year 1969 onwards, bad feelings arose between the plaintiff and the defendant. He resides on the land in question. In 1969, this culminated in the plaintiff filing in the Magistrate's Court in Apia an action for possession of the land against the defendant. An order for possession was made by consent on the 6th August, 1969. Thereafter, on two occasions the plaintiff applied to the Court for a warrant to evict the defendant pursuant to the Court order, but according to the plaintiff's evidence, on each occasion the plaintiff at the last moment relented and persuaded the Police not to execute the warrant because he had reached a reconciliation with the defendant. Now, however, he wishes the defendant to leave the land.

The defendant claims that the land belongs to the extended family, that the plaintiff obtained title to the land by fraud or by mistake, and that the plaintiff is holding the land as trustee for the extended family. The Mormon Church has been joined as third party to the proceedings.

I think this case fairly illustrates the confusion in the minds of many Samoans as to the distinction between freehold land and customary land. Clearly, both the late Pauga and the plaintiff acted throughout this matter as the matais of the family. The plaintiff obviously had great difficulty in answering questions as to whether he regarded himself as now holding the land for his own benefit or merely as the representative of the family. I am satisfied from the evidence, however,

that the late Pauga had a right to title to parcel 164 as beneficial owner. I reach this conclusion having regard to the provisions of section 15 of the Land and Titles Protection Ordinance 1934 as amended, which reads as follows:-

All Samoan freehold land and every Samoan interest in freehold land shall be deemed to be the individual property of the owner thereof unless it shall be declared in manner hereinafter appearing to be property held in accordance with the usages and customs of the Samoan people.

In the following section 16 of the Ordinance there is provision for the Land and Titles Court to reach a finding as to whether or not Samoan freehold land is held in accordance with the usages and customs of the Samoan people. There is no evidence that any such finding has ever been made by the Land and Titles Court in relation to this property.

Therefore, in terms of section 15, the late Pauga must, on the strength of the letter written in 1934 by the Church representative, have had a Samoan interest in freehold land which was deemed to be his individual property, insofar as parcel 164 was concerned. After his death, as he left no will, his widow was quite possibly entitled in terms of the Administration Act 1952 (N.Z.) to take up the title to parcel 164. The plaintiff, as the new holder of the title Pauga, had no right, as I see it, to dispose of that interest in parcel 164 as he purported to do, since he would not have had any rights to that land under the Administration Act 1952 (N.Z.) while the widow survived. Whether or not the widow has action against the plaintiff for ownership of the worked-out quarry, which was accepted in exchange for lot 164, is a matter for conjecture with which I am not presently concerned.

As to the remaining parcels 166/78 and 191/78, these clearly were in the hands of the Mormon Church as owner without any legal restraint, although there was some sort of moral obligation to give the plaintiff's family the first opportunity to purchase. The Church chose to sell to the plaintiff for the £80 balance paid. To my mind, it makes no difference whether he collected the £80 from the family or not. Certainly, the Church on the evidence had its own reasons for wanting to sell it to him as a faithful servant of the Church. The plaintiff may well have had the intention that the land would provide a home for the family when he took title, but that bare intention is not inconsistent with his ownership for his own benefit. There is obviously a lot of confusion in the minds of the parties as to whether the plaintiff is holding this property as Samoan customary land, but in view of the terms of section 15 of the Land and Titles Protection Ordinance 1934 as amended, he must be deemed to be holding it as an individual only. Thus all the occupants of the land are licensees at will, i.e., their right to occupy the land is determinable at the will of the plaintiff. The defendant appears to have acknowledged this by his consenting to judgment in the Magistrate's Court proceedings, which, contrary to the defendant's allegations, appear to have been valid proceedings.

I reject the two remaining allegations that the plaintiff obtained title to parcel 166/78 by fraud or mistake. All of the evidence before me appears to indicate just the contrary. The defendant has certainly made out no claim whatever to any interest in the land in question. If he were a formally adopted son of the late Pauga and the late Pauga's estate were large enough, it is possible that he could claim an interest in the parcel 164/78, or its replacement, since the widow under the Administration Act 1952 (N.Z.) was entitled to the first £1,000 and one-third of the remainder of her late husband's estate, and his issue would have been entitled to the remaining two-thirds. But as the defendant was not formally adopted in the sense that would allow his recognition as issue under the Administration Act 1952 (N.Z.), it would appear that he cannot even claim an interest in that parcel. He has not established to my satisfaction that he made any contribution towards the purchase of the remaining parcels and in particular parcel 166/78. I am satisfied that he has been on the land along with the rest of the family as a mere licensee of the plaintiff, and that his

license has been terminated by the plaintiff. An injunction will therefore issue to restrain the defendant from trespassing upon the land. The defendant will pay costs of both the plaintiff and the third party in the sum of \$100.00 each. I cannot help but comment that on the face of it, the Mormon Church took advantage of this unusual situation to acquire for itself what has been described in the Church's own correspondence as the "choice site" comprised in parcel 164/78 in return for a worked-out quarry, an exchange which was unlikely to result in benefit to the Church's faithful servant Pauga Ao.