MANUEL H., Plaintiff

v.

YUANITA and GERION MURITOK, Defendants

Civil Action No. 358

Trial Division of the High Court

Truk District

May 13,1968

Action to determine interests in land on Udot Island in Truk Atoll. The Trial Division of the High Court, E. P. Furber, Temporary Judge; held that even when both parties to an agreement are in the wrong regarding their "lease" agreement covering land they both still have an obligation to comply with their agreement and they cannot disregard that agreement.

1. Landlord and Tenant-Leases--Breach

   While lessor's breach of the lease agreement was wrongful and gave lessees ground for an action against him, it did not justify lessees' trying to repudiate and disregard the agreement.

2. Landlord and Tenant-Leases--Generally

   By acknowledging the lessor's ownership, and having taken possession of property in that manner, the lessee is estopped from claiming that the lessor has no rights in the property and that the lessee owns it.

3. Landlord and Tenant-Leases--Breach

   The lessor having first caused trouble by his own wrong cannot properly try to profit from that wrong by throwing off or disregarding the lease agreement any more than the lessees may.

4. Truk Land Law-Use Rights

   Lessor is entitled to no compensation for coconut trees cut down by the lessees where the trees were either old and not bearing well or trees it was reasonable for them to cut down to make room for their new house.

FURBER, *Temporary Judge*

FINDINGS OF FACT

1. In 1955 the plaintiff Manuel (acting as agent and representative of his father Carl Hartmann) and the defendants Yuanita and Gerion agreed orally that the de-

,fendants might enter the land in question, build and maintain a house on it, take such produce from it as they need for their subsistence, and harvest copra from it along with the plaintiff, that the defendants would take care of the land for the plaintiff, and that the proceeds of all copra made from the land and sold would be divided one half to the plaintiff and one half to the defendants, regardless of which one of them made the copra.

2. The defendants entered under the above agreement and fulfilled their obligations under it for about two years.

3. While the defendants were fulfilling their obligations under the above agreement, the plaintiff broke the agreement by obtaining and selling copra from the land without giving the defendants any part of the proceeds.

4. After the above breach of the agreement by the plaintiff, the defendants refused to fulfill their obligations under it and in 1957 for the first time claimed that the defendant Yuanita owned the land, as her individual property.

5. Since 1957 the defendants have continued to make and sell copra from the land without giving the plaintiff any part of the proceeds.

6. Prior to his death in 1959 Carl Hartmann gave all his interest in the land to the plaintiff Manuel.

7. The eleven coconut trees cut down on the land by the defendants were either old trees not bearing well or trees it was reasonable for them to cut down to make room for their new house.

OPINION

This action involves the ownership and right to possession of a piece of land on Udot Island in Truk Atoll. It is governed primarily by general principles of common law with regard to leases, construed in the light of and as modified by Trukese custom.

[1] The defendant Gerion's contention that the plaintiff Manuel had rights in the land in 1955, but lost them by his breach of the agreement set forth in the first finding of fact above, is entirely repudiated. The plaintiff's breach of the agreement though wrongful and giving the defendants ground for an action against him, did not justify the defendants' trying to repudiate and disregard the agreement. Restatement of the Law of Contracts, Sec. 290.

[2] By entering on the land under the agreement set forth in the first finding of fact, the defendants acknowledged the ownership under which they had obtained permission to enter. It was then in Carl Hartmann, but no doubt has been raised about his having authorized the plaintiff to act for him and having later given the land, or at least whatever rights he had in it, to the plaintiff. So in effect the defendants acknowledged what has now become the plaintiff's ownership. Having obtained possession in this manner, it is most unfair from both American and Trukese points of view for the defendants to turn around and claim that the plaintiff has no rights in the land and that the defendant Yuanita owns it. The court holds that the defendants are estopped to do this. That is, they cannot legally do so. 32 Am. Jur., Landlord and Tenant, §§ 101, 112.

[3] The plaintiff and the defendants are therefore both in the wrong and both have an obligation to comply with their agreement. The plaintiff having first caused trouble by his own wrong cannot properly try to profit from that wrong by throwing off or disregarding the agreement any more than the defendants may. 27 Am. Jur. 2nd, Equity, § 129. 32 Am. Jur., Landlord and Tenant, § 852.

According to the terms of the agreement both sides have an obligation to account to the other for all copra made and sold by them from the land. It also appears

that both developed for a time a practice, suggested and initiated by the plaintiff of setting off their cuttings of copra one against the other instead of making settlements in cash. In view of the seven or eight years that the plaintiff has let this matter rest without making any such off-setting cutting himself, it is believed he is not entitled now to demand settlement in cash, but must be content to work out an arrangement for taking the necessary number of cuttings and retaining all the proceeds therefrom to balance the accounts between the parties, provided the defendants are agreeable to this.

[4] In view of the seventh finding of fact, the court holds that the plaintiff is entitled to no compensation for the eleven trees cut down by the defendants.

JUDGMENT

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

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

a. The land known as Fukun, located in Wolip Village on Udot Island, Truk District, is owned by the plaintiff Manuel Hartmann, subject to the rights of the defendants set forth in the following sub-paragraph and the obligations imposed on the plaintiff by the agreement referred to in that sub-paragraph.

b. In accordance with agreement made between the parties, the defendants Yuanita Muritok and Gerion Muritok are entitled to take care of said land for the plaintiff, to maintain a house there, subsist from the land, and make and sell copra from there along with the plaintiff, but both the plaintiff and the defendants have an obligation to account to each other for all copra made and sold by any of them from the land and to share the proceeds of such copra one half to the plaintiff and one half to

the defendants, regardless of which one of them makes and sells the copra.

c. Neither of the defendants Yuanita Muritok and Gerion Muritok has any rights of ownership or of possession and use in said land except in accordance with the agreement referred to in the foregoing sub-paragraph.

2. The plaintiff and the defendants have an obligation to account to each other for all copra made and sold from the land by either side, the proceeds from which have not been shared one half by the plaintiff and one half by the defendants. The parties are given six months to try to work out such an accounting and balancing of proceeds of copra made and sold by any of them to date, either by division of copra cuttings, or in some other manner which will impose as little hardship as possible on any party. If the parties do not succeed in agreeing within six months from the date of this judgment on a method of effecting this balancing or if the method so agreed on is not carried out, any party may, by motion in this action, request a determination by the court as to how said accounting and balancing of the shares of copra proceeds shall be carried out.

3. This judgment shall not affect any rights-of-way there may be over the land in question.

4. No costs are assessed against any party.

5. Time for appeal from this judgment is extended to and including July 12, 1968.