

DERESITA DAMARLANE, Plaintiff
v.
KEDERIKO OLPER, KULIO OLMOS, TADASY SANTOS,
DR. ALEXANDER PANUELO, Defendants

Civil Action No. 369

Trial Division of the High Court

Ponape District

April 2, 1970

Action to determine ownership of parcel of land in Nett Municipality. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that pursuant to Ponape District Law plaintiff, adopted daughter of "owner", was entitled to land when "owner" died and surviving spouse was not, thus, absent a showing of a resulting trust by owner's surviving husband, plaintiff was succeeded to ownership of land.

1. Trusts—Resulting Trust

Where a transfer of property is made to one person and the purchase price is paid by another, a resulting trust arises in favor of the person by whom the purchase price is paid.

2. Trusts—Resulting Trust

Where a transfer of property is made to one person and the purchase price is paid by another and the transferee is a wife, child or other natural object of bounty of the person by whom the purchase price is paid, a resulting trust does not arise unless the latter manifests an intention that the transferee should not have the beneficial interest in the property.

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3. Real Property—Improvements

When a husband performs labor and erects improvements on land in which his wife is a tenant in common, he stands in the position of a party who has voluntarily and knowingly improved another's property without request, and may claim nothing by way of direct compensation, as he had no interest or title in the premises so improved.

4. Real Property—Gifts

The general rule is that when a spouse pays the purchase price for land and title is taken in the names of both husband and wife or in the name solely of the one not paying the purchase money, a gift of the land or improvement was intended.

5. Trusts—Resulting Trust

When property is taken in the joint names of husband and wife and the consideration is furnished by one of them alone there is a presumption of a gift from the one furnishing the consideration to the other and clear and convincing evidence is required to overcome the presumption of a gift and to establish a resulting trust.

6. Trusts—Resulting Trust

Where a transfer of property is made to one person and another seeks to enforce a resulting trust in his favor on the ground he has paid the purchase price he has the burden of proving by clear and convincing evidence that he paid the purchase price.

7. Ponape Land Law—Inheritance

Ponape District Law 3-17-59 which provided that when the "owner" died, inheritance was to be by the natural children and then adopted children, did not include the surviving spouse—either male or female. (Ponape District Law 3-17-59)

<i>Assessors:</i>	PRESIDING JUDGE CARL KOHLER and JUDGE ANTONIO E. RAIDONG
<i>Interpreters:</i>	JUDAH JOHNNY and JOANES EDMUND
<i>Reporter:</i>	SAM K. SASLAW
<i>Counsel for Plaintiff:</i>	YASUWO JOHNSON
<i>Counsel for Defendants:</i>	YOSTER CARL

TURNER, *Associate Justice*

This action relates to ownership of a parcel of land, Ihpat Peidi, Dolonier Section, Nett Municipality, which is included in German deed No. 36. The land was purchased from Kulio Olmos in the name of Deresia Olper, whose

husband at the time of the purchase was the defendant. Plaintiff is the adopted daughter of the couple.

The crux of the dispute between adopted daughter and defendant father was who paid for the land. Plaintiff asserts her mother delivered a pig and some merchandise to the seller in payment; that her mother took title to the land and owned it and that she, the plaintiff, inherited from her mother who died in 1968.

The defendant insists that it was his pig and cash which paid for the land; that title was taken in his wife's name to prevent his relatives in Truk from claiming the land if title was in his name and he died before his wife. Defendant produced nothing in writing or other evidence except his testimony that he owned the land even though title was in his wife's name. Defendant and his new wife have refused plaintiff and her husband entry on the land although at close of the trial it was stipulated the plaintiff and her husband could enter to care for their pepper planting.

The defendant's claim is substantiated, if at all, upon the theory of entitlement by reason of a resulting trust. Other theories of defendant's entitlement, such as joint ownership with right of survivorship or tenancy by the entirety, are not applicable because defendant's name does not also appear in the instrument transferring title from seller to defendant's wife in her name.

