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IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANAS ISLANDS COURT

In Re Estate of)	CIVIL ACTION NO. 89-369
)	
ERNESTO RANGAMAR,)	ORDER
)	
Deceased.)	
_____)	

On April 7, 1992, this court issued a stay while probating the estate of Vicente I. Rangamar so that the probate of estate of his father, Ernesto W. Rangamar, could be completed. The court issued this stay because the parties were seeking to resolve questions concerning the legal character of property belonging to Ernesto in Vicente's probate. Noting that it was premature to complete the estate of Vicente before completing Ernesto's probate, the court asked that the parties resolve these issues in the probate of Ernesto's estate. The parties have stipulated that the briefing of the issues in the probate of Vicente's estate will apply in this matter as well.

I. Facts

Ernesto W. Rangamar died on October 12, 1980. He was survived by his daughters Dolores R. Rabauliman, Ana R. Cruz,

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Delgadina Rangamar, and Fidelia R. Merur (listed in order from oldest to youngest). He was also survived by his sons Raphael, Lorenzo, Daniel, Vicente, Louis, Luciano, and Ricardo I. Rangamar (also listed in order from oldest to youngest). This court previously ruled in probating this estate that the aforementioned children are Ernesto W. Rangamar's only heirs. The Rangamar family is of Carolinian descent.

The distribution of the decedent's personal property is uncontested. There is, however, a dispute existing with respect to three parcels of land which are the subject of this opinion. The first parcel, Lot 1835 NEW 1-1 ("Lot No. 1"), consists of an area of 5,000 square meters.¹ The second parcel, Lot 1835 NEW 1-2 ("Lot No. 2"), consists of an area of approximately 8,494 square meters.² Lot No. 2 also contains a two-story, concrete, tin-roofed house. The third parcel, Lot 1835 New-1 ("Lot No. 3"), contains 13,401 meters.

The only issue presented is whether the children of Ernesto Rangamar have failed to treat the land in accordance with the principles of Carolinian custom, thus preventing any of them from seeking the application of custom in this matter.

¹ Lot 1835 NEW 1-1 was formerly a portion of Homestead Agricultural Tract/Lot No. 056 D 01.

² Lot 1835 NEW 1-2 was formerly a portion of Homestead Agricultural Tract/Lot No. 056 D 01.

A. Petitioner's Argument

The petitioners argue that the assets of the estate cannot be treated as Carolinian family land because the heirs of Ernesto Rangamar have taken actions with respect to the land that are inconsistent with traditional notions of Carolinian land tenure and distribution. The petitioners conclude that the heirs took the land out of the "traditional mold," thus taking this case out of the reach of local custom.

B. Respondent's Counter Attack

The respondents counter that the land is family land simply by virtue of its passing from Ernesto Rangamar to his children. The respondents seem to argue that an irrebuttable presumption and required application of customary law arises whenever a probate involves the estate of a decedent of Carolinian descent. If this is true, and no other requirements must be met for custom to apply, Dolores Rabauliman, the eldest daughter of Ernesto Rangamar, either automatically became the customary trustee and took title to family lands upon the death of her father or will take title if this court determines that she is the customary trustee.³

³ The probate code is unclear as to when title vests in the customary trustee. It appears that vesting occurs at the time of the death of a person of Carolinian descent. If this status is contested, however, it would appear that title cannot vest until a court determines the validity of the claim of a person claiming to be customary trustee.

II. Presumption of Custom

The probate code defines "family land" as follows:

"Family land" means land acquired by any person by law or decision of the family or by inheritance from one or more Carolinian ancestors, and held by the person as customary trustee for the use of the family members. Any land where a title determination vests title in the heirs of a person where the person was Carolinian or a person who adopted and followed Carolinian custom shall be deemed family land.

8 CMC § 2107(1).⁴

It appears from the language of this provision that the legislature intended that all transfers of land in probate actions from Carolinian decedents to Carolinian heirs were intended to be deemed family land. Although it may be true that the land in this case constitutes "family land" under the Code, persons of Carolinian descent are not restricted by cultural customary methods of land tenure and distribution. Therefore, the family has the option of either treating the family land in

⁴ The Probate Code generally does not apply unless the decedent's death occurred after February 15, 1984. In *In Re Estate of Cabrera*, No. 90-044, at 10-11 (N.M.I. July 31, 1991), our Supreme Court implicitly indicated that although the provisions of the probate code are generally not applicable where the decedent died prior to its effective date, the principles contained in the code provisions relating to customary intestate succession may be applied retroactively since one of the purposes of the code was to codify existing custom. See, *Hofschneider v. H.O. Lee, Inc.*, No. 91-232, at 10 (N.M.I. Super. Ct. 1992) (applying probate code provisions relating to Chamorro custom even though decedent died prior to effective date of code). Because the purpose of the code was to codify existing custom, the principles codified in the code must have been in existence prior to the Code's effective date. To rule otherwise, would require that the court determine that the framer's of the probate code were wrong in their assessment of custom. Therefore, the court can consider the Code provisions in analyzing probate actions where the decedent dies prior to its effective date.

accord with custom, or deviating from the customary mode.

