

LLECHOLECH RECHEMANG, Plaintiff

v.

JOSEPH BELAU, Defendant

Civil Action No. 380

Trial Division of the High Court

Palau District

May 20, 1968

Action to determine title to land in Melekeiok Municipality, Palau District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that purchase of the land in question created a joint or family tenancy in the land and the sole surviving brother of the decedent became sole owner of the property, thus the decedent's adopted son did not inherit under section 801 of the Palau District Code as that section does not apply to joint tenancies.

1. Palau Custom-Funeral Meeting

It is customary that the funeral meeting of relatives of the decedent, his surviving spouse and children, when adopted, which is conducted by family, lineage and clan male elders, affirm any dispositions, or promises of gifts made by the decedent during his last illness, and that they agree upon the distribution, in accordance with rules prescribed by custom, of the decedent's property not disposed of by him.

2. Palau Land Law-Individual Ownership--Decedent's Estates

Section 801 of the Palau District Code impinges upon the funeral meeting custom by providing that lands held in fee simple by an individual which are not disposed of by will shall be inherited, first, by the "oldest living male child of sound mind, natural or adopted".

3. Palau Land Law-Family Ownership-Transfer

The principle of American law of joint ownership, with right of survivorship is similar to Palauan land law custom that land purchased by a family belongs to the family and cannot be transferred without consent of the family members even though the oldest member administered and occupied it.

4. Palau Land Law-Family Ownership-Survivorship

Upon the death of the oldest member of a family occupying family land, the land goes to the oldest surviving member who also assumes any obligations of the decedent to the other family members, including the children.

5. Real Property-Deed of Transfer

A deed of transfer is insufficient to vest title in the "transferee" if he was not otherwise entitled to the land transferred.

6. Palau Custom-Children's Money

Under Palau custom a father may retain the children's money while his adopted son remains a member of the family and the father may transfer it when he, the father, dies, and, if, at any time the money was to be transferred the father's brothers could substitute smaller pieces for the large piece.

7; Palau Custom-Children's Money

The consent of one entitled to children's money to use the money in land purchase was no more than acquiescence in the revocation of a promise to use the specific piece as children's money.

8. Gifts-"Causa Mortis"

A gift *causa mortis* is defined as being made in contemplation of death from a present illness or some immediate peril, which if death does not result revokes the gift.

9. Gifts-Generally

. Before any gift is completed there must be an intention to make a gift on a delivery to and acceptance by the donee.

10. Gifts—Land

Since the statute of frauds is not in effect in the Trust Territory, the law as developed from gifts of chattels is equally applicable to gifts of land.

<i>Assessor:</i>	JUDGE PABLO RINGANG
<i>Interpreter:</i>	SINGICHI IKESAKES
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	WILLIAM O. WALLY
<i>Counsel for Defendant:</i>	GILBERT TULOP

TURNER, *Associate Justice*

In accordance with the stipulation of the parties, by their counsel, it was ordered that the complaint be dismissed against Saburo Dulei, who relinquished all claim to the land in question, and trial then was commenced with the Intervenor, Joseph Belau, as the only defendant. Trial was held May 7 through May 14, 1968, at Korol, Palau District, before D. Kelly Turner, Associate Justice.

OPINION

The plaintiff and defendant each claimed ownership of the land Ngeaur in Melekeiok Municipality, Palau District, which was listed in the *Tochi Daicho*, the Japanese land summary compiled in 1938-1941, as Lot No. 452, comprising 1,460 *tsubo*, as individually owned by Madraimul. No effort to change recorded ownership was made until plaintiff filed a "Deed of Transfer" signed by himself as transferee but without a grantor and witnessed by thirteen other persons, one of whom was Merii Tengoll, administrator for her father, Madraimul, now deceased. This instrument, recorded in Book VII, pages 91-93, May 1, 1967, by the Clerk of Courts, Palau District, recited, among other things:

"That his (Belau's) adopted son Joseph (over 40 years of age) will make his living with the said Llecholech Rechemang, as his brother, until he designate any property to him as his inheritance and Saburo Dulei who was adopted also by Blau (spelled Belau in this opinion) 14 months prior to his death, was given a piece of Palauan money and the single house mentioned in paragraph one above, provided he removed it from the land."

