MOON GILMAR, Appellant

v.

YOU NIFROU, Appellee

Civil Action No. 22

Trial Division of the High Court

Yap District

April 21, 1961

Action to recover piece of Yapese shell money. The Yap District Court dismissed the action and plaintiff appealed. The Trial Division of the High Court, Chief Justice E. P. Furber, held that evidence offered on behalf of plaintiff totally failed to support his claim and that action of District Court in attempting to bring about settlement was proper and not prejudicial. Affirmed.

1. **Evidence—Evidence of Criminal Conduct in Civil Suit**
   Alleged criminal conduct of party defendant in civil action has nothing to do with claims in civil suit, since court is only concerned with particular right and not with conduct affecting other matters not related to claim.

2. **Evidence—Evidence of Criminal Conduct in Civil Suit**
   Any delay in bringing criminal charges against individual to trial should be taken up with prosecuting authorities and has nothing to do with merits of civil action.

3. **Courts—Settlements**
   In view of importance of family unity and cooperation under Yapese system of culture, trial judge is fully justified in going to great lengths to bring about settlement of situation primarily involving injured feelings of party's wife.

4. **Courts—Justiciable Controversy**
   Law courts are in difficult position to deal on permanently satisfactory basis by any form of judgment with family disputes involving primarily injured feelings.

5. **Courts—Justiciable Controversy**
   There are situations, particularly of emotional nature, where there may be considerable unhappiness without any practical remedy through the courts.

6. **Courts—Justiciable Controversy**
   Courts cannot create by decree love, affection and cooperation which it is hoped will prevail in family.

7. **Equity—Generally**
   One who invokes aid of courts must expect to stand upon the truth.

8. **Courts—Witnesses**
   Although it is unpleasant under Yap custom to have brother and sister testifying on opposite sides of civil dispute, it is not just that one should be barred from testifying any more than the other.

9. **Courts—Dismissal**
   When action could have been dismissed at close of plaintiff's evidence, plaintiff cannot justly complain about delay in dismissal of action.

Assessor: JUDGE FALEYEER
Interpreter: FEICHIN C. FAIMAU
Counsel for Appellant: F. UAAYAN
Counsel for Appellee: LINUS RUUAMAU

FURBER, *Chief Justice*

In addition to the two grounds which the appellant set forth in his notice of appeal, namely, that the trial court erred in dismissing the action because violence might occur and in dismissing the action when substantial evidence pointed to judgment in favor of the plaintiff, who is now the appellant, counsel for the appellant argued that the trial judge had been unduly interested in trying to bring about a settlement of the action, rather than deciding it. Counsel for the appellant also complained about delays in the trial, the fact that a criminal case, which he considered related to this and believed should have been tried before it, had been delayed pending decision of this action, and that the defendant had grossly violated Yapese custom in calling as a witness the brother of the plaintiff's wife after the wife had already testified for the plaintiff.

Counsel for the appellee argued that the trial court had acted properly in dismissing the action, both because the evidence failed to establish the plaintiff's claim as set out in his complaint, and because it was in the public interest to maintain peace and as much harmony as possible within the plaintiff's wife's family and that the court and counsel had properly made every reasonable effort to settle the matter to avoid further difficulty within this family.

OPINION

This is an action which has clearly aroused very unfortunate feeling within the family of the plaintiff's wife, who stands in the position under Yapese custom of a mother of the defendant as well as being the true sister of one of the defendant's witnesses. From the argument of the appellant's counsel it would seem that either the appellant or his wife is primarily seeking a determination that the wife is telling the truth and the defendant is lying about a certain piece of Yapese shell money. The plaintiff asks that this be returned to him or its value paid him, although both his testimony and that of his wife clearly indicate the defendant has a right to keep it. The defendant has purported to return the shell money with some irritating language, but the appellant and his wife maintain that the piece he attempted to return is not the right one or worth as much as it is.

[1, 2] From a purely technical point of view, it appears from the record that there is no merit whatever in the plaintiff's claim, as set out in his complaint. The evidence offered on behalf of the plaintiff, even if all true, totally fails to support that claim. The matters of alleged criminal conduct by the defendant have nothing to do with the claim in the complaint. Any delay in bringing such charges to trial is something to be taken up with the prosecuting authorities in the first instance and has nothing to do with the merits of this action. The court is concerned here with a particular right claimed by the plaintiff and not with the defendant's conduct affecting other matters not related to this claim. It is doubtful if the plaintiff has any basis for a civil action against the defendant, but if he has, it is for something entirely different from the shell money he is claiming in this action.

[3–6] In view of the importance of family unity and cooperation under the Yapese system of culture, it is believed that the trial judge was not only fully justified, but was wise, in going to great lengths to try to bring about a settlement of a situation which appears to involve primarily the injured feelings of the plaintiff's wife due to opposition within her family. Law courts are well recognized to be in a very difficult position to deal, on a permanently satisfactory basis, with such family situations by any form of judgment. It is on this basis that under the common law in United States many types of actions between husband and wife and parent and child are ordinarily barred, and it must be recognized as a practical matter that there are bound to be situations, particularly of an emotional nature, where there may be considerable unhappiness without any practical remedy through the courts. Courts simply cannot create by decree the love, affection, and cooperation, which it is hoped will prevail in a family. 1 Am. Jur., Actions, §§ 15 and 28 to 32. 27 Am. Jur., Husband and Wife, § 589. 33 Am. Jur., Libel and Slander, § 54. 39 Am. Jur., Parent and Child, §§ 88 to 90. 52 Am. Jur., Torts, §§ 29 and 45.

[7, 8] On the other hand, one who invokes the aid of our courts must expect to stand upon the truth and, while it is recognized that it is unpleasant under Yapese custom to have brother and sister testifying on opposite sides, it is not just that the one should be barred from testifying any more than the other. The possibility of such a conflict is something a plaintiff should think about before bringing an action.

[9] The efforts of the trial judge to bring about a settlement may have given the plaintiff an exaggerated idea of the merits of his case, but this court can find nothing which the trial court did that in any way prejudiced the

rights of the plaintiff. The action might well have been dismissed at the close of the plaintiff's evidence. Since the trial judge's efforts to bring about a settlement were unsuccessful, it may be unfortunate that he did not dismiss the case at that point, but the plaintiff cannot justly complain about this delay in dismissing the action.

JUDGMENT

The judgment of the District Court for the Yap District in its Civil Action No. 25 is affirmed without costs.

YANGRUW and GILTAMAN, Plaintiffs

v.

MANGGUR and FENAM, Defendants

Civil Action No. 23

Trial Division of the High Court

Yap District

April 21, 1961

Action to determine fishing rights under Yapese customary law in waters over reefs. Plaintiffs claimed rights of control of all "big fishing" in Palau Village, Maap Municipality. The Trial Division of the High Court, Chief Justice E. P. Furber, held that waters in dispute suitable for *zum ey* fishing are "owned" by family group of which defendants are members, subject to obligation to permit others to cooperate with them in fishing and obligation to contribute *walbuu* to senior male member of group owning certain land in Palau Village.

1. Yap Custom—Fishing
   Under Yap custom, *yaraw* type fishing and "small" (individual) fishing are essentially different matters from, and covered by different controls, than *zum ey* fishing.

2. Yap Custom—Fishing
   No inference should be drawn from opinion relating to *zum ey* fishing rights as to fishing in any other waters or rights in any other kind of fishing.

3. Yap Custom—Fishing
   Under Yap custom, waters of Palau Village suitable for *zum ey* fishing are divided into plots, each owned by various family groups and usually