The problem in the present case is the legal ramifications that occur when the heirs stray from custom. Although this issue has not yet been resolved by our Supreme Court, it has surfaced and been resolved in two prior partition actions before the Superior Court.

In *In Re Estate of Igitol*, 3 CR 906 (N.M.I. Super. Ct. 1989), this court ruled that even though a particular tract of land may be family land governed by the laws of Carolinian custom, customary law can only be applied where "the history of the land and activities of the heirs in relation to the land [are] consistent with custom." *Id.* at 911. Therefore, if the parties asserting custom treat the land in a manner that is inconsistent with custom, they may not later resort to custom in a legal proceeding simply because its application will assist them in achieving a desired legal result. If the court finds that the invoking party has, by his or her own acts, "destroy[ed] the traditional land tenure pattern," the court will not invoke customary law. *Tarope v. Igisaiar*, 3 CR 112, 117 (N.M.I. Super. Ct. 1987) (discussing the inequitable nature of allowing some family members to act in manner inconsistent with custom while requiring that another heir strictly comply with traditional Carolinian land tenure patterns). Any other procedure would unjustly punish an heir who treats land in accordance with the wishes of the other heirs only to later discover that they have

"changed their minds" and decided to revert to custom to defend their own acts which are, in fact, inconsistent with custom. *Id.*

III. Factors in Determining Whether a Party or Parties Have Acted in a Manner Consistent With Traditional Carolinian Land Tenure Patterns

In order to determine whether a party invoking custom has treated land in a manner consistent with custom, the court must determine whether traditional land patterns have been respected.

In *Tarope v. Igisaiar, supra*, at 113, the court listed several factors that must be considered in determining whether a party is estopped from invoking Carolinian custom in a probate matter. First, the court must determine whether the heirs have treated the land in such a way as to give all family members equal rights to use of the property. Second, the court must look to see if the eldest female member of the lineage has been appointed customary trustee for the purpose of acting as spokesperson for the family in all matters regarding the land. Finally, the court must determine whether the land has been passed down or distributed to "successors or heirs of family members through the matrilineal line." *Tarope v. Igisaiar, supra*, at 113.

A. Did the Heirs of Ernesto Rangamar Treat the Land In Accordance With the Principles of Carolinian Custom?

Under respondent's interpretation of Carolinian custom, upon the death of Ernesto W. Rangamar, title to the family land

automatically vested in Dolores as the eldest daughter.⁵ Therefore, she should have assumed title to the land as customary trustee and made it available for the use of the other family members. If anyone initiated a probate proceeding to determine the fate of the family land, she should have interjected and asserted her position as spokesperson for the family with respect to the land. Even if title did not vest in her automatically upon Ernesto's death, she certainly should have asserted her position as customary trustee in this matter at some point

The heirs of Ernesto Rangamar have never treated Lots 1, 2 and 3 in a manner consistent with Carolinian custom. When Lots 1 and 2 were originally partitioned by Ernesto Rangamar and his sister following the death of their mother, their act was inconsistent with Carolinian land tenure. This fact is not disputed.

Following the death of Ernesto W. Rangamar, Luis I.

⁵ The respondents raise an interesting question as to when a customary trustee assumes her duties. The respondents refer to Mrs. Rabauliman in their pleadings as the customary trustee in the present tense, but at the same time seek to have the court appoint her customary trustee over the lands during final distribution. The probate code does not address the point at which the eldest daughter becomes customary trustee. This is an important point since Mrs. Rabauliman took no action in the probate of her father's estate to assert that she was trustee until July 7, 1992. If she automatically became trustee upon his death, she has not assumed any of the responsibilities associated with that position. If she can only become trustee upon a determination by this court, the fact that she waited so long to assert her trustee status is contrary to her statement that the land is, and has always been, treated as family land.

