

SITANIS FENEI, Plaintiff
v.
PINENGIN, Defendant
Civil Action No. 506
Trial Division of the High Court
Truk District
June 11, 1971

Action to determine ownership of land located in Penia Village on Moen Island in Truk lagoon. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that as land in question had been in defendant's possession for a long period of time any claim plaintiff may have had would be barred by laches.

1. Real Property—Quiet Title—Laches

If a person who believes he owns certain land stands by for many years and raises no objection to someone else using it on the theory that such other person is using it for the person who believes he owns it, the person claiming the ownership should at least obtain some clear and definite acknowledgment of his ownership by word or acts of the user at intervals of less than twenty years.

2. Real Property—Quiet Title—Laches

If a person of full age and sound mind stands by for twenty years or more and lets 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.

3. Real Property—Quiet Title—Laches

If a person, of full age and sound mind, owns land, it is to be expected that he will assert his claim to it in a manner that will make it clear to anyone who is openly and peaceably using the land.

4. Real Property—Quiet Title—Presumption of Ownership

Long continued peaceful possession and use of land under claim of right is a strong indication of ownership.

<i>Assessor:</i>	PRESIDING JUDGE F. SOUKICHI
<i>Interpreter:</i>	SABASTIAN FRANK
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	KINTOKI J.
<i>Counsel for Defendant:</i>	FUJITA PETER

TURNER, *Associate Justice*

The parties agreed this action relates only to a Wininin land division or parcel designated as #1 in the plaintiff's sketch admitted in evidence as Exhibit No. 1. The land is located in Penia Village on Moen Island in the Truk lagoon.

FINDINGS OF FACT

1. The land Wininin, was distributed from the original owner, the Sapunipi Clan, to individual brothers, one of whom, Chechak, the father of defendant, received the land in question. (Designated as Wininin #1, and marked by heavy blue boundary line on plaintiff's Exhibit No. 1 in evidence.)

2. Other divisions of Wininin and their present ownership is expressly not involved in this action.

3. Chechak gave Wininin #1 to defendant in 1936 and he began working the land in 1938.

4. Chechak gave certain coconut and breadfruit trees in an area stipulated to be 150 feet by 50 feet within the southeast portion of Wininin #1 to Niko and Nito, daughters of Mochin who was the daughter of Au, also spelled Aup, who was the older brother of Chechak.

5. The plaintiff, Sitanis, is the natural son of Niko.

6. The defendant married, in 1939, Aruko, daughter of Nesechin who was the daughter of Nito, the sister of plaintiff's natural mother, Niko. Aruko died in 1949.

7. When defendant married Aruko, the special trees on Wininin #1 (called "nufou" and "neifou") were given by Niko and Nito to defendant, who in turn in accordance with custom made a gift of the land Wiseinuk in Peniesene Village to Nito and Niko. After about ten years, the land Wiseinuk was returned to defendant and the trees were returned to Nito and Niko.

8. The trees were destroyed during the war by the Japanese to permit farming of the land. Under the custom when the trees were destroyed, the land reverted to the owner for replanting and the owners of the trees no longer had any interest in the newly-planted trees.

9. Plaintiff did not assert any claim to Wininin #1 until 1968 after the death of Nito and Niko.

10. Defendant occupied and used the land as his own, except for the trees given to Nito and Niko, for more than thirty years before this action was brought and his predecessor, his father, controlled and used the land for perhaps thirty years prior to defendant's possession. The only break in use and occupancy occurred when Chechak, at the request of the Japanese administrators, authorized the use of the land as a village coconut plantation and later, during World War II, the Japanese farmed the land.

OPINION

The conflicting ownership claims to the land in question undoubtedly arose because of the gift of coconut and breadfruit trees in a portion of the land to Niko, plaintiff's true mother, and Nito, his aunt by American genealogy but his mother under the custom in Truk. There was a great deal of testimony on the original ownership and distribution of the Wininin divisions, but in accordance with the findings of fact it is clear that the specific parcel in dispute was given to defendant by his father, Chechak.

