

AUGUSTIN LADORE, Plaintiff
v.
PISENDA SALPATIERRE and PERELENG, Defendants

Civil Action No. 17
Trial Division of the High Court
Ponape District
December 9, 1952

Action to determine ownership of land on Ponape Island, in which plaintiff claimed ownership as beneficiary of alleged will and defendant claimed ownership as adopted heir. The Trial Division of the High Court, Chief Justice E. P. Furber, held that disposition of land by will was invalid under German land system, and failure of Japanese to give effect to intent of deceased in transfer of land was not a wrong which present administration is obliged to rectify.

1. Ponape Land Law—German Land Title—Succession

Inheritance of land on Ponape Island held under German land title is controlled by provisions stated in standard form except for any changes made during subsequent administrations.

2. Ponape Land Law—German Land Title—Approval of Transfer

Sale, gift or rental of land on Ponape Island held under German land title could be made only with consent of *Nanmarki* and Governor, and no attempted will was effective to transfer land without such consent.

3. Former Administrations—Redress of Prior Wrongs

In absence of clear evidence of fraud or gross mistake, present administration has no obligation to rectify, as matter of right, any harshness of previous administration in failing to consent to transfer of land on Ponape Island in accordance with attempted will of owner.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The defendant, Pisennda, was legally adopted by Dese in accordance with the law in force on Ponape at that time and was duly recognized by the Japanese authorities then lawfully administering Ponape, as the adopted son of Dese.

2. Transfer of title from Dese to Pisenda was duly made by the Japanese authorities then lawfully administering the Island of Ponape, by endorsement dated 11 Showa August 6.

3. Any instructions which Dese gave to the effect that the plaintiff Augustin, should take the land in question after Dese's death were not consented to by the *Nanmarki* or the Governor, or by anyone authorized to give such consent on behalf of either of them.

CONCLUSIONS OF LAW

[1] 1. Since the land in question was held under the standard form of title document issued by the German Government in accordance with its basic reform of land law in 1912, the inheritance of such property is controlled by the provisions stated in the standard form of German title document, except for any changes which may have been made by the German authorities during their regime, the Japanese authorities during their regime, or the American authorities during their occupation. For further discussion of this matter see the conclusions of law in the case of *Kilara and others against Tomuas Alexander*, 1 T.T.R. 3. No changes appear to have been made by any of these authorities which bear upon this case.

[2] 2. In accordance with the provisions contained in the standard form of German title document referred to above, sale, giving away, or renting of the land covered thereby could be made only with the consent of the *Nanmarki* and the Governor. Consequently, no attempted will of such land was effective to transfer land without such consent.

[3] 3. It would appear that under the terms of the standard form of German title document the Japanese authorities with the consent of the *Nanmarki* might have

consented to Dese's request that the property on his death be transferred to Augustin, but it is clear that they did not and that instead, by endorsement dated 11 Showa August 6—that is, August 6, 1936—they transferred the property to the defendant, Pisenda, as the adopted son of Dese. The making of this transfer so far as appears from the evidence was entirely regular. In the absence of clear evidence of fraud or gross mistake, any harshness there may have been in refusing or failing to consent to any request Dese may have made that the land should go to the plaintiff Augustin, is not a matter that the present administration is under obligation to rectify as a matter of right. The position of the present government of the Trust Territory of the Pacific Islands with regard to acts of the former administrations is explained in the second paragraph of the conclusions of law by this court in the case of *Wasisang* against *Trust Territory of the Pacific Islands and others*, 1 T.T.R. 14. As there stated, the general rule is that it is not a proper function of the courts of the present administration to right wrongs which may have, for many years before, been persisted in by the former administration. See Volume 30 of American Jurisprudence, page 207, paragraph 47 of the article on "International Law".

JUDGMENT

It is ordered, adjudged, and decreed as follows:

1. As between the parties and all persons claiming under them, the land constituting that part of Malenpei No. 80 to the right, as one stands on Malenpei No. 80, facing the water, of a division line marked by seven boundary markers, running from the shore to the upland boundary of the lot and consisting of about 6.2 *chabu*, is the property of the defendant, Pisenda Salpatierre (subject to any rights he may have given to the defendant Pereleng,