

LIPIHNA DIOPULOS, Plaintiff
v.
LUHKAS OSAIAS and LUTHER NETH, Defendants

Civil Action No. 332
Trial Division of the High Court
Ponape District

June 12, 1968

Action to determine title to land. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that under the law in effect at the time of decedent's death his adopted daughter could not inherit his land.

1. Judgments-Summary Judgment

Summary judgment is available when there is no disputed issue of material fact and the party moving for it is entitled to judgment upon the law.

2. Judgments-Summary Judgment

Where evidence was required on a disputed issue upon which a party's entitlement to a judgment vesting title in him depended, summary judgment could not be granted.

3. Ponape Land Law-Inheritance

The land law prevailing in Ponape in 1944 denied the right of inheritance to a daughter, natural or adopted.

4. Ponape Land Law-Inheritance

Under the land law set forth in the standard form of German title document used on Ponape a daughter could not inherit land, and although the Japanese permitted land to be transferred to women during the latter part of their administration, they made no change authorizing daughters to inherit as a matter of right; no such change was made by the American Administration until Ponape District Order No.8-57 was issued February 1, 1957.

ASSESS01":

Interpreter:

Counsel for Plaintiff:

Counsel for Defendants:

JUDGE CARL KOHLER

JUDAH C. JOHNNY

KAPUHA DIOPULOS

YOSTER CARL

TURNER, *Associate Justice*

Pre-trial conference was begun before Robert K. Shoecraft, Chief Justice, March 8, 1968, and was terminated without memorandum upon granting motion to intervene to Luther Neth and allowing additional time to answer.

Pre-trial conference again was held June 7, 1968, before D. Kelly Turner, Associate Justice. As a result of the findings on the pre-trial memorandum, defendants moved for summary judgment. Hearing on the motion was commenced June 11, 1968, before D. Kelly Turner, Associate Justice. When the court announced it was ready to rule plaintiff had failed to state a cause of action as a matter of law, counsel for plaintiff, who also was her husband, filed motion to intervene, which in effect amounted to a motion to be substituted as party plaintiff.

OPINION

[1] Summary judgment is available when there is no disputed issue of material fact and the party moving for it is entitled to judgment upon the law. See the opinion and summary judgment entered June 11, 1968, *Rehap Julios v. Jonis Amusten*, 4 T.T.R. 25.

The agreed facts shown in the pre-trial order are not sufficient for entry of judgment for the defendants but they do establish that plaintiff, as a matter of law, is not entitled to judgment. The disputed material fact which precludes summary judgment for the defendant Luther Neth relates to the status of Neht, from whom Luther claimed by inheritance as being his adopted son.

Defendants claim Neht was the adopted son of Dikoi, the predecessor owner, and plaintiff disputes this, claiming that Neht was not adopted but merely was Dikoi's brother-in-law.

[2] Because evidence is required on this disputed issue upon which defendant Neth's entitlement to a judgment vesting title in him depends, summary judgment may not be granted.

[3] However, it is clear from the record the plaintiff may not have judgment upon her claim to the land by inheritance from Dikoi, her adopted father. Dikoi died in 1944 and the land law prevailing on that date denied the right of inheritance to a daughter, natural or adopted.

[4] The Ponape law as to succession to land, commencing in 1912 under the German Administration, and as modified by the Japanese Administration after December, 1941, and further modified during the present administration by district legislative enactments in 1957 and 1959 is referred to in the following cases: *Makdalena and Deresia v. Aluis Liger*, 2 T.T.R. 572. *Liui v. Higgins*, 2 T.T.R. 218. *Eneriko v. Marina*, 1 T.T.R. 334. *Kehler v. Kehler*, 1 T.T.R. 398.

In Civil Action No. 117, 1 T.T.R. 334, the court said:-

"Under the land law set forth in the standard form of German title document used on Ponape, however, a daughter could not inherit land. Although the Japanese permitted land to be transferred to women during the latter part of their administration, they made no change authorizing daughters to inherit as a matter

of right, and no such change was made by the American Administration until Ponape District Order No.8-57 was issued February 1, 1957"

The subject of Ponape District land law is carefully reviewed in two articles by Donald T. Bliss, Jr., in the "Micronesian Advocate", Vol. 1, No.2, p. 4, "The Law of Real Property on the Ponape Island" (January 13, 1967) and Vol. 1, No.3, p. 28, "The Law of Real Property on the Outer Islands of the Ponape District" (March 1967).

From the foregoing, it is clear that plaintiff, as the adopted daughter of Dikoi, the predecessor owner, does not have a cause of action. Defendants moved, as an alternate to summary judgment, for dismissal with prejudice for failure to state a cause of action.

Plaintiff's counsel and husband countered this move with his motion to intervene, claiming entitlement to the land in his own right on a number of grounds, none of which pertained to inheritance. He was not prepared, however, to proceed with trial and consequently the court denied his motion as not timely.

Because of the involved procedures in this case, the court deems it to be necessary that a "new start" be made in settlement of this land dispute, even though the desirable procedure is to settle all conflicting claims when a land title dispute finally reaches a court for determination. Short of an out-of-court agreement, now that the plaintiff's interests have been adjudicated, either the plaintiff's husband or the defendant Luther Neth should initiate proceedings in the nature of a quiet title action.

JUDGMENT

Ordered, adjudged, and decreed:-

1. That plaintiff, LipihnaDiopulos, claiming title by inheritance from her adoptive father, Dikoi, to the land called Sopuk in Pingelap Section of Sokehs Municipality,

Ponape District, is denied relief and that her complaint be and hereby is dismissed with prejudice.

2. That this judgment does not determine the claim of title to the land by the defendant Luther Neth but that his action for summary judgment be and the same is denied without prejudice to his rights to initiate an action in his own behalf.

3. That the defendant Luhkas Osaias has waived any claim to the land in favor of his natural son, the defendant Luther Neth, and is therefore denied any relief.

4. That the motion to intervene of plaintiff's counsel Kapuha Diopulos, be and the same is denied but without prejudice to his right to commence an action asserting title to the land in his own behalf.

5. No costs are assessed against any of the parties.