

der them, the lands known as Winiso (sometimes written Uniso), Fan Ros, and Leulan (sometimes written Neulan), all located in Chukuram Village on Polle Island, Truk District, are owned by the defendant Keremalus who lives in Chukuram Village, and the plaintiff Aselis (sometimes written Asenis), who also lives in Chukuram Village, has no rights of ownership in any of them.

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

3. The defendant Keremalus is awarded such costs, if any, of this action as he may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided he files a sworn itemized statement of them within thirty (30) days after the entry of this judgment. Otherwise no costs will be allowed.

4. Time for appeal from this judgment is extended to and including September 23, 1963.

JOSEPH, Plaintiff

v.

ONESI, Defendant

Civil Action No. 144

Trial Division of the High Court

Truk District

July 23, 1963

Action upon Master's Report to determine title to taro patch on Fefan Island, in which plaintiff claims taro patch as member of lineage which gave conditional use rights to Protestant Mission, retaining reversionary interest. The Trial Division of the High Court, Chief Justice E. P. Furber, held that Mission had not violated condition of use rights and that, although lineage did have reversionary rights should the taro patch cease to be used by Mission, Mission presently had indefinite use rights.

1. Truk Land Law—Reversionary Interest

Under Truk Custom, firm attachment to land and long-continuing reversionary rights indicate that inference of complete transfer of ownership is not to be readily drawn.

2. Truk Land Law—Lineage Ownership—Gifts

Gifts of land between lineages in Truk result in granting of usufruct rights in perpetuity but not full title.

3. Truk Land Law—Reversionary Interest

Under Truk custom, reversionary rights in land are recognized today.

4. Truk Land Law—Use Rights

Under Truk custom, evidence of informal “gifts” of land or taro patches for missionary purposes raises inference of indefinite use rights for as long as land is used for missionary purposes specified, with owners retaining reversionary rights if Mission use is discontinued or attempt is made to transfer to non-missionary uses, unless there is definite showing to the contrary.

FURBER, *Chief Justice*

This action came on for hearing on the Master’s Report on June 8, 1961, and was argued by August H. as counsel for the plaintiff, and by the defendant Onesi. Counsel for the plaintiff Joseph admitted that the plaintiff’s leaders had given permission for the use of the taro patch in question for food for Protestant Mission preachers at Wisas, but said that this was because the preachers were from the Mortlock Islands and had no other source of food. He argued that, now that the preachers were from Truk Atoll, the plaintiff should have the taro patch back. Onesi argued that the action should be against the Protestant Mission and not against him, that he was using the taro patch just because he was the Protestant preacher at Wisas and was just following what the preachers before him there had done, some of whom were from the Mortlock Islands and some from Truk Atoll.

Counsel for the plaintiff replied that the action had been brought against Onesi because he was the only one interfering with the plaintiff’s use of the taro patch.

In answer to questioning from the court, Onesi stated that he didn’t know whether there were any documents

concerning this taro patch. It appeared that he had not made any great effort to find out whether the Mission authorities had any documentary evidence as to their rights in the taro patch in question, but he offered to write them about it if the court would allow him time to do so. The hearing was accordingly continued until further notice to allow the defendant to look into the question of any documents showing the Mission's rights.

On November 27, 1961, the defendant Onesi filed a letter from Dr. Harold F. Hanlin indicating that the Mission had no documents available concerning the taro patch. On March 19, 1962, the action was again called for hearing on the Master's Report and, neither side having any further evidence or argument to offer, the action was taken under advisement.

After examination of the transcript of evidence, the Master's Report is approved subject to the interpretation of the words "owned" in the Master's second finding of fact, and "transferred" in his third finding of fact, explained in the opinion below.

OPINION

This action, and that of *Andrew v. Otto and Ineui*, 2 T.T.R. 441, involve the question of what inferences are to be drawn when it is shown that land, or permission to use land, for mission purposes in Truk Atoll was "given" long ago, but there is no documentary or other clear evidence as to just what rights were transferred, even though it appears that certain "gifts" were made in exchange.

