

MAX ALIK and MERII ALIK, Plaintiffs-Appellants

v.

TEBENGEL ALIK, et al., Defendants-Appellees

Civil Appeal No. 134

Appellate Division of the High Court

April 27, 1976

Action to quiet title to land. The Appellate Division of the High Court, Brown, Associate Justice, held that where father of plaintiffs and defendants owned a single tract of land traversed by a road and for over 20 years defendants lived on portion of land north of road, upon which they had built a house with father's permission, and for approximately same period of time plaintiffs had lived on portion of land south of road, upon which they also had built a house, and father had moved back and forth, living in both houses until he died, evidence was sufficiently competent and substantial to support trial court's judgment that prior to their father's death he had effectively conveyed portion north of road to defendants and portion south of road to plaintiffs, so that at time of his death, father did not own land and could not dispose of it by will.

1. Appeal and Error—Evidence—Conflicting

It is usually the duty of the trial judge to weigh conflicting evidence and to resolve conflicts in the evidence.

2. Appeal and Error—Evidence—Reweighting

Duty of appellate court is not to reweigh the evidence; in fact, it has duty not to do so.

3. Appeal and Error—Findings and Conclusions—Substantial Evidence

Where there is any substantial evidence that supports the judgment of trial court, the Appellate Division cannot disturb that judgment as being contrary to the evidence, and that is the rule regardless of whether case was tried to court or to a jury.

4. Appeal and Error—Findings and Conclusions—Supporting Evidence

Trial court findings will not be disturbed when supported or sustained by competent evidence, especially where evidence is conflicting or where different inferences can be reasonably drawn from it.

5. Gifts—Land

Where father of plaintiffs and defendants owned a single tract of land traversed by a road and for over 20 years defendants lived on portion of land north of road, upon which they had built a house with father's permission, and for approximately same period of time plaintiffs had lived on portion of land south of road, upon which they had also built a house, and their father had moved back and forth, living in both houses, until he died, evidence was sufficiently competent and substantial to support trial court's judgment that prior to their father's death he had effec-

tively conveyed portion north of road to defendants and portion south of road to plaintiffs, so that at time of his death father did not own land and could not dispose of it by will.

Counsel for Appellants: JOHNSON TORIBIONG, ESQ.
Counsel for Appellees: JOHN NGIRAKED, ESQ.

Before BURNETT, *Chief Justice*, BROWN, *Associate Justice*, and WILLIAMS, *Associate Justice*

BROWN, *Associate Justice*

At the time of his death, Alik owned the land, Mariar, which consisted of Tochi Daicho Lots Nos. 966, 989, 990 and 991. These lots constitute a single parcel of land which is traversed by a road which has been in existence for many years. For over twenty years Tebengel Alik and his brother, Ngiraikelau, have lived on that part of the land lying north of the road, and for approximately the same period of time Max Alik and his sister have lived on the portion south of the road. Then, during 1974, Tebengel claimed ownership of the entire parcel; and thereafter Max sued to quiet title to the property, alleging that he became the owner by virtue of an oral will made by Alik. Tebengel answered and claimed title through an oral conveyance made by Alik prior to his death, but during trial conceded that his claim was limited only to the portion north of the road.

The Trial Court considered the conflicting statements and testimony of witnesses called by both sides and also considered what actually was done with the land for more than twenty years prior to trial.

Alik had Tebengel and Ngiraikelau build a house on the land north of the road, and they have lived there ever since that time. Then Max and Augusta built a house on the portion of the land south of the road and have occupied it since then. While he continued to live, Alik moved back and forth, living in both houses.

After Alik died, the parties continued to live in their respective houses with no dissension. Then in 1971, Tebengel filed Civil Action No. 546 against a third party with whom he had a boundary dispute, and in his complaint Tebengel claimed ownership of Mariar to the road. Max knew of this claim, did not intervene in the action and testified that he had no interest in that case.

From the foregoing, and after weighing the conflicting evidence, the Trial Court concluded that prior to his death Alik had effectively conveyed the portion of Mariar north of the public road to Tebengel and the portion south of the road to Max. Thus, as of the time of his demise, Alik did not own Mariar and hence could not dispose of it by will. The judgment of the Trial Court declared Max to be the owner of Tochi Daicho Lot No. 966, which is that portion of Mariar lying south of the road (known as the Lower Road) and Tebengel to be the owner of Tochi Daicho Lots Nos. 989, 990 and 991 which lie north of the road.

The appeal is taken from that portion of the judgment pertaining to the portion north of the road, appellant asserting that it is not supported by a preponderance of the evidence. No other ground for appeal is urged.

[1] Admittedly, the evidence that came before the Court was not uncontradicted. Almost always it becomes the duty of the Trial Judge to weigh conflicting evidence and to resolve conflicts in the evidence. Such was the case here.

[2, 3] The duty of the Appellate Court is not to re-weigh the evidence. In fact, it has a duty not to do so. Where there is any substantial evidence that supports the judgment of the Trial Court, the Appellate Court cannot disturb that judgment as being contrary to the evidence. *Hatfield v. Levy Bros.*, 117 P.2d 841 (Cal.); *Connell v. Clark*, 200 P.2d 26 (Cal. App.), and this is the rule regardless of whether the

case was tried to the Court or to a jury. *Winterton v. Lannon*, 330 P.2d 987 (Ariz.). The Courts of the Trust Territory have followed that rule consistently. We continue to do so. In *Arriola v. Arriola*, 4 T.T.R. 486, this Court stated:

The Appellate Division of the High Court on appeal from a decision of the Trial Division cannot re-weigh the evidence and decide whether in its opinion it should reach the same or different conclusions as the trial judge did as to the facts.

[4] In essence, Appellate Courts deal with questions of law and are not constituted to consider questions of fact decided by the Trial Court. Such findings will not be disturbed when supported or sustained by competent evidence, especially where the evidence is conflicting or where different inferences can be reasonably drawn therefrom. *Kenjul v. Tamangin*, 2 T.T.R. 648.

[5] The evidence upon which the Trial Court arrived at its conclusion was competent and substantial; accordingly, the judgment is AFFIRMED.