ORRENGES THOMAS, Plaintiff-Appellee

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendant-Appellant

Civil Appeal No. 275

Appellate Division of the High Court

Palau District

May 23, 1979

Dispute over ownership of land. The Appellate Division of the High Court, Hefner, Associate Justice, held that where German Government was deeded clan land by head of clan in 1909, and the Japanese later acquired the mineral rights, and apparently did not also acquire the land itself, when the United States took the island containing the land the United States acquired all rights of prior sovereigns, including the German Administration's rights to the lands transferred by the 1909 deed; and as rights of the United States were represented by the Trust Territory, when the clan, in the 1960's, filed a claim to the land and was given a quitclaim deed in exchange for a release of the claim, the clan received consideration for its release and the government gave up its interest in the land, except for land retained under the quitclaim deed for United States Coast Guard use.

1. **Palau Land Law—Alienation of Land of Another Clan**

   Palauan customary land law provides that a head of one clan cannot alienate land belonging to another clan.

2. **Palau Land Law—Clan Ownership—Transfer**

   Under Palauan customary land law the only way clan or lineage land can be transferred is when the consent of the senior members of the clan is obtained.

3. **Deeds—Consideration—Presumptions**

   Consideration was presumed where deed recited that 1,200 German marks were paid the sellers of land for the land.

4. **Palau Land Law—Clan Ownership—Transfer**

   It would be presumed that head of clan had the consent of the senior members of the clan to sign deed transferring ownership of clan land where no evidence appeared of any attempt of the clan to rescind or revoke the transfer.

5. **Palau Land Law—Alienation of Land of Another Clan**

   Where there were 18 clans on island and the heads of three clans signed deed transferring ownership of the island to the German Government, the signatories did not have authority to transfer the whole island, but the clan heads who did sign could and did transfer the land of their clans.

6. **Palau Land Law—Clan Ownership—Transfer**

   Where clan head transferred clan land by deed and there was no evidence clan attempted to rescind or revoke the transfer, the clan was estopped from denying the transfer.

7. **Palau Land Law—Clan Ownership—Release**

   Where German Government was deeded clan land by head of clan in 1909, and the Japanese later acquired the mineral rights, and apparently did not also acquire the land itself, when the United States took the island containing the land the United States acquired all rights of prior sovereigns, including the German Administration's rights to the lands transferred by the 1909 deed; and as rights of the United States were represented by the Trust Territory, when the clan, in the 1960's, filed a claim to the land and was given a quitclaim deed in exchange for a release of the claim, the clan received consideration for its release and the government gave up its interest in the land, except for land retained under the quitclaim deed for United States Coast Guard use.

8. **Appeal and Error—Record on Review—Designation and Certification**

   Where court rule was designed to eliminate having court clerks certify everything in the file upon an appeal where there is no need for certification of everything, and to require the appealing counsel to designate what he thought necessary for the appeal, the clerk to then certify what counsel designated, and counsel designated the entire file records without going over them, and many of them were irrelevant, counsel's client would be taxed $300 as a reasonable expense. (T.T.R. App. P. 16)

Counsel for Appellant: JOHN TARKONG, *Attorney General's Office*

Counsel for Appellee: CARLOS SALII

Before HEFNER, *Associate Justice*, GIANOTTI, *Associate Justice*, and LAURETA, *Designated Judge*

HEFNER, *Associate Justice*

At issue in this appeal is the ownership of an airstrip and related facilities on Angaur Island, Palau, that were used by the United States Coast Guard. The use commenced in 1952 or 1953, although a formal "Use and Occupancy" Agreement was not entered into between the Trust Territory Government and the United States until 1971.

The appellee is the male head of the Ochedaruchei Clan with the title of Adelbai. The clan claims ownership of the land from a period predating the events to be related in this opinion. The Trial Court apparently found this to be the case, and this Court will not disturb that finding.

For the purposes of this matter the history commences during the German Administration.

Sometime after the turn of the century, the need for phosphate was such that it was determined that it was economical to mine phosphate from the Island of Angaur.

