

dition by the Japanese surveyors has been effectively rebutted and shown to be in error.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the parcel of land known as Iruang located in the Ngebuked Section of Ngaraard Municipality on Babelthaup Island in the Palau District, is owned by the Romei family of the Idung clan.

2. This judgment shall not affect any rights of way which may exist over or across the land in question.

3. No costs are assessed against either party.

NGIRCHONGERUNG, Plaintiff

v.

NGIRTURONG, Defendant

Civil Action No. 8

Trial Division of the High Court

Palau District

September 3, 1953

Action to determine ownership of land in Ngaraard Municipality, in which former chief of clan purported to give land to individual who held use rights therein. The Trial Division of the High Court, Chief Justice E. P. Furber, held that under Palau customary law, if land at time of purported gift was family or clan land, chief had no authority to dispose of it without consent of family or clan owning land.

1. Palau Land Law—Family Ownership

Under Palau custom, chief of clan has no authority to dispose of family land owned by family within clan without consent of that particular family.

2. Palau Land Law—Clan Ownership—Transfer

Under Palau custom, chief of clan has no authority to dispose of clan land without consent of clan.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Tebtar, the land in question in this action, was acquired many years ago by either the Tublai clan or the Akii family of that clan.

2. The Tublai clan in dividing up its clan lands either transferred Tebtar to the Akii family as family land or confirmed the Akii family's pre-existing right to it as family land.

3. Ngirmekur was permitted by both the Tublai clan and the Akii family to use this land during the remainder of his lifetime. As holder of the title of the head of the Akii family, he represented the land in dealings with persons outside the family, but he was given no right to dispose of it without the consent of the Akii family. Shortly before his death he expressed a desire that the plaintiff, Ngirchongerung, inherit the land on Ngirmekur's death. This expressed desire was not agreed to or acted upon in any way by the Akii family.

4. Any purported gift of the land by the chief of the Tublai clan was not consented to by either the Tublai clan or the Akii family.

5. The land was listed in the report of the Japanese survey completed in 1941, as Ngirmekur's private land, but this was not generally known to members of the Akii family until very recently.

CONCLUSIONS OF LAW

1. The questions of law involved in this case are covered by the conclusions of law in 1 T.T.R. 71, 66, No. 7 and No. 11, except for one point.

[1, 2] 2. There was some evidence that the former chief of the Tublai clan, while chief, had purported to give the land to Ngirmekur. It was not indicated whether

this purported gift was before or after the ownership by the Akii family as family land had been definitely confirmed by the clan in connection with the division of the Tublai clan lands. As shown by the fourth finding of fact, no such purported gift was consented to by either the Tublai clan or the Akii family. If the land at the time of the purported gift was family land, the situation is covered by the conclusions of law in Palau District Civil Action No. 11, holding that the chief of a clan has no authority to dispose of family land owned by a family within the clan without the consent of that particular family. The evidence as to whether the chief of the clan ever purported to make the gift claimed, was not clear, but the court considers it immaterial whether he purported to make this gift or not and holds that, even if at the time of the purported gift this was clan land, the chief of the clan had no authority to dispose of it without the consent of the clan.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the parcel of land known as Tebtar, located in Negaraard Municipality on Babelthaup Island in the Palau District, and designated in the Japanese land records as No. 807, is owned by the Akii family of the Tublai clan, represented in this action by the defendant.
2. This judgment shall not affect any rights of way which may exist over or across the land in question.
3. No costs are assessed against either party.