

IF, Plaintiff
v.
SIMALET, Defendant
Civil Action No. 130
Trial Division of the High Court
Truk District
October 9, 1961

Action upon master's report for determination of use rights in land on Ettal Island in Mortlock Islands. The Trial Division of the High Court, Chief Justice E. P. Furber, held that plaintiff had use rights in land and that obligation to care for relative under Mortlock custom attached to land and was binding on successor owner.

1. Truk Land Law—Mortlock Islands

It is so common in Mortlocks to think of rights as family matters that even if only one child's name is mentioned as having use rights in land, court will imply intention to provide for all of donor's children.

2. Truk Land Law—Mortlock Islands

Under Mortlock custom, although two parties may be specifically given obligation to care for and permit use rights in another, such obligation attaches to land and applies equally to parties' brother as their successor to land.

FURBER, Chief Justice

This action came on to be heard on the master's report. Neither side was present or represented at the call of the list and neither had notified the Clerk of a desire to be heard on the report. The action was therefore taken under advisement by the court without argument.

Upon consideration of the master's report and the record of the testimony taken before him, the master's report is approved, but the court makes the further finding that Soris gave Likinpar to Ikalis and Nepueki upon the understanding that if Soris' son If came to Ettal he could get his food from the land and Ikalis and Nepueki would take care of him.

OPINION

This action involves the ownership of land on Ettal in the Mortlock Islands of the Truk District.

[1] Although only If was specifically mentioned in the limitation which Soris put on his transfer to Ikalis and Nepueki, it is so common in the Mortlocks to think of rights as family matters even if only one member's name is mentioned that the court believes Soris' intention was to provide for all his children while on Ettal and that Ikalis and Nepueki so understood it.

[2] Similarly although only Ikalis and Nepueki were specifically mentioned as having to give the care directed by Soris, the court believes that under Mortlock custom such an obligation attaches to the land and applies equally to their brother Simalet as their successor.

No question was raised in this action as to whether Simalet owns this land individually or as a member of a group of relatives, separate from Soris' children. Therefore, no determination is made as to the nature of Simalet's ownership, except as far as it relates to the claims made by the plaintiff If.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties and all others claiming under them, the land known as Likinpar, located on Ettal Island, Truk District, is owned or controlled by the defendant Simalet, who lives on Ettal Island, subject to the obligation to allow the children of Soris, so long as they live, including the plaintiff If, who lives on Ta Island, Truk District, to take such food from this land as any of them reasonably need when they are on Ettal and to look out for their needs while they are on Ettal. This obligation will end upon the death of the last surviving child of Soris.

2. Neither the plaintiff If nor any other child of Soris has any rights in this land except to have the benefit of the obligation stated above.

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

4. No costs are assessed against either party.

5. Time for appeal from this judgment is extended to and including January 9, 1962.

POULIS, Plaintiff

v.

MEIPEL, ATINKACHAU, CHENIN, and ANIPIO, Defendants

Civil Action No. 140

Trial Division of the High Court

Truk District

October 9, 1961

Action for determination of title to land located in Uman Municipality. The Trial Division of the High Court, Chief Justice E. P. Furber, held that lineage land sold to party represented by plaintiff cut off all rights of lineage in land thereafter. The Court further held that after 1930, on larger islands of Truk Atoll, honest gift of land to *afokur* cut off all traditional rights in transferor lineage.

1. Truk Land Law—Lineage Ownership—Sales

Under Truk custom, sale of land held by lineage cuts off all rights of lineage and any rights which its *afokur* might reasonably hope to obtain through it in that part of land.

2. Real Property—Sales

Attempted subsequent gift of land by vendor after sale to third party is of no legal effect.

3. Truk Land Law—Lineage Ownership—Transfers

Under Truk custom, transfer of land in Truk Atoll by lineage to *afokur* carried with it implied obligation on part of children's lineage to make return gift of other land or to present first fruits to their father's lineage, which would still retain certain residual rights in land.