In order to acquire land to perform this mining operation, the German Government assigned its administrators the task of dealing with the people on Angaur Island. Consequently, on November 20, 1909, an Agreement was entered into which purportedly transferred ownership in Angaur Island, except for 150 hectares, to the "lands Treasury" of the German Government.

The Agreement was signed by eight Angaurese of which only three were heads of the clans. (Tr. p. 12–15.)

Thereafter, the Germans mined phosphate until the Japanese acquired the mining rights. There is no showing that the German Administration transferred its purported land ownership interest to the Japanese Government.

The Japanese Government mined phosphate until the war, when the United States military forces conquered the island.

In 1947–48 negotiations were commenced to renew the mining operations and a Mining Agreement was entered

into. Basically, the clans of Angaur agreed to allow the United States to mine phosphate in exchange for royalties. The clans which claimed land in the mined area were referred to as owners in the various agreements relating to the mining operations.

The people of Angaur were given pretty much free access in the German, Japanese and U.S. Administrations to the island except that some houses had to be relocated for mining purposes. The testimony reveals that the Angaurese paid no rent to anyone and, in certain instances, obtained rentals for the use of lands in Angaur.

The appellee argues this demonstrated that everyone treated the Angaurese as owners and, in fact, they are the owners of the land.

In the early 1950's, the Government surveyed the island and the Coast Guard began using the property in dispute around 1953. In the early 1960's, the people were invited to file claims for their land pursuant to land management regulations. Included in the claims filed was Claim No. 230, which was signed by the predecessor of the appellee and which claimed essentially the land in dispute in this case.

Apparently, the Government determined to resolve the problem of the claims by executing quitclaim deeds to the various claimants in exchange for a release by the claimants. In the case of Claim No. 230, the Government quitclaimed three lots included in the claim, but retained a large portion for the use of the Coast Guard, including the airstrip and navigation station operated by the Coast Guard. The head of the Ochedaruchei Clan, Ongino, signed a release (Defendant's Exhibit E) in exchange for the quitclaim deeds. The release states in part:

> In consideration of . . . deeds of even date, . . . I Ongino hereby withdraw Palau Land Claim No. 230 . . . and do hereby remise, release and forever discharge the Government . . . of and from any and all manner of actions, causes of action, suits, proceedings,

damages, claims and demands whatsoever in law or equity, which the Ochedaruchei Clan, now have or hereafter shall or may have against the Government . . . by reason of any matter, cause or thing concerning or arising out of any activity on or use of, or status of right, title and interest in and to said lands.

From 1953 to about 1978, the Coast Guard used the retained land. In 1975, the appellee discovered the 1909 German Agreement, and shortly thereafter filed his lawsuit.

The appellee was successful in convincing the Trial Court that his cause of action did not commence until 1975 and therefore the bar of statute of limitation or laches did not apply. It was further found that there was no consideration for the withdrawal and release of land Claim No. 230 executed in 1962 by Ongino and that the German deed was not effective to transfer title to the major part of the island because not all of the heads of the Angaur clans signed the deed.

In analyzing the merits of appellant's appeal, we start with the 1909 German deed.

There appears little doubt that the persons who signed the deed did not have authority to transfer the entire island. The Trial Court found that at all times pertinent there were 18 separate and distinct clans on Angaur, each of which owns land in its own right. Only three heads of the 18 clans signed the deed.

[1, 2] Palauan customary land law provides that a head of one clan cannot alienate land belonging to another clan. The only way clan or lineage land can be transferred is when the consent of the senior members of the clan is obtained. *Gibbons v. Bismark*, 1 T.T.R. 372 (Tr. Div. 1958); *Medaliwal v. Irewei*, 2 T.T.R. 546 (Tr. Div. 1964); *Rechemang v. Belau*, 3 T.T.R. 552 (Tr. Div. 1968); *Armaluuk v. Orruken*, 4 T.T.R. 474 (Tr. Div. 1969).