Rangamar, the son of the decedent, petitioned for, and received appointment as administrator of Ernesto's estate. Appointment of Administrator (filed May 1, 1989). Luis Rangamar's Petition for Letters of Administration specifically states that he "consulted with each of the alleged heirs of the Estate and has determined that none of the said heirs has any objection to [his] appointment as Administrator of [Ernesto's] Estate." Luis Rangamar's Petition for Letters of Administration, at 2 (filed March 29, 1989). The order appointing Luis administrator specifically noted that "[n]o one appeared at the hearing to make an objection." *Id.* at 1. Therefore, it is obvious that Dolores Rabauliman did not contest Luis' appointment as administrator of her father's estate. This inaction is inconsistent with her current claim to be customary trustee and spokesperson for the family with respect to family lands. She should have come forward and either claimed that customary law dictated that title to those lands vest immediately in her as customary trustee or that she was the spokesperson for the family with respect to the land and, therefore, must be appointed administrator. She also should have contested the appointment of Luis, the *fifth eldest male in the Rangamar family*, to act as administrator of her father's estate.

Even more perplexing is the fact that counsel for Mrs. Rabauliman has petitioned the court to appoint Luciano Rangamar, *not* Dolores Rabauliman, to replace Luis Rangamar as

administrator of Ernesto's estate. This petition was filed after the death of Luis Rangamar on September 30, 1991. Seeking the appointment of the *sixth eldest male* as administrator of Ernesto's estate, rather than Dolores Rabauliman, the alleged customary trustee and family spokesperson, is completely inconsistent with Carolinian custom and diametrically opposed to the position her counsel puts forth on her behalf in this case.

In any event, neither Mrs. Rabauliman nor any of the other heirs have contested the appointment of Luis Rangamar as the administrator of Ernesto's estate. During the time between Ernesto Rangamar's death and the filing of this action, Dolores Rabauliman did nothing consistent with her claim to be customary trustee. In fact, she did not perform any of the duties normally associated with being a customary trustee. She neither assumed title to Lots 1, 2, and 3, nor did she perform any act consistent with being the titleholder. She did not sign the lease in her capacity as trustee, nor did that document contain any indication that she was the customary trustee or that her siblings' signatures were obtained for the sole purpose of signifying their approval of the sale of Carolinian family land. In summary, the respondents point to no specific instances in which Dolores Rabauliman took any acts with respect to the land that could be deemed consistent with her assertion that she is customary trustee.

Furthermore, the court strongly disagrees with respondent's

contention that the lease, sale or partition of Carolinian family land is consistent with Carolinian custom. In support of this proposition, the respondents cite 8 CMC § 2904(c). That provision states in full:

Unless the family consents or agrees otherwise, family land shall not be passed by will, devised, sold, leased, exchanged, mortgaged, partitioned, or otherwise disposed of by the customary trustee.

Id.

"changed their minds" and decided to revert to custom to defend their own acts which are, in fact, inconsistent with custom. *Id.*

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a notion was from a legal standpoint when it codified the traditional Carolinian customary practices. For this court to say that it is consistent with Carolinian custom to lease family land and live off the benefits would ignore the historic traditions and culture of the Carolinian people. One of the stated purposes of the Probate Code was:

To realize the compelling interest of the Northern Mariana Islands in preserving the historic traditions and culture of its citizens of Northern Marianas descent.

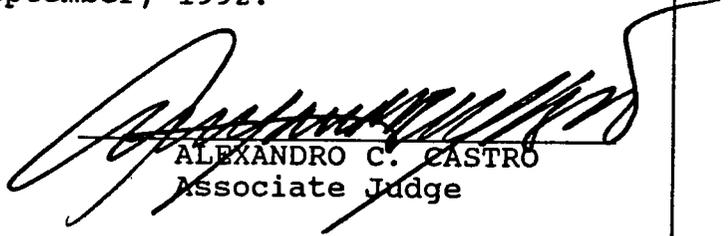
8 CMC § 2104(b)(4).

How can the historic traditions of the Carolinian people be preserved if the court labels as custom an act which removes possession of family lands from a Carolinian family for fifty-five years? Such a labeling would serve only to promote the deterioration of the traditionally cohesive Carolinian family unit and invite greed to replace the family bond. The court is not saying that Carolinian families cannot take full advantage of the economic opportunities created by the increase in island land values. Once a family decides, however, to opt for the financial rewards associated with ignoring customary ways, they cannot use custom as a shield to repel attacks instigated by their conscious choice to engage in transactions that do not fit within the traditional mold.

Because the family failed to treat the land in accord with Carolinian custom, the court will order partition of the land. Technically, the parties themselves have already accomplished

this result by leasing and sharing the proceeds from the lease.
Any further questions with respect to distribution in the estate
of Vicente Rangamar should be addressed in that probate.

DATED this 4 day of September, 1992.



ALEXANDRO C. CASTRO
Associate Judge