

JONATHAN JONATHAN, Plaintiff

v.

TIMOTHY JONATHAN, Defendant

Civil Action No. 456

Trial Division of the High Court

Ponape District

September 29, 1972

Dispute over title to land in Kitti Municipality, Ponape. The Trial Division of the High Court, Arvin H. Brown, Jr., Associate Justice, held that land conveyed by father to son in 1931 could not be conveyed by father to another son in 1933 where 1931 deed was valid, 1933 deed was fatally defective and there was no evidence that 1931 conveyance was a conditional gift validly revoked or that the land reverted back to the father in any other way.

1. Ponape Land Law—German Land Title—Validity of Transfer

Owner of land under deed which was a standard form of title document executed during and issued by the German Administration in 1912, and which was registered, was empowered to convey it to others if he obtained the approval of the *Nanmwarki* and the Governor.

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

Where 1931 deed was signed by the *Nanmwarki*, as required by law, but not by the Governor, as required by law, and there was a question whether the *Nanmwarki*, acting as the Cho Sun Cho, was authorized to sign for the Governor, transferees would be treated as holding title as against all persons except the Government, and it would be inferred that the present and past governments tentatively consented to the transfer where they did not challenge it.

3. Ponape Land Law—German Land Title—Validity of Transfer

Document relied upon to establish 1933 conveyance of land was defective and did not vest title where it did not contain *Nanmwarki's* approval, as required by law, and there was no evidence otherwise showing such approval.

4. Ponape Land Law—German Land Title—Validity of Transfer

Land conveyed by father to son in 1931 could not be conveyed by father to another son in 1933 where 1931 deed was valid, 1933 deed was fatally defective and there was no evidence that 1931 conveyance was a conditional gift validly revoked or that the land reverted back to the father in any other way.

5. Equity—Laches

Where persons validly deeded land lived on and worked the land, and person claiming title under defective deed did not live on and work

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the land, claimant to the land could not successfully assert laches on part of those validly deeded the land.

<i>Assessor:</i>	YOSTER CARL, <i>District Judge</i>
<i>Interpreter:</i>	HERBERT GALLEN
<i>Reporter:</i>	GAYLEN AMMONS
<i>Counsel for Plaintiff:</i>	EDWELL SANTOS
<i>Counsel for Defendant:</i>	YASUWO JOHNSON

BROWN, *Associate Justice*

The land, Sauiso (also known as Jauiso), lies in Kitti Municipality, Ponape, and is the subject of a dispute which gave rise to this case. The plaintiff claims title to three parcels designated as Palapa, Pilenmwaki, and Nehmas, which make up one half of the land. The defendant claims all of the land, Sauiso, including not only the three parcels referred to above, but also the remaining one half which is comprised of three additional parcels known as Apali en Toke, Masawi, and Nan Kehnpap.

The property was registered under Land Deed No. 147 which was executed during the German administration in 1912. This land deed reveals that as of the time of its execution, all of the land, Sauiso, was owned by a man named Jonathan, whose Ponapean name was Insen Nei, and whose title was Namadau en Rohn Kitti.

Jonathan had two sons, the elder, Ihlon, being father of the plaintiff, Jonathan Jonathan, and the younger, the defendant, Timothy Jonathan. In 1911, an uprising took place in Sokehs Municipality, Ponape; and, upon suppressing the rebellion, the German administration exiled the entire population of Sokehs, except for one family. See: "Land Tenure Patterns, Trust Territory of the Pacific Islands", 1958, p. 114. Ihlon's wife, Albera, was a resident of Sokehs, and Ihlon accompanied her into exile. They settled in Palau, where the plaintiff was born in 1916. Two years later,

Ihlon, Albera, and the infant, Jonathan Jonathan, returned to Ponape.

In 1931, Jonathan divided his land, Sauiso, into six parcels, three of which he conveyed to Ihlon, and three of which he conveyed to Timothy. This division of the land was memorialized on November 26, 1931, in a written instrument signed by Jonathan, witnessed by appropriate witnesses, and approved by the *Nanmwarki*, Paul, as well as the Nisliklapalap, Luelen. It is noted that as of the date of the approval of the division, Paul held under the Japanese administration the title of Cho Sun Cho, and Luelen the title of Sun Cho. The former means, roughly, the "head man" of a Municipality; and the latter indicates the position of the Cho Sun Cho's deputy. The approval of Paul and Luelen is established by their personal stamps being affixed to the document conveying title to Ihlon and Timothy.

While the document memorializing the division of the land did not bear upon it the stamp of the governor, there was credible testimony that at the time with which we are concerned, a Cho Sun Cho had the authority to act on behalf of the Governor. However, as will be seen below, that question, if it is indeed a question, need not be answered in this case.

When Ihlon and his family returned to Ponape from Palau, they moved upon the land Sauiso. They occupied a house on one side of the property; and the defendant, Timothy Jonathan, occupied a house on the other side. When Jonathan Jonathan, Ihlon's sole surviving son, grew up, Ihlon showed him the boundaries and pointed out a stone marker or monument in the center, an ivory tree that was a monument, and a stone monument at each corner.

The defense offered, and there was received in evidence a document dated October 18, 1933 reciting that Jonathan

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had on that date conveyed all of the land, Sauiso, to the defendant. This document was stamped by one Ruyuicho Noda of the office of the Governor, who appears to have been the Police Master of Kitti Municipality. No other stamp appears upon that document; and, specifically, it was neither stamped nor signed with approval by the *Nanmwarki* as required under Ponape land law.

Jonathan died in 1940, and Ihlon died in 1952.