The instrument in addition to the paragraph above also stated that at Belau's funeral meeting "it was decided . . . that the land so described above be transferred to his (Belau's) younger brother, Llecholech Rechemang, (true brother by blood) as his individually owned property; . . ."

This claim of ownership by the plaintiff was vigorously contested by the defendant Joseph Belau, who claimed his adoptive father, Belau, had either given or promised to give him the land.

[1] Strangely enough, because it is completely contrary to Palauan custom, all of the witnesses agreed that disposition of the land was not discussed at Belau's funeral meeting, contrary to the recitation in the "transfer" instrument. It is customary that the funeral meeting of relatives of the decedent, his surviving spouse and children, when adopted, which is conducted by family, lineage and clan male elders, affirm any dispositions, or promises of gifts made by the decedent during his last illness, and that they agree upon the distribution, in accordance with rules prescribed by custom, of the decedent's property not disposed of by him.

[2] Impinging upon custom, however, is Section 801 of the Palau District Code, which provides, in addition to disposition of land by will, that "lands held in fee simple by an individual" which are not disposed of by will shall be inherited, first, by the "oldest living male child of sound mind, natural or adopted".

Defendant claimed ownership of the land on two theories:-

1. As a gift *causa mortis* because his adopted father intended to substitute the land for a large piece of Palauan money, *lteterachel*, which his father had displayed as "children's money" at the funeral meeting of the defendant's adoptive mother. The money had been used,

some time after the funeral meeting, to purchase the land in question.

2. In the alternative, if there was no gift or oral will of the land to the defendant, then he was entitled to it by inheritance as the oldest male child in accordance with the Code section.

For either one of these theories to prevail, it was incumbent upon defendant to prove Belau was sole owner, that is, that he owned the land in fee simple. This he attempted to do, but his proof was not conclusive.

[3,4] The plaintiff's claim rested upon the principle known in American law as joint ownership, with right of survivorship, which is similar to Palauan land law custom that land purchased by a family (in this case, brothers and their wives) belonged to the family and could not be transferred without consent of the family members even though the oldest member administered and occupied it. Upon the death of the oldest member, the land went to the oldest surviving member who also assumed any obligations of the decedent to the other family members, including the children. In this case, the plaintiff is the oldest and only surviving member and under the custom is entitled to the land and should assume any unfulfilled obligations to any of Belau's children. From the evidence it appears the defendant Joseph is the only one having a claim against the plaintiff, although the former defendant, Saburo Dulei, is entitled to remove from the land the house which was given him at Belau's funeral meeting.

[5] The plaintiff relied upon the provisions of custom in preparing and having recorded the witnessed transfer instrument. That instrument, in form at least, was insufficient to vest title in plaintiff if he was not otherwise entitled to the land.

To resolve the dispute, the court is required to examine the evidence to determine whether the land in question was family land under the custom or was owned in "fee simple" by the decedent, Belau. In doing so, the court considers the common law of the United States relating to joint ownership and to gifts as being applicable because of the absence of any conclusive determination under Palauan custom.

The large piece of Palauan money used in purchasing the land from Madraimul was obtained from Tmodrang for four smaller pieces of money and 400 yen. The plaintiff contributed one *Kldait*; the brother, Ngirngedkui, now deceased without survivors, supplied one *Kldait*, one *Kluk* and 200 yen; the son, Demei, of a younger brother, and his wife, gave one *Kldait* and 50 yen; and Belau and his wife contributed one *Elebucheb* and 150 yen to make up the total used in the exchange for the piece, *Iteterachel*. Upon the death of Belau's wife, the adoptive mother of the defendant, Joseph, and an adoptive daughter, Bieb, and another adoptive son, Orukei, the piece, *Iteterachel*, was displayed as children's money. Because both Bieb and Orukei were otherwise taken care of, Belau announced he would retain the children's money while the adopted son, Joseph, remained a member of the family and would transfer it when he (Belau) died.

