

OSIMA, Plaintiff
v.
RENGIL and RECHESENGEL, Defendants
Civil Action No. 126
Trial Division of the High Court
Palau District
November 17, 1960

Action to determine ownership of land in Ngaraard Municipality, in which plaintiff claims on behalf of clan and defendant claims as successor in interest of person listed in Japanese survey as individual owner. The Trial Division of the High Court, Chief Justice E. P. Furber, held that since plaintiff failed to sustain burden of showing survey determination was wrong, survey listing controls.

1. Palau Land Law—Japanese Survey—Presumptions

Determinations made in official Japanese land survey of 1941, while not conclusive, are entitled to great weight.

2. Palau Land Law—Japanese Survey—Presumptions

Burden is on party who disputes determination made in Japanese land survey to show that it is wrong.

3. Palau Land Law—Japanese Survey—Presumptions

Where party fails to sustain burden of showing that determination made in Japanese land survey of Palau Islands was wrong, presumption arising from listing in survey controls question of ownership.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Mad ra Ulechetong's claim to the taro patch, Orong, as his individual property was known, at or before the time of the Japanese land survey of about 1938–1941, to strong senior members—senior to those now complaining about it—of the Irei and Ngelengi Clans and was considered by them, and each of those who considered it finally acquiesced in Mad's claim.

2. During the Japanese land survey of about 1938–41, Orong was clearly staked out as claimed by Mad as his individual property and no objection to its being so listed in the report of that survey was presented to the survey authorities.

3. At the meeting held after Mad's death Orong was announced by name, in the presence of members of the Irei and Ngelengi Clans, as one of the properties to go to Mad's children and no one raised any objection at that time.

4. The plaintiff has failed to sustain the burden showing that the listing of the property in the report of the Japanese land survey referred to above, was wrong.

OPINION

[1, 2] As this court has repeatedly held, determinations made in the official Japanese land survey of about 1938–41, while not conclusive, are entitled to great weight. The burden is on one who disputes such a determination to show that it is wrong. See paragraph 3 of Con-

clusions of Law in *Basehelai Baab v. Klerang and Rudimch*, 1 T.T.R. 284.

[3] In this action, since the plaintiff has not sustained the burden of showing that the determination made in that survey was wrong, the presumption arising from the listing of the taro patch in the Daicho or report of that survey as the individual property of Mad is controlling, establishing ownership in him, which was duly transferred to his children and from them to the defendant Rengiil.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties and all persons claiming under them, the taro patch known as Orong, located in Ulimang Village, Ngaraad Municipality, Palau District, consisting of about 714 tsubos, bounded on the north by the public road, on the east by the taro patch now or formerly of Beches, on the south by the taro patch now or formerly of Wasisang and Bitlaol, and on the west by land now or formerly of Uchel, and shown in the Daicho as lot 1315, is owned by the defendant Rengiil, who lives in Ngaraad Municipality, as his individual property.
2. This judgment shall not affect any rights of way which may exist over or across the taro patch in question.
3. No costs are assessed against any party.