OLKERIIL SECHESUCH, Plaintiff

v.

KEBIK and ELIBOSANG, Defendants

Civil Action No. 493

Trial Division of the High Court

Palau District

June 12, 1973

Title dispute. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, granted plaintiff's motion for summary judgment where defendants did not plead, or offer to establish, title.

1. **Judgments—Summary Judgment—Identity of Parties**

   In action involving title dispute, motion for summary judgment on ground title had been decided in a prior action would be denied where the parties were different.

2. **Judgments—Summary Judgment—Lack of Fact Issues**

   In action claiming title to land, plaintiff's motion for summary judgment would be granted where defendants' pleadings made no claim to title and defendants did not offer to establish title.

Assessor:	PABLO RINGANG, *Presiding Judge, District Court*
Interpreter:	AMADOR D. NGIRKELAU
Reporter:	ELSIE T. CERISIER
Counsel for Plaintiff:	FRANCISCO ARMALUUK
Counsel for Defendants:	JOHN O. NGIRAKED

TURNER, *Associate Justice*

Plaintiff moved to substitute Siksei as successor to Olkeriil, who died after the complaint was filed. Sechesuch

is the title held by both Olkeriil and his successor Siksei. The motion was granted and the caption was amended accordingly.

When defendant answered the complaint, plaintiff filed a motion for summary judgment on the ground that title to the land in question had been decided in *Sechesuch v. Trust Territory*, 2 T.T.R. 458. The reported case combined four appeals from the determinations made by the Palau District Land Title Officer concerning lands claimed by the Trust Territory in Airai Municipality, Babelthuap Island.

Because the reported case did not describe any of the land involved in the decision, it is necessary to compare the specific determination of the land title officer as appealed to this court in Civil Action No. 165. The judgment in Civil Action No. 165 held:—

"As between the parties and all persons claiming under them, the land described in said Determination of Ownership and Release, namely, that known as Ngertoluk, Deleb, Las, Tochelaboi, and Ngermedii, located in Airai Municipality, Palau District, and more fully described as follows:

Bounded on the north by Government land
Bounded on the east by Government land
Bounded on the south by Ocean
Bounded on the west by Skedong
as shown on sketch No. 81 and Land Office Map No. B 1

is the property of the Ibau Lineage, represented in this action by the appellant Olkeriil Sechesuch, who lives in Ngerusar, Airai Municipality, Palau District."

The land description, at least as to its boundaries, is not the same in Civil Action No. 165 as in the present case. However, the essential similarity is found in the reference to Lot or Sketch No. 81 in the Land Office map B 1. The preferred description, as a matter of law, is by reference to a map depicting a survey. 12 Am. Jur. 2d, Boundaries, Sec. 3. *Ngirudelsang v. Itol*, 3 T.T.R. 351, 354.

[1] Although the land, i.e., the subject matter, of Civil Action No. 165 and the present case is the same, the decision now asked for by plaintiff cannot be based upon the doctrine of res judicata because of the difference in parties. In the earlier case the contest was between plaintiff Olkeriil and the Trust Territory, and the present case began between Olkeriil and Kebik and Elibosang. Had the defendant asserted at trial or in response to motion for judgment they claimed from the Trust Territory, then doctrine of res judicata would apply because they would be in privity with the former defendant.

In *Joseph v. Ludwig*, 4 T.T.R. 354, 356, the doctrine is considered and carefully explained. The court said:—

> "The doctrine of res judicata, literally translated as 'the matter has been adjudged' means quite simply that the court will not permit parties or those in privity with them to relitigate issues which have already been determined by a court of competent jurisdiction. . . . When we speak of parties and those in privity with them as being bound under the doctrine, we mean parties claiming under the same title; privity involves one so identified in interest with another that he represents the same legal right."

[2] The defendants made no claim to title in their answer to the complaint by general denial. Had they been able to allege or show title from any source other than the Trust Territory government, the doctrine of res judicata would not have been applicable in spite of the former judgment holding that as against the Trust Territory, ownership rested in the Ibau Clan (also spelled Ebai). Without a claim of title in their pleadings or an offer to establish title, the defendants could offer no dispute of the principal issue of facts. Without such issue of fact, the plaintiff, as representative of his clan, was entitled to judgment as a matter of law, based upon the decision in Civil Action No. 165.

It is

Ordered, adjudged and decreed:—

1. That the land shown as Lot No. 81, comprising of 2,500 *tsubo*, more or less, as depicted in Palau District Land Office Map No. B 1, is the property of the Ebai, also spelled Ibau, Clan, represented by its title bearer, Siksei.

2. That the defendants have no right, title or interest in the land in question, and shall forthwith vacate the premises.

3. That plaintiff shall have costs as allowed by law.