[6] It is noted that under the custom this was permissible, and, if, at any time the money was to be transferred, the brothers of Belau could substitute smaller pieces for the large piece. Under the law of gifts, this was not a present gift nor was it so considered under the custom. At most, it was a promise of a gift in the future.

[7] Later Belau used this promised money to buy the land in question but before he did so, he obtained Joseph's agreement to use the money. From this, Joseph assumed the land was substituted for the money, but this

conclusion is not valid either under Palauan custom or the law of gifts. At no time, then or later, did Belau complete the gift to Joseph. The consent of the defendant to use of the money in the land purchase was no more than acquiescence in the revocation of the promise to use the specific piece as children's money.

Defendant attempted to show, however, Belau promised the land to him in lieu of the money. This, however, Belau could not do without consent of his brothers.

At Belau's funeral meeting, no decision was made as to the land, although the house on it was given to Saburo and three sacks of copra from the land went to Joseph to sell. During Belau's last illness he was asked, in the presence of Joseph, if there were any instructions about disposition of the property. Belau said he had nothing to say. If Belau intended Joseph to have the land, he would have said so and the funeral meeting would have confirmed the transfer.

[8, 9] A gift *causa mortis* is defined as being made in contemplation of death from a present illness or some immediate peril, which if death does not result revokes the gift. *Parker v. Mott*, 107 S.E. 500, 25 A.L.R. 637.

Before any gift is completed, there must be:-

1. An intention to make a gift, and
2. There must be a delivery to and acceptance by the donee. 25 A.L.R. 642 at 643. 3 A.L.R. 902.

The comment at 3 A.L.R. 916 covers the situation in this case:-

"A mere unexecuted purpose, however clearly or forcibly expressed, so long as it rests merely in intention, is not effectual. . . . in order to consummate the gift, the donor must have transferred the possession of the thing to the donee in person, or to someone for his use"

[10] It is noted the law relating to gifts as annotated in A.L.R. and discussed in 24 Am. Jur., Gifts, §§ 2, 6,

21 and '68, treats gifts of chattels for the reason a gift of land is required to be evidenced by a written instrument in compliance with the statute of frauds; Since we do not have this statutory requirement in the Trust Territory, the law as developed from gifts of chattels is equally applicable to gifts of land.

The same principle is applicable to creation of joint tenancy or ownership with right of survivorship in land. *Greenwood v. Commissioner*, 134 F.2d 915. 64 A.L.R.2d 922. 44 A.L.R.2d 595 at 605. 20 Am. Jur. 2d, Cotenancy and Joint Ownership, § 4 et seq.

The court concludes from the law and the evidence:-

1. There was not an executed gift of the Palauan money, *lleterachel*.

2. Purchase of land with the money created a joint or family tenancy in the land.

3. The land was not given to Joseph and under the custom, the plaintiff became the sole owner as the sole survivor of the brothers.

4. The statute providing for descent of land to the oldest son, in the absence of a will, is not applicable to jointly-held family land.

5. By inheritance of the land under the custom, the plaintiff assumed his brother's obligation to Joseph regarding payment of the children's money.

Accordingly, it is the court's

JUDGMENT

Ordered, adjudged, and decreed : -

1. That the land known as Ngeaur, Melekeiok Municipality, designated as Lot No. 452, individually owned by 'Madraimul, in the *Tochi Daicho*, is the individual property of Llecholech Rechemang and those who claim underhim.

2. That the defendant Joseph Belau has no right, title or interest in the land, Ngeaur, except as he may derive from Llecholech Rechemang.

3. That Joseph is entitled to receive from the plaintiff and Belau's other relatives a gift of Palauan money or other property of equivalent value to the money called *Iteterachel*.

4. That Saburo Dulei has no right, title or interest in the aforesaid land and may not occupy it without the express consent of the plaintiff, but Saburo Dulei is entitled to remove the house from the land in which he is living and if he fails to remove the house within ninety (90) days, unless Llecholech Rechemang consents to its remaining longer, the house shall be deemed abandoned to the plaintiff.

5. This judgment shall not affect any rights-of-way which may exist over or across the land in question.

6. No costs are assessed against any party.