

NUKAS, Plaintiff

v.

MARSIAN, Defendant, and

IOSUO MINAMI, Intervenor

Civil Action No. 474

Trial Division of the High Court

Truk District

June 18, 1971

Action to determine title to land in Muen Village, Fefan Island, Truk District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that too much time had elapsed to upset title of person presently occupying and using land in question.

1. Real Property—Quiet Title—Laches

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

2. Real Property—Quiet Title—Laches

Continued absence from area and failure to successfully assert a claim against one in possession of land from German times to the present, pre-

NUKAS v. MARSIAN

cluded person bringing claim from establishing any interest his predecessors might once have had.

<i>Assessor:</i>	F. SOUKICHI, <i>Presiding Judge,</i> <i>District Court</i>
<i>Interpreter:</i>	SABASTIAN FRANK
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	MIKAEN A.
<i>Counsel for Defendant:</i>	PRO SE
<i>Counsel for Intervenor:</i>	PIOS

TURNER, *Associate Justice*

This action involves four lands, Faniuon, Neinang, Nenipi and Nepitiu, located in Muen Village, Fefan Island, Truk District. Each of the three parties claim the lands as individual owner.

FINDINGS OF FACT

1. Antonin, also spelled Antolin, went into possession and occupancy of the lands in question when he returned from Ponape in German times. Portions of Nenipi and Nepitiu were purchased by Antonin in Japanese times to add to portions of these two lands which Antonin took possession of in German times. All of Neinang was purchased by Antonin from a relative in Japanese times.

2. Antonin gave the lands in question to the defendant, Marsian, at a formal ceremony in 1968 in the presence of island officials and others. The gift was predicated upon Marsian having begun to take care of Antonin in 1964 and continuing to the present. Antonin has been blind since World War II.

3. At the "dying declaration" ceremony at which Antonin gave the lands to Marsian, the plaintiff and intervenor both protested the gift as each claimed to be individual owners of the lands in question.

4. Neither plaintiff nor intervenor have ever had possession or control of the lands.

5. Although plaintiff attempted to establish that Antonin and Marsian occupied and worked the lands in his (plaintiff's) name and in his behalf, the evidence shows that he admitted to Rekina, his former wife and the adopted daughter of Antonin, and to others that Antonin owned the lands in question.

6. Intervenor and his predecessors have resided on Tsis Island since German times and were unable to produce evidence to overcome the presumption of ownership in Antonin arising from his uninterrupted control and possession since German times.

OPINION

Like most Truk land disputes which attempt to trace ownership interests back into the dim past of pre-German times, this case produced sharply conflicting histories of acquisition, descent and distribution. Each of the claimants—the plaintiff, the defendant and the intervenor—presented their own self-serving theories of descent of title, which if believed, would justify judgment in their behalf.

The only point at which the three parties agree is the beginning. The lands in question and a number of other lands were acquired by Waito as spoils of the Fefan Island civil war. There are some accounts that date this clan war in 1877. *Oneitam v. Suain*, 4 T.T.R. 62.

From that point on, three different and conflicting histories were presented. However, plaintiff and defendant did agree that Waito gave the four lands to his daughter, Inemasong, and that she gave the four in question, together with other lands acquired from Waito, to her children who were her daughters Usachen and Near and her son, Antonin.

The intervenor disagreed with both plaintiff and defendant and argued that under Trukese custom, Waito was less likely to give all the land to his daughter, Inemasong, than to his sister, Nonopung. These were lineage lands rather than individual lands, intervenor says, and passed by matrilineal lineage descent from Nonopung to Inechiwo to Unno to Teresia to the intervenor Iosuo as individual owner.

Many more lands than the four in question were involved originally and none of the parties were entirely clear as to which lands went to which child of Waito's daughter, Inemasong, or in intervenor's case, to Waito's sister and her descendants.

Plaintiff's own evidence in several instances contradicted his theory that the lands in question were individual lands of Near and that she gave them to her daughter Sisinia, who gave them to her son, the plaintiff. Plaintiff, without apparent regard for his basic theory of direct descent, offered evidence the lands actually were lineage lands rather than individually owned. Plaintiff also brought out testimony that one of the four lands held by Near was not acquired by direct descent from Inemasong but was given as a penalty by Usachen to Near because Usachen married Near's husband.

It appears, however, that a penalty of this nature is not paid under the custom from one sister to another but only is paid when a stranger marries another's husband.

Defendant claims the lands in question from his relative (his father's uncle) Antonin who claims from his mother, Inemasong, even though he did not obtain all of them directly from her.

The two sisters, Usachen and Near, registered part of the land in question together with other lands not here involved with the German officials in 1909 and 1910 while Antonin was absent from Truk and was in Ponape. The

German deeds showed registered to Near: one-half of Neinang (Lailan); Nenipi (Nellipi); and Faniuon (Faruon). The German registration for Usachen showed Nepitui (Laepitu) owned together with brother "Airij".

Defendant (through Antonin) claims one-half of Nenipi was obtained from Antonin's mother, Usachen, and one-half purchased from Angkena. All of Neinang was purchased from Rimei. One-half of this land was in Near's German deed. One-half of Nepitui, registered one-half to Usachen, from Antonin's mother and one-half purchased from Rimei. All of Faniuon, registered in Near's German document, from Antonin's mother.

Plaintiff acquired the four lands from Antonin in a formal gift ceremony, described by the witnesses as Antonin's "dying declaration". The gift was made in 1968 and at the time of trial Antonin had not yet died. Actually, the gift from Antonin to defendant Marsian was in payment for services rendered. Antonin was blind and feeble and from 1964 to the present, Marsian and his family took care of Antonin. The practice is recognized under Trukese custom.