[1] The Trukese are so firmly attached to their land and still have such a keen sense of long-continuing reversionary rights in it, and apparently had a still firmer concept of this in the past, that it is believed that the inference of a complete transfer of ownership is not to be

readily drawn. Certainly English words used to translate the statements of witnesses concerning any such informal "gifts" cannot fairly be considered to give rise to the same inferences those words might have if used in the United States today and there were no Statute of Frauds bearing on the matter. See Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 181-183.

[2, 3] It may be noted that in the part of Land Tenure Patterns cited above, John L. Fischer, Jr., the former Truk District Anthropologist, states as follows at page 183 with regard to gifts of land between lineages in Truk:—

"Probably it is fairest in these cases to assume that the recipient lineage was granted usufruct rights in perpetuity but not full title".

He also states at the foot of that same page:—

"The Trukese continue to recognize reversionary rights to this day."

[4] Taking all of the circumstances into consideration, and Trukese practice in handling land matters among themselves at the time, the court is of the opinion that the proper inference to be drawn from evidence of informal "gifts" of land or taro patches in Truk Atoll for missionary purposes, is that the gift is one of indefinite use rights for as long as the land or taro patch is used for the missionary purposes specified, but that the owners retain the reversionary rights to the taro patch or land and that they or their successors are entitled to get it back if the Mission use is definitely discontinued or attempt made to transfer it to non-missionary uses, unless there is a definite showing to the contrary.

The court therefore holds that the words "owned" and "transferred" as applied to the part of the taro patch in question in the Master's second and third findings of fact respectively must be construed to apply to the ownership and transfer of use rights and not full title.

On the other hand, the court considers that the plaintiff Joseph has completely failed to sustain the burden of proving that the gift or permission to use the part of the taro patch in question was in any way made contingent upon the location of the Mission preacher's home island or place of residence apart from his missionary work.

The evidence gives rise to the inference that the plaintiff Joseph is only the successor of those who gave use rights in a portion of the part of the taro patch in question, and that there may be others also interested in even the portion in which he has an interest. Since, however, the trial of this case was concerned primarily with the question of rights of immediate possession, it may be that the exact distribution of the reversionary rights is of no practical immediate concern. Therefore, no determination is made in this action as to just who are the present holders of those reversionary rights.

Also, no representations have been made or evidence introduced as to the exact organization of the "Protestant Mission". Accordingly no determination is made as to exactly what organization within the Protestant missionary movement in the Trust Territory holds these rights.

JUDGMENT

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

1. As between the parties and all persons claiming under them, rights in the part of the taro patch known as Wisas, located in Sapore, which is sometimes considered a separate village, within Sapota Village on Fefan Island, Truk District, from which part successive Protestant preachers at Wisas have been obtaining food for over fifty years, are held as follows:—

a. Indefinite use rights are held by the Protestant Mission, represented in this action by the defendant Onesi, so long as that part of the taro patch is used in support

of the mission at Wisas, including any periods of lack of missionary activity at Wisas which do not indicate an intention to discontinue the Mission there, and the defendant Onesi, as preacher there, has full right to make use of the taro patch to which the plaintiff has objected in this action.

b. Reversionary rights, subject to the above mentioned rights of the Protestant Mission, are retained by those who gave these use rights or their successors.

2. If either of the parties is unable to determine the exact boundaries separating the part of said taro patch subject to the above mentioned use rights from any other part of said taro patch owned or controlled by the plaintiff, either party may, by motion filed in this action, request a determination of the boundary or boundaries.

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

4. The defendant Onesi is awarded such costs, if any, of this action as he may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided he files a sworn itemized statement of them within thirty (30) days after the entry of this judgment. Otherwise no costs will be allowed.

5. Time for appeal from this judgment is extended to and including September 23, 1963.