However, of crucial importance to the resolution of this appeal are two facts. First, the excepted area of 150 hec-

tares is in the southeast of the island and does not include the land in dispute here. Second, the signature "Gagelbai" as it appears on the German deed is in fact that of Adelbai, the title of the head of the Ochedaruchei Clan. (Tr. p. 13, LL 11–14.) This was also conceded at the time of argument by appellee's counsel.

[3] The German deed recites that 1,200 German marks was paid the sellers for the land. Consideration is presumed. 18 Am. Jur. 2d Contracts sec. 90. Indeed, there is no showing that the signatories did not receive consideration.

[4] It must also be presumed that Adelbai had the consent of the senior members of the Ochedaruchei Clan since there is no evidence of any attempt of the clan to rescind or revoke the transfer as indicated in the deed.

The mining operations started during the German Administration, but the record is silent as to any dispute between the clan and the Germans or the Japanese.

[5] Thus, it is concluded that even though the signatories to the 1909 German deed could not and did not have authority to transfer all of the land included in the deed, the clan heads who did sign the deed could and did transfer the land of their respective clans. This, of course, includes the Ochedaruchei Clan.

[6] The clan is estopped to deny the transfer of its own land though it had no authority to transfer the land of other clans. 28 Am. Jur. 2d Estoppel and Waiver secs. 4–10.

[7] Whether the German Government transferred the land acquired or other mineral rights to the Japanese Government is not critical to the resolution of this appeal. The record seems to support the conclusion that the Japanese acquired only the mineral rights with the ownership rights still vested in the German Government, albeit in limbo.

Be that as it may, when the U.S. took the island, it acquired all rights of prior sovereigns. 45 Am. Jur. 2d International Law sec. 27. This includes the rights of the German Administration to the lands transferred by the Ochedaruchei Clan.

Since the U.S. rights are represented by the Trust Territory Government, there was, in fact, consideration for the consent and release of Claim No. 230 of the Ochedaruchei Clan. The Government did give up its interest in the land previously acquired from the Ochedaruchei Clan by the German Government, except for the retained lands used by the U.S. Coast Guard.

Once consideration is found for the release of the clan's claim, the other issues raised on appeal become immaterial. As a matter of fact, the discovery of the 1909 German Agreement by the appellee supports the prior transactions between the Ochedaruchei Clan and the Trust Territory Government rather than giving the clan a purported new cause of action some 13 years after the release of Claim No. 230.

[8] Another matter must be discussed. On October 27, 1978, the appellant filed its notice of appeal. There was no compliance with T.T. Rules App. P. 16, which was effective for all appeals filed after October 1, 1978.

A letter was sent to appellant's counsel advising him of the requirements of Rule 16. The appellant's counsel proceeded to file a designation of record on December 29, 1978, designating ". . . the entire file records of the entire case." The Clerk of Courts accordingly included and certified every document in the file in this case. The Certification of the Record indicates 47 items. Included therein are returns of service, letters, an Order taking the matter of calendar, various affidavits, and pretrial matters, all of which were never relevant or helpful to this appeal.

Appellant's counsel made no effort to analyze his appeal, did not go through the file, nor did he use the basic or minimal process required to comply with Rule 16.

Rule 16 was promulgated with the intent and design to eliminate the useless procedure of having the Clerks of Courts certifying everything in the file when there is absolutely no need for it. The shotgun approach of appellant's counsel is nothing more than a cavalier attitude with little attempt to do basic legal work required of him.

Consequently, pursuant to T.T. Rules App. P. 16, it is determined that the appellant failed to make a good faith effort in the designation of the record and included frivolous and obviously unnecessary documents. It is found that $300.00 is a reasonable expense to be taxed the appellant.

The appellant's counsel should more properly be assessed the costs, but until and unless an amendment to Rule 16f is promulgated, it appears that the appellant must bear the cost (e.g. see *In Re Sutter*, 543 F.2d 1030 (2nd Cir. 1976)).

Accordingly, the Judgment of the Trial Court is REVERSED. Costs are taxed appellant in the sum of $300.00. Payment shall be made to the Director, Administrative Office of the Courts, within 60 days of the date of this Opinion.