Several years after conveyance to Deresia litigation over another portion of land within German deed No. 36 arose between Olmos and another who claimed ownership. *Benjamin v. Olmos*, 4 T.T.R. 185. The judgment in that case established ownership, as a matter of record, in Olmos not only for the land now in dispute but also for the remainder included in German deed No. 36, part of which was sold to Tatasy Santos, who is the same person as the co-defendant, Tadasy Santos, in this case.

This judgment coupled with the showing in the present case that Olmos did not sell to Santos any portion of land now in dispute which he previously sold to Deresia required dismissal of the complaint against Olmos and Santos, upon their motion at the close of plaintiff's case. At the start of the trial, upon stipulation of plaintiff and defendant Olper, dismissal was granted as to Dr. Alexander Panuelo.

In addition to claiming ownership as his wife's survivor, the defendant also asserted he had paid, except for a small balance due, the cost of a house constructed on the property by financing through the Metalanim Housing Cooperative. This financing also was carried in Deresia's name and in part in plaintiff's name. (Exhibits A and C.) Another improvement, which defendant said he gave permission for, was the planting of 100 poles of pepper by the plaintiff and her husband.

As against defendant's case, the plaintiff sought to show that Deresia raised the pig and delivered it to Olmos with other goods in payment for the land. That Deresia also made payment on the co-op house from funds supplied by plaintiff and her husband.

Also of significance was the unchallenged evidence that defendant left Deresia and went to live with another woman approximately one year before Deresia died. However, the conclusion that defendant was not the surviving spouse does not affect any entitlement he may have had to the land under the principle of resulting trust. Also as surviving spouse he had no rights whatever under the Ponape statute of descent and distribution and in the absence of a will or other written instrument transferring the land from Deresia to defendant there was no other basis of legal entitlement except the theory of trust arising from payment of the purchase price.

[1] The general rule as to creation of a resulting trust is found in Restatement, Trusts 2d, Sec. 440: the general rule is:—

“Where a transfer of property is made to one person and the purchase price is paid by another, a resulting trust arises in favor of the person by whom the purchase price is paid. . . .”

[2] But there are certain exceptions to the general rule. Section 442 of the Restatement says:—

“Where a transfer of property is made to one person and the purchase price is paid by another and the transferee is a wife, child or other natural object of bounty of the person by whom the purchase price is paid, a resulting trust does *not* arise unless the latter manifests an intention that the transferee should not have the beneficial interest in the property.”

[3] A similar rule applies to the question as to what rights, if any, the defendant had in the improvements on the land—the co-op house and the pepper planting. The rule is stated in connection with the annotation upon division of improvements upon partition of land, 1 A.L.R. 1189 at 1190:—

“When a husband performs labor and erects improvements on land in which his wife is a tenant in common, he stands in the position of a party who has voluntarily and knowingly improved another’s property without request, and may claim nothing by way of direct compensation, as he had no interest or title in the premises so improved. Citing.”

[4] The general rule is that when a spouse pays the purchase price for land and title is taken in the names of both husband and wife or in the name solely of the one not paying the purchase money, a gift of the land or improvement was intended.

[5] In *Walker v. Walker* (Ill.), 17 N.E.2d 567, cert. den. 306 U.S. 659, 59 S.Ct. 774, noted, 43 A.L.R.2d 919, the court declared that when property is taken in the joint names of husband and wife and the consideration is fur-

nished by one of them alone “there is a presumption of a gift from the one furnishing the consideration to the other,” and that “clear and convincing evidence” is required to overcome the presumption of a gift and to establish a resulting trust.

In this case the evidence is insufficient to say the defendant did not intend a gift and that he did not intend that Deresia have an interest in the land. The evidence is to the contrary. Furthermore, to find any right, title, or interest in the defendant we must assume he paid the entire purchase price. This assumption is not adequately supported by the evidence.

The property in question was a replacement of government land leased to Deresia’s mother. The mother, Deresia, the plaintiff and the defendant lived on the land until the lease was canceled and it became necessary to find a new place to live. This was done by the purchase from Olmos.

Not only the land was obtained in Deresia’s name, but the house was financed in her name and defendant’s (Exhibit C) through the Metalanim Housing Cooperative. The customary practice of the co-op of listing the successor in interest in the event of the death of the co-op member was not followed in this instance. This would have been evidence upon which defendant could support this claim, but it was not available and other evidence, including his testimony, was not adequate.

