

**TERESITA (sometimes spelled THERESITA
and sometimes DERCHIDA) PHELIP, Plaintiff**

v.

IOAKIM and ENERIKO, Defendants

Civil Action No. 31

Trial Division of the High Court

Ponape District

June 29, 1954

Action to determine ownership of land in Net Municipality, in which each party claims ownership of entire land which was divided between them by Japanese surveyors. The Trial Division of the High Court, Chief Justice E. P. Furber, held that each party holds complete ownership over half of land and that division of land as registered by Japanese survey is presumptive evidence of divided ownership.

Ponape Land Law—Japanese Survey

Where German land titles were replaced by Japanese Government with Japanese documents showing divisions approved by surveyors, presumption is that division of land on Ponape Island approved by Japanese surveyors is absolute and each owner of part of divided lot has complete control over his part.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. In accordance with the terms of inheritance set out in the standard form of German title document issued by the German Government on Ponape beginning in 1912, Aluis inherited the land in question on the death of his younger brother Paulino on June 21, 1935, subject to the terms of that title document. No fraud or other irregularity has been shown in connection with the endorsement of the title document to him.

2. Aluis, during his lifetime, made a division of the land into three parts, the dividing lines being shown by two piles of stone at the shore. Each of these dividing lines runs from one of these piles of stones in a straight line to the up-

land boundary of the land. The left hand one of these three parts, as one stands on the shore facing the land, was assigned by Aluis to the plaintiff Teresita; the middle part to the defendant Eneriko; and the right hand part to the defendant Ioakim. This division was approved by the *Nanmarki* and the official Japanese surveyors on behalf of the Governor.

3. Although the title document covering the entire lot was later endorsed to the defendant Eneriko following the death of Aluis, Eneriko had consented to the division of the land and freely acknowledges that he only claims a beneficial interest in the middle part which was assigned to him, but claims the right to control the sale of any part of the lot. Eneriko took the title document subject to the rights of the plaintiff Teresita and the defendant Ioakim to the beneficial ownership of the parts assigned to them respectively, as set out in finding of fact No. 2.

CONCLUSIONS OF LAW

1. The principal question of law involved in this action is as to the effect of a division of land with the consent of the *Nanmarki* and the official Japanese surveyors acting for the Governor, but without being shown upon the title paper. The plaintiff has expressed a willingness that the defendants may continue to use the parts assigned to them if it is determined that the whole lot is hers, and the defendant Eneriko, as indicated in the third finding of fact above, takes a similar position, but each of them wants to control any sale of any part of the whole lot.

2. The court takes notice that in connection with the Japanese survey of private land on Ponape Island that was in progress about 1941, the Japanese Government gave general notice to the Ponapeans that the Government would, under proper circumstances, permit the division of land, and that when the survey was completed the title

papers which had been issued by the German Government on Ponape beginning in 1912, were all to be recalled and replaced by Japanese documents which would show the divisions approved by the surveyors. Unfortunately, part of the documents and records collected by the surveyors were destroyed in the bombing of Kolonia, although parts of them have been recovered by the Ponape District Land Office. The court holds that the natural presumption, under all the circumstances, is that a division approved by the Japanese surveyors was to be absolute, and that each holder of a part of a divided lot was thereafter to have as complete control over his part as the owner of the whole would have over the whole if there had been no division. In the absence of evidence to the contrary, the court holds that the presumption controls in this action.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the land known as Werei (sometimes spelled Uorei) No. 8, located on Parem Island in the Municipality of Net, is owned as follows:—

(a) It is divided into three parts; the dividing lines are shown by two piles of stones at the shore, and each dividing line runs from one of these piles of stones in a straight line to the upland boundary of the land.

(b) The left hand one of these parts (as one stands on the shore facing the land) is the property of plaintiff Teresita (sometimes spelled Theresita or Derchida) Phelip, who lives in the Nanponsapw Section of Net; the middle part is the property of defendant Eneriko, who lives in the Parem Section of Net; and the right hand part is the property of defendant Ioakim, who also lives in the Parem Section of Net.

(c) Each of these parts is the property of the person named above, with the benefit of and subject to all the rights and obligations imposed by the system of private land ownership set forth in the standard form of title document issued by the German Government on Ponape in 1912, as heretofore or hereafter modified by law.

(d) Each of the parties has as complete control over his part of the land as he or she would have if a separate German title document had been issued for each of these parts.

2. This judgment shall not affect any rights of way there may be over the land in question.

3. No costs are assessed against any party.

MARKARIDA CHRISTOPHER, Plaintiff

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS and Others,
Defendants

Civil Action No. 2

Trial Division of the High Court

Ponape District

June 29, 1954

Action to quiet title to land in Sokaes Municipality confiscated by German Government after Sokaes rebellion. The Trial Division of the High Court, Chief Justice E. P. Furber, held that land is vested in Alien Property Custodian, and that it is not judicial function to right wrongs committed under prior administration which have persisted for many years during previous administration.

1. Former Administrations—Applicable Law

Question of whether action of German Government in confiscating land on Ponape Island was legal must be decided according to law at time it took place.

2. Former Administrations—Redress of Prior Wrongs

It is not proper function of courts of present administration to right wrongs which may have occurred during former administration and which persisted for many years during previous administration.