Defendant's marriage to Aruko, whose possible claim to the land, in accordance with Finding No. 5, was through the same two sisters from whom plaintiff's claim is derived, gave rise to plaintiff's theory of entitlement to the land. Plaintiff sought to prove the defendant worked the land in his wife's name and not as owner.

This basis for plaintiff's claim fails to be convincing for several reasons. First, the evidence supports defendant's

contention he did not work the land in his wife's name because he became owner through his father before he married his wife. The argument, frequently encountered in Truk, that someone was not the owner of land but worked it in the name of another is resorted to in an effort to overcome the normal presumptions arising from long use and occupancy.

[1] Such a claim by a plaintiff seeking recovery of land was rejected in *Nukas v. Marsian and Iosuo Minami*, Truk Civil Action No. 474. Also this Court said in *Nakas v. Upuili*, 2 T.T.R. 509, 511:—

“ . . . if a person who believes he owns certain land stands by for many years and raises no objection to someone else using it on the theory that such other person is using it for the person who believes he owns it, the person claiming the ownership should at least obtain some clear and definite acknowledgment of his ownership by word or acts of the user at intervals of less than twenty (20) years.”

In the present case, plaintiff does not dispute the use and occupancy by defendant from the date of his marriage in 1939 until suit was filed in 1969, a period of thirty years. Defendant's claim to occupancy by his father as predecessor, which also was not disputed, goes back to German times, approximately sixty years. Even adopting the minimum period of twenty years from the time defendant's wife died, it is most evident plaintiff slept on the rights he now claims.

In *Oneitam v. Suain*, 4 T.T.R. 62, this Court collected and reviewed earlier decisions on presumption of ownership and adverse possession of land over long uninterrupted periods and said at 4 T.T.R. 70:—

“Although the statute (of limitations) may not be applied, this court in effect has substituted for it the common-law principles of adverse possession.”

[2] *Oneitam* relies in part on *Kanser v. Pitor*, 2 T.T.R. 481, and in the present case the following from 2 T.T.R. 489 is approved as applicable:—

“ . . . if a person of full age and sound mind stands by, for twenty (20) years or more and lets 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.”

[3, 4] Also, we agree with what was said in *Ei v. Inasios*, 2 T.T.R. 317 at 319:—

“If a person, of full age and sound mind, owns land, it is to be expected that he will assert his claim to it in a manner that will make it clear to anyone who is openly and peaceably using the land. If he sleeps on his rights for many years and allows others to develop the land over a long period as apparent owners, a court cannot fairly in the public interest be expected to oust such apparent owners. This is especially so where written records of land ownership are scarce. Long continued peaceful possession and use of land under claim of right is a strong indication of ownership.”

In the present case, plaintiff attempted to ascribe settlement of a 1954 land dispute between Niko and Nesechin as evidence he or his predecessor asserted claim of ownership to the land. The testimony was not convincing and more persuasive was defendant's evidence the 1954 settlement did not relate to the land in question and he, the defendant, was neither present nor involved in the 1954 settlement.

Also, plaintiff offered some testimony he and his predecessors—his “mothers” Niko and Nito—worked the land in Japanese times. Again the evidence falls short of a bona fide assertion of ownership. It is more reasonable to believe the explanation that plaintiff's predecessors only gathered food from their trees on the land and did not do those things, such as clearing, planting and cutting copra, that would be expected of an owner.

Ordered, adjudged, and decreed:—

1. That defendant Pinengin, and those claiming under him, are owners of Wininin Division #1 in Penia Village, Moen Island, Truk, and that plaintiff Sitanis Fenei, and those claiming under him, have no right, title or interest in the land.

2. That the Order for Temporary Possession by both plaintiff and defendant issued by the District Court August 17, 1970, pending entry of judgment as to ownership is vacated.

3. That this judgment shall not affect any rights-of-way that may exist on said land.

4. That no costs are allowed.