

NEIKABUN, Plaintiff
v.
MUTE, Defendant
Civil Action No. 299
Trial Division of the High Court
Marshall Islands District
September 29, 1971

Action to determine *alab* interests on Barbarbun *Wato*, Mejit Island. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that defendant's attempt to oust plaintiff from the land on the basis of right acquired by will was contrary to law because of his failure to establish validity of will or superior title.

1. Marshalls Custom—"Iroij Lablab"—Approval of Wills

An attempt to pass *dri jermal* interests by will was ineffective where the *iroij lablab* did not approve the will and his representative was prevented from objecting to it.

2. Marshalls Land Law—"Iroij Lablab"—Powers

Under Marshallese customary land law a transfer of land interests must be approved, in all circumstances, by the *iroij lablab*.

3. Marshalls Land Law—"Alab"—Limitation of Powers

Land interests, once they have vested and have been established for a long time, may not be cut off by the *alab* without the consent of the *iroij lablab* and the *iroij lablab* may not approve an attempted termination of vested interest without good cause.

Master: SOLOMON L., *Associate Judge of the District Court*

Reporter: JELTAN J. SILK

Counsel for Plaintiff: MONNA BUNITAK

Counsel for Defendant: RAITO KEJU

TURNER, *Associate Justice*

REPORT OF HEARING

The parties, their counsel and their witnesses appeared before the Master on Mejit Island, Marshall Islands. The Master did not make conclusions upon such facts as he found nor did he propose a determination. Counsel for the

parties submitted written argument to this court after receiving the Master's report. This court's findings include those made by the Master and such additional ones, as are necessary to the determination, which are based upon the testimony and evidence presented to the Master.

FINDINGS OF FACT

1. Barbarbun *Wato*, Mejit Island, the land in dispute in this case was "*imon aje*", that is, gift land, from former *Iroi j lablab* Keju to a predecessor *alab* and *dri jermal* of the parties.

2. Interests in the land descended in the matrilineal lineage of the recipient until it reached Jebel (also spelled Jebwel) as holder of *alab* and *dri jermal* rights.

3. Jebel attempted to transfer, by written will, his *dri jermal* interests to Rebeka, wife of Raito, counsel for the defendant, and to Kobaia Mute, wife of the defendant. Another alleged will attempted to transfer *alab* interests to defendant Mute.

4. These wills were not approved by Jorran, the *iroi j lablab*, nor did his representative, Larron, who was present when the wills were made, approve or acquiesce in them. Larron was restrained by force by members of the defendant's family from objecting to the attempted transfer of the land interests.

5. Plaintiff "followed" her father as *dri jermal* onto the land in question upon his death in accordance with Marshallese custom governing lineage descent of *imon aje* land interests.

6. Upon Jebel's death, he was succeeded by Emel as *alab*. Emel is now deceased and the plaintiff is his successor.

7. Plaintiff's and her father's use and occupancy of the land preceded the Jebel wills to Mute, Rebeka and Kobaia.

8. Defendant failed to introduce Jebel's wills but did introduce in evidence a copy of what purportedly was Jebel's will of *dri jermal* interests to Rebeka and Kobaia. He did not offer a will or a purported copy of any will of *alab* rights to Mute.

9. Mute has attempted to oust plaintiff from the land on the strength of his claimed acquisition of interest from Jebel.

OPINION

The record reasonably supports the Master's finding that the proof was insufficient to establish a will of *alab* interests from Jebel to the defendant Mute. Particularly is this failure evident from the stipulation or agreement between the parties that Emel was the successor *alab* upon the death of Jebel. If Mute had been granted *alab* rights by Jebel's will, it would have been proper for him to succeed Jebel. But he did not. Emel succeeded Jebel.

[1] The most we can say for the evidence is that Jebel attempted to pass *dri jermal* interests by will to Rebeka and Kobaia. This attempt, however, was ineffective because the *iroij lablab* did not approve the will and his representative, the witness Larron, was prevented from objecting to it.

[2] This action of the defendant and his family against the *iroij lablab's* representative clearly indicate they were entirely aware of the Marshