

ATALPET SIMIRAIT, Plaintiff

v.

KASUO SALPIN and MOSES HENRY, Defendants

Civil Action No. 349

Trial Division of the High Court

Ponape District

March 7, 1972

Action to determine ownership of land in Alohapw section, Madolenimw. The Trial Division of the High Court, H. W. Burnett, Chief Justice, held that where there was no evidence to support a claim superior to plaintiff's, defendant who had purchased property from co-defendant was entitled to a refund of money he had paid for the land.

1. Wills—Oral

An oral will cannot suffice to overcome rights held under the inheritance law.

2. Ponape Land Law—Inheritance

One claiming a transfer out of normal lines of inheritance carries a burden of establishing conclusively that that was in fact the intention of the owner.

Counsel for Plaintiff:

YASUWO JOHNSON

Counsel for Defendants:

EDWEL SANTOS

BURNETT, Chief Justice

The dispute herein involves a portion of the land Imwindol, Alohapw section, Madolenimw, which was originally owned in its entirety by Simirait. During Japanese times Simirait divided the land, giving one division to plaintiff, and retaining the balance himself. Out of the retained portion it is agreed that he sold three parcels, including one to defendant Moses Henry. The fourth, remaining parcel, is the subject of this dispute. Simirait died in 1962, having executed neither deed nor will to provide for succession to his title.

Both plaintiff and the defendant Kasuo Salpin claim as adopted children of Simirait, who had no natural issue. Moses Henry claims by purchase from his co-defendant, and consequently must rely entirely on the strength of Kasuo's claim.

The evidence fully supports the contention that Simirait adopted both Atalpet and Kasuo. Under the law in effect in 1962 when Simirait died, P.L. 3-17-59 (now Section 12-101, Ponape District Code), Atalpet, the older of the two, was clearly entitled to succeed, in the absence of any prior disposition of the land by Simirait.

[1] Kasuo attempted to show that he had, at various times, been promised by Simirait that the land was for him. Prior to Ponape District Order No. 9-57, effective March 22, 1957, no testamentary disposition of land, out of the ordinary line of succession, was permitted. Following that date, and under that Order, such disposition was permitted, but only through observance of strict formal requirements as to execution, witnesses, and approvals. An oral will cannot suffice to overcome rights held under the inheritance law.

[2] Defendant's evidence in support of his contention that Simirait had given him the land before death is unconvincing, in view of other believable testimony that almost to the day he died Simirait was attempting to sell to others. As this court has held before, one claiming a transfer outside of normal lines of inheritance carries a burden of establishing conclusively that that was in fact the intention of the owner. See *Welliem v. Welliem*, 4 T.T.R. 210.

There being no evidence to support a claim superior to that of plaintiff under the inheritance law, I conclude that he is entitled to be recognized as owner of the land.

It follows that defendant Moses Henry is entitled to a return of money paid to Kasuo Salpin. The evidence as to amount, however, is not sufficiently clear to permit entry of

judgment for it. If they are unable to agree, that is to be reported to the court, so that the matter can be reopened and a Master appointed to take evidence on that issue.

It is ordered, adjudged, and decreed:—

1. Plaintiff Atalpet Simirait is the owner and entitled to possession of the land here in dispute, being that portion of the land Imwindol, Alohapw section, Madolenimw, Ponape District, owned by Simirait at the time of his death.
2. No costs are assessed.