[6] Even the proof as to payment for the land and for the construction of the house was not convincing. Before the defendant could claim under a resulting trust it was necessary for him to show that he paid for both the land and the improvements. This he did not do. The Restatement of Trusts, Sec. 458, provides with respect to the obligation to prove the payment of the one claiming under a resulting trust:—

“Where a transfer of property is made to one person and another seeks to enforce a resulting trust in his favor on the ground he has paid the purchase price he has the burden of proving by clear and convincing evidence that he paid the purchase price.”

The court rejects the defendant's claim of ownership. His evidence does not overcome the effect of the written instrument of transfer to Deresia signed by Kulio Olmos and the *Nanmwarki*. (Exhibit 3.) The question next arises as to what interest, if any, the surviving spouse has in the decedent's property in the absence of a will or other transfer effective on death. This question assumes, of course, that defendant was the surviving spouse of Deresia even though he had left her home to live with another woman.

The Ponape decisions on descent and distribution all relate to the rights of the survivors when the male owner dies owning land not disposed of by testamentary transfer. One reason for this is that under German land law a woman could not own land. This rule was modified by the Japanese but it was not until recent times that statutes have been enacted recognizing the rights of a woman to inherit and own land.

[7] District law 3-17-59 provides that when the “owner” dies, inheritance shall be by the natural children and then adopted children. The statute does not include the surviving spouse—either male or female. Under the statute, the plaintiff inherited from her mother, Deresia. Neither defendant nor his new wife have now or acquired on the death of Deresia any interest in the land in question or the improvements on it.

Two further questions were raised by the evidence. The first relates to the legal description of the property in question and the other as to what affect, if any, on plaintiff's ownership was the purported sale by defendant of

part of the land to Swingley Welpshagen, husband of the daughter of defendant's present wife.

As to the extent of the land sold by Olmos to Deresia there was much conflicting testimony as to whether it extended onto the "flat area" of the mountain or only to the flat area. Because the oral testimony is conflicting and far from conclusive the court accepts the survey sketch (Exhibit 5) as the area transferred to Deresia. Its eastern boundary is the land sold to Dr. Panuelo by Olmos. Its area corresponds with the area set forth in Olmos' document reciting transfer of 2.5 *hectares*, more or less, to Deresia. The survey shows the area surveyed to be 2.385 *hectares*. It is held that the "property map" made from the survey by Donado Suldán in 1968 depicts the area of the land in question. (Exhibit No. 5.)

Within this area is the portion defendant claims he sold his wife's son-in-law, Swingley Welpshagen. Defendant was unable to describe the area but did say he had been paid in full. The question is whether Swingley acquired any interest in the land when defendant had no interest to convey. Whatever rights Swingley might have acquired it had to be on the basis of an innocent purchaser without notice who is protected by estoppel against the true owner. The evidence is clear that Swingley was not an innocent purchaser. Title of record was in Kulio Olmos, subject to the unrecorded transfer to Deresia. If Swingley had recorded a deed, which he did not, a different question might have arisen. *Rudimch v. Chin*, 3 T.T.R. 323.

Swingley was not a party to this action and what his rights may be against the defendant is expressly not decided. As against the plaintiff he does not have a valid claim.

JUDGMENT

It is ordered, adjudged, and decreed:—

1. As between the parties and all persons claiming

under them, the plaintiff, Deresita Damarlane succeeded to ownership of that portion of the land Ihpat Peidi, (also spelled Ipat), German title document No. 36, Dolonier Section, Nett Municipality, Ponape District, transferred by Kulio Olmos to Deresia Olper (also known as Deresia Ariote) and depicted in the sketch, Exhibit 5, containing 2.385 *hectares*.

2. That defendant and all persons claiming under him shall vacate the above described land forthwith and shall not interfere with plaintiff's occupancy and use.

3. That it is further ordered that the complaint be dismissed against Kulio Olmos, Tadasy Santos and Dr. Alexander Panuelo.

4. This judgment shall not affect any rights-of-way there may be over the land above described.

5. No costs are assessed.

6. Time for appeal from this judgment is extended to sixty days from date of entry.