

WELSIN SALMON, Plaintiff

v.

TOHTER NORMAN, ITOSI and STELLA, Defendants

Civil Action No. 322

Trial Division of the High Court

Ponape District

January 31, 1969

Action for specific performance. The Trial Division of the High Court, H. W. Burn'ett, Associate Justice, held that plaintiff failed to establish existence of alleged agreement and that his claim to land in question or alternative money damages would be denied.

1. Real Property-Sales

If parties had agreed that one would receive real property, pursuant to an exchange upon that party's receiving right to such property as the result of a successful court action, only following date of entry of judgment would any rights accrue to the person receiving the real property in the exchange.

2. Civil Procedure--Damages

Where plaintiff had no rights in land in question he could not receive money damages for compensation for working the land.

BURNETT, *Associate Justice*

The dispute in this action involves the land Liksarwei on Ngatik Island, Ponape District. It was acquired by defendant Tohter Norman under judgment rendered in Ponape District Civil Action No. 209, *Tohter Norman v. louanes Lehsna, Gustaj Nelper, and Toris Salel*, decided April 19, 1965.

It is plaintiff's contention that, some time prior to trial in Civil Action No. 209 in December 1964, he and defendant Tohter entered into an agreement under which he agreed to deliver a pig which would be paid for by the land Liksarwei if Tohter were successful in the action. He alleged delivery of the pig and sought specific performance of the agreement for the transfer of the land to him.

Following pre-trial conference, at which it appeared that Tohter had sold the land to Itosi and Stella, plaintiff amended his complaint to seek damages in the alternative totalling \$346.00, the bulk of which is represented by the cost of the pig, including cost of transportation from Ngatik to Ponape, and counsel fees which he claims to have paid on Tohter's behalf in Civil Action No. 209.

As might be expected, there was direct conflict in the testimony of the two parties with respect to the existence of an agreement for the transfer of Liksarwei to plaintiff. It appears, however, that much of the negotiation on plaintiff's behalf was carried on by his son Erwin, who is also an adopted son of the defendant Tohter. Thus, while plaintiff testified he made the agreement, he presented in evidence a letter written by his son Erwin which related the agreement which he, Erwin, had made with Tohter and her husband for delivery of the plaintiff's pig. Defendant, on the other hand, was consistent in her testimony that she dealt with Erwin and that no mention of the land Liksarwei entered into their discussions.

[1] Trial in Civil Action No. 209 was held in Ngatik in December of 1964. Plaintiff is again inconsistent in contending that he was to obtain the land if Tohter prevailed since, according to his testimony, he sent the pig to Tohter in January of 1965 and entered the land in the same month. Judgment in Civil Action No. 209, however, was not entered until April 19, 1965, and, thus, if there were such an agreement as claimed by plaintiff, it would be only following that date that any rights would accrue to him. I hold, therefore, that there was no agreement under which plaintiff might lay claim to the land Liksarwei.

As to plaintiff's alternative claim for the value of the pig and counsel fees, there was no clear showing of any agreement as to compensation or that defendant Tohter had any agreement with this plaintiff at all. The relationship between Tohter and Erwin is such as to lend weight to testimony of the defendant that she was not expected to pay. In any event, it is undisputed that in April of 1967, the sum of \$50.00 was sent to plaintiff and returned by him with the explanation that it was not sufficient. Counsel who represented Tohter in Civil Action No. 209, and who appeared as plaintiff's witnesses in this action, testified that Erwin paid their fees and that he did so in the name of "Mother Tohter". Plaintiff is consequently in no position to make claim therefor in the absence of any showing that Erwin acted for him. In any event, plaintiff would seem to have been amply compensated. According to his testimony he occupied the land from January 1965 to May 1967 and could produce one bag of copra a month from it.

[2] Other items in plaintiff's alternative claim for money damages include compensation for working the land. Since I hold that plaintiff had no rights in the land, obviously

no such items can be allowed. The same can be said for a remaining item having to do with his costs and expenses incident to this action.

Defendants Itosi and Stella entered an appearance and filed an answer pursuant to order of the court at pre-trial conference, but did not appear at the trial. It appears, however, that the land has been sold to them by Tohter who admits partial payment and states that the sale is not completed.

It is hereby ordered, adjudged, and decreed:-

1. As between these parties, title to the land Liksarwei in Ngatik Island, Ponape District, is in the defendant Tohter, subject only to whatever rights defendants Itosi and Stella have acquired by reason of their contract to purchase the land.

2. Plaintiff Welsin Salmon has no rights in the land Liksarwei and his claim to the land or, in the alternative, money damages is denied.

3. No costs are assessed any party.