In *Irons v. Rudo*, 2 T.T.R. 296, it is said at 300:—

"Caring for the sick during their last illness by anyone outside of a person's matrilineal family has long been recognized in Truk as a proper ground for the transfer of land, even family or lineage land. . . . a transfer of land made to meet such obligation is considered as payment rather than as a gift in the strict sense of that word. See 'Land Tenure Patterns', p. 191-195."

At the transfer ceremony, both plaintiff and intervenor were present although Antonin had not deemed it necessary to invite either of them, and both of them objected to the transfer by "dying declaration". The plaintiff objected because he claimed them as his individual property and the intervenor objected on the grounds they were lands of his lineage and without consent of all adult lineage members could not be transferred. *Kinara v. Tipa*, 2 T.T.R. 8.

Both Trukese customary law and the common law of presumptive ownership preclude recovery by either the plaintiff or the intervenor.

As to the plaintiff, the record shows that he married Antonin's adopted daughter, Rekina, in 1935 and went to the lands in question to live with his wife and Antonin. Although plaintiff claims to have worked the lands and been in possession of them from German times when they were distributed, the evidence does not sustain this claim.

He may have gathered food from these lands prior to his marriage to Rekina but even this claim is without corroboration. If the plaintiff obtained food from the land prior to 1935, it appears far more likely that it was in accordance with the Trukese custom of close relatives sharing in the use of land. But as this Court said in *Kanoten v. Manuel*, 2 T.T.R. 3, this does not indicate any interest in the title.

Two years after plaintiff's marriage to Rekina, plaintiff went with his mother, Sisinia, to Ponape. He left his wife on Truk. From 1937 to 1956, when plaintiff returned from Ponape, only Antonin and Rekina occupied the land. Plaintiff "re-married" Rekina for a few months in 1956 and then he left again in 1957 to live with his mother in Fein Village. When she died, plaintiff again returned to Antonin's house to live at Antonin's request to help build a copra dryer. His conduct thereafter—he planted trees, cut and sold copra, and harvested breadfruit to sell without informing Antonin—resulted in Antonin ordering plaintiff from the premises. Plaintiff left to live with his father.

The record thus shows that except for the two-year period when plaintiff was married to Rekina and a short interval from 1956 plaintiff never occupied the land and at no time did he ever exercise normal ownership rights. During the sixty-year period from the beginning of the Japanese administration to the present, Antonin has had possession and use.

In the face of this record plaintiff asserts the land is his, that Antonin occupied the land because he was "taking care of it for Near (his grandmother) and Sisinia (his mother) even though both of these women admittedly owned other lands which Antonin did not "take care of".

From 1965 plaintiff says, the defendant Marsian "worked the lands in my name" for the benefit of Antonin. Everything that was done by either Antonin or Marsian was done, plaintiff says, in his name because "Antonin was the brother of my grandmother."

Plaintiff's claims are contrary to the facts and the evidence. It is unnecessary to decide how or from whom Antonin acquired the lands in question. An adverse possession under a claim of right that has continued for half a century cannot be perverted into a consensual occupation by an ownership claimant who has never been in possession of the land by the simple device of asserting the adverse possessor's occupancy was permissive and in the name of the claimant.

The evidence is most persuasive and the records in this Court are clear that the plaintiff attempted to deal with these and other lands on Fefan Island by trickery and stealth. His present claim is without support from the evidence.

[1] This Court in recent decisions has had occasion to repeat the wise admonition found in *Nakas v. Upuili*, 2 T.T.R. 509 and to emphasize the point and also to dispose of plaintiff's claim, the statement at page 511 is again repeated:—

"The plaintiffs claim that they did not object to the actions of some of the defendants or their predecessors in interest with regard to the lands because they thought that these people were acting for or under the plaintiff's group, but the conduct of these defendants clearly shows that they were not so acting and the court considers that the plaintiffs have failed to show any reasonable ground for believing that these defendants or their predecessors in interest

were acting, or ever acknowledged that they were acting, for the plaintiffs' group. To avoid trouble of this sort in the future, it is strongly urged that 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."

Plaintiff's claim of ownership is so far removed from this reasonable requirement of proof of ownership that it almost amounts to an attempted fraud upon the Court.

In contrast to plaintiff's inaction and indifference to the land, is the action of intervenor's predecessor who at least attempted to assert an ownership claim in Japanese times before the island chief. Unfortunately for intervenor's claim, his predecessor failed to establish provable individual ownership.

[2] The same lapse of time giving rise to presumption of ownership in Antonin which was fatal to plaintiff's claim also precludes assertion of intervenor's claim. His predecessors left Fefan Island for Tsis Island in German times and they have remained there ever since. Even though intervenor's theory that these lands in question were lineage lands and descended in the matrilineal lineage of Waito's sister is plausible and is in accordance with general custom, nevertheless, the continued absence and failure to successfully assert a claim against Antonin from German times to the present, precludes intervenor from establishing at this late date any interest his predecessors might have had.

Ordered, adjudged, and decreed:—

1. That plaintiff Nukas, and all those claiming under him, have no right, title and interest in and to the lands Faniuon, Neinang, Nenipi and Nepitiu, located in Muen Village, Fefan Island, Truk District.

2. That intervenor, Iosuo, and all those claiming under him, have no right, title or interest in and to the lands in question.

3. That defendant, Marsian, is the individual owner of Faniuon, Neinang, Nenipi and Nepitiu, located in Muen Village, Fefan Island, Truk District.

4. That this judgment shall not affect any rights-of-way that may exist over these lands.

5. That defendant shall recover his cost from the plaintiff upon filing an itemized claim in accordance with the law. That no costs are assessed against the intervenor.