[1, 2] Land Deed No. 147 was a standard form of title document issued by the German government in 1912. Manifestly, Jonathan was the sole owner of the property at that time and until 1931, when he conveyed one half of the land to his son, Ihlon, and one half to his son, Timothy. Jonathan, as the owner of the land, was empowered to convey it to others provided he obtained the approval of the *Nanmwarki* and the Governor. There can be no doubt but that the *Nanmwarki* approved of the 1931 transfer. There is, of course, a question as to whether or not the Governor approved. If Paul, the *Nanmwarki*, while acting as Cho Sun Cho, was authorized to act in the place and stead of the Governor, it could be held that the Governor had approved of the transfer of title; but this need not be decided here. If the present government were to challenge the conveyance, there could well be a different answer; but the present government has not challenged the conveyance; nor is there any evidence that it was ever challenged by the Japanese administration. Thus, it may be inferred that the government has tentatively consented to the *Nanmwarki's* determination; and unless and until it takes further action, the transferees have the right to be treated as the title holders as against all persons, except the government. *Lusama, et al. v. Eunpeseun*, 1 T.T.R. 249; *Welentin Pernando v. Paulus*, 1 T.T.R. 32.

[3] Defendant argues that title vested exclusively in him by virtue of the purported conveyance of 1933. With this, the court cannot agree. The document relied upon by the defendant to establish a conveyance is defective in that it does not indicate the approval of the *Nanmwarki* as required under Ponape land law, and no other evidence was offered tending to show the approval of the *Nanmwarki*.

[4] Even more important is the fact that one cannot convey title to property one does not own. Thus, this court must pass upon the question of the validity or invalidity of a gift of land. No cases can be found where a revocation can be sustained or held valid solely on the basis of inferences drawn from later acts of the donor. Of course, a conditional gift can be made, and a violation of the conditions could result in a revocation of the gift. Here, however, there is not a scintilla of evidence before the court tending to show that the 1931 conveyance was a conditional gift or that, if it were, plaintiff violated any conditions which might possibly be implied in connection therewith. No evidence came before the court that even remotely indicated that any facts or circumstances exist which would estop plaintiff from pursuing his legal remedies other than defendant's claim that plaintiff's father, Ihlon, was exiled after 1931 and before 1933 and that such exile barred Ihlon from owning real property in Ponape. Defendant, himself, admitted that Ihlon joined his wife in exile on one occasion only. The evidence is overwhelming that this event took place in 1912. Further, no part of the land, Sauiso, ever lay in Sokehs Municipality. We find this claim to be without merit. Likewise, no evidence was offered to show that Ihlon had failed in any duty he owed to his father, Jonathan, or committed any act which would give the latter a just reason to revoke the conveyance of 1931.

Therefore, Jonathan, in 1933, could not convey to de-

fendant, alone, the land he had already conveyed to plaintiff and defendant, in equal shares, at an earlier date.

Finally, defendant argues that plaintiff is barred by laches. We disagree. Laches is defined in 27 Am. Jur. 2d 689 as follows:

“Laches is a purely equitable doctrine, and the defense of laches is creation of equity and is generally peculiar to a court of equity. Laches is founded principally upon the equitable maxims, ‘He who seeks equity must do equity,’ ‘He who comes into equity must come with clean hands,’ and ‘equity aids the vigilant, not those who sleep on their rights.’ The basis of the doctrine of laches is said to be public policy, which requires, for the peace of society, the discouragement of stale demands. The doctrine is based on the injustice of allowing recovery where no explanation is given for unreasonable and injurious delay, and is based, in part at least, on the injustice that might or would result from the enforcement of a neglected right or claim. The defense that a claim is stale is said to be nothing more than an application of the doctrine of laches and to be based on estoppel.” Section 153.

In *Kanser v. Pitor* 2 T.T.R. 481, 489, this court stated:

“Roughly and bluntly stated, the effect of the above is that if a person of full age and sound mind stands by, or he and his predecessors in interest together have stood by, for twenty (20) years or more and let someone else openly and actively use land under claim of ownership for that period or more, the person who so stood by will ordinarily be held to have lost whatever rights he may previously have had in the land and the courts will not, and should not, assist him in regaining such rights. In the future, any one claiming the ownership of land of which neither he nor his predecessors in interest have been in open and active possession within twenty (20) years before the bringing of the action, can expect that the issues in his action will be separated and the question of whether his claim has been barred will be considered first and disposed of either at the pre-trial conference or by trial of that issue, before the court will go into the merits of any rights he may have had in the land based on things that happened more than twenty (20) years before the bringing of the action.”

[5] In this case before us, neither Ihlon nor plaintiff stood idly by and permitted others to openly and actively use the land. The evidence is to the contrary. They lived upon that land and worked upon it. The evidence is in conflict, but the court is of the opinion that the great preponderance of the evidence is in accord with the foregoing; and, further, that defendant at no time either worked upon or lived upon the land which had been given to Ihlon.

According, it is Ordered, Adjudged and Decreed as follows:

1. As between the parties and all persons claiming under them:

a. The parcels Palapa, Pilenmwali, and Nihmas of the land, Sauiso, Kitti Municipality, Ponape are owned by plaintiff, Jonathan Jonathan, the sole surviving son of Ihlon;

b. The parcels Apali en Toke, Masawi, and Nan Kehnpap of the said land, Sauiso, Kitti Municipality, Ponape, are owned by defendant, Timothy Jonathan;

2. This judgment shall not affect any rights of way there may be over and across said land; and

3. Plaintiff is awarded costs herein.