

ALONSO NARRUHN, Plaintiff
v.
SARU SALE, Defendant
Civil Action No. 324
Trial Division of the High Court
Truk District
April 22, 1968

Action to determine ownership in taro swamp on Uman Island, Truk District. The Trial Division of the High Court, E. P. Furber, Temporary Judge, held that plaintiff's actions in having defendant "sell" him land was unconscionable and that defendant would not be bound by the purported contract.

1. Truk Land Law-Family Land-Transfers

Under Trukese custom family land cannot be lawfully transferred without the unanimous consent of at least all the adult members.

2. Contracts-Voidable Contracts-Undue Influence

It is unconscionable for one relatively well educated lineage member to impose upon another who can neither read nor write and who had every reason to rely upon him to treat her fairly, and a contract resulting from such action is neither binding nor does it prevent her personally from asserting her rights.

3. Real Property-Improvements

Where one enters upon land without any reasonable and honest belief that he has a true right to do so he cannot properly charge the owners for whatever improvements he may have made on the land.

4. Real Property-Improvements

Even if one enters upon land in good faith, with reasonable and honest belief in his right to do so, the only compensation to which he would be entitled for improvements would be the amount that the value of the land was increased by the improvements, or for the value of the labor and materials employed in making such improvements, whichever is least.

FURBER, *Temporary Judge*

FINDINGS OF FACT

1. At the time of the alleged transfer of the land and taro swamp in question by the defendant Saru to the plain-

tiff Alonso, the land and the taro swamp were owned by Saru, Tamakichi, and Urasima as a family group, and the plaintiff Alonso knew this or should have known it.

2. The defendant Saru considers Tamakichi and Urasima as "her children", although in fact Tamakichi is the son of Saru's deceased sister Peresen, and Urasima is the sort of Saru's half-sister by blood and the other half by adoption named Estana.

3. The defendant Saru never knowingly and intentionally purported to give or sell the land and taro swamp in question to the plaintiff Alonso.

4. The defendant Baru and her co-owners protested to the plaintiff Alonso in 1959 against his having the land and taro swamp unless he paid for them. They originally asked that he pay \$350.00 for them but later, at his request that they reduce this, they did reduce it to \$280.00, and he asked them to wait until they met again about the matter.

5. The defendant Saru, both directly and indirectly, repeatedly warned the plaintiff Alonso's workers to leave the land and taro swamp alone.

OPINION

This action involves a most unfortunate dispute between the members of a Trukese Lineage concerning a piece of land and taro swamp on Uman Island, Truk District.

It is admitted that the defendant Saru made an arrangement with the plaintiff Alonso for the sale of a piece of land known as Wilinis for \$200.00 in 1958. Wilinis had been owned by the same people as the area now in question and used with it at least since before the close of Japanese times. There is no dispute in this action about that sale, which was consented to by Saru's co-owners and evidenced by a record in the Uman Municipal Office, in

connection with the making of which record the plaintiff Alonso, the defendant Saru, and her nephew (considered as her son under the custom) Tamakichi visited the Uman Municipal Office together and vouched for the sale. This \$200.00. was to be paid in installments and, according to the plaintiff, before the payments had been completed, the defendant voluntarily offered to give the plaintiff Alonso, as part of the sale, the land and taro swamp now in question, known as Nepunu, which adjoins Wilinis and, according to the evidence was either the same size as or larger than Wilinis, provided Alonso would agree to make the balance of the installment payments to her rather than to either of "her children".

He further claims that, after he had completed payment of the \$200.00 for Wilinis, the defendant Saru asked him for \$15.00, he gave this to her and at his request a written statement offered in evidence as Exhibit #1 was prepared by one of Alonso's employees and signed by the defendant Saru with a cross, and in hand-writing by Alonso by this employee who had prepared it, and by three witnesses, all of whom worked for Alonso at one time or another. It also purports to be witnessed by the village chief, but he admits he was not present when the others signed.

The defendant Saru denies that she ever either gave or sold the land and taro swamp Nepunu to the plaintiff Alonso, or that she signed Exhibit #1 with a cross. There is strong evidence, however, that she did make her cross on this paper, but the court considers it was quite apparent that she did not intend at any time to make a transfer of Nepunu either as a gift or for the \$15.00 mentioned in the agreement, since it is clear that she protested about the plaintiff's use of the land Nepunu and that she did this reasonably promptly from the Trukese point of view, after seeing Alonso's workers were on the land. In addi-

tion, it is undisputed that she repeatedly, either herself or through others, warned Alonso's workers to leave Nepunu alone. In fact her protests to his workers are alleged by Alonso as one of the reasons for Alonso's bringing this action.

[1] In view of the first finding of fact above, it is apparent that neither Saru's alleged oral statement about including Nepunu in the sale of Wilinis, nor her signing of Exhibit #1 could transfer title. Tamakichi and Urasima were both of age and it is quite clear that family land under Trukese custom cannot be lawfully transferred without the unanimous consent of at least all the adult members. Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 168. *Kinara v. Tipa*, 2 T.T.R. 8.

[2] The intent or legal purport of Exhibit #1 is not too clear. It does not state too clearly what the total price for the inclusion of Nepunu in the sale was to be, but if, as Alonso claims, the true intent was to evidence the sale of Nepunu for \$15.00, it is considered by the court to be so unconscionable for one relatively well educated lineage member to impose upon another who could neither read nor write, and who had every reason to rely upon him to treat her fairly" that the court believes and holds that it should not be held binding upon her nor should it prevent her personally from asserting her rights. in the land. 17 Am. Jur. 2d, Contracts, § 192. *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (1965).

[3, 4] The plaintiff has laid great stress on the amounts of money he claims to have expended in the development of this land. Since it is clear that he entered on the land without any reasonable and honest belief that he had a true right to do so; as he later admitted to Urasima, he cannot properly charge the owners for whatever improvements he may have made on the land. 27 Am. Jur.,

Improvements, §§ 13 to 15 Inclusive. Even if he had entered in good faith, with reasonable and honest belief in his right to do so, the only compensation to which he would be entitled for improvements would be the amount that the value of the land and taro swamp was increased by the improvements, or for the value of the labor and materials employed in making such improvements, *whichever is least*. In this instance it clearly appears that a large part of the expenditure which the plaintiff alleges he made resulted in no permanent benefit to the owner, since a substantial part of the plantings his workers made have been destroyed by fire and certain of the short-term crops have been eaten by the plaintiff's own family. Restatement of the Law of Restitution, Sec. 42(1). 27 Am. Jur., Improvements, §§ 19,22.

JUDGMENT

It is ordered, adjudged, and decreed as follows:-

1. As between the parties, both of whom live on Uman Island, Truk District, and all persons claiming under them:-

a. The plaintiff Alonso Narruhn has no rights of ownership in the land and taro swamp known as Nepunu located in Mualukan Village on Uman Island, Truk District.

b. The defendant Saru Sale owns said land and taro swamp with her nephews Tamakichi and Urasima, both of said Uman, as a family group and she, as the senior member of that group, is entitled to control the immediate possession and use of the said land and taro swamp provided she gives due consideration to the rights of her co-owners.

2. This judgment shall not affect any rights-of-way there may be over the land and taro swamp in question.

3. The defendant Saru Sale is awarded such costs, if any, as she may have had which are taxable under the

first sentence of Section 265 of the Trust Territory Code, provided she files a sworn itemized statement of them within thirty days after the entry of this Judgment; otherwise no costs will be allowed.

4. Time for appeal from this judgment is extended to and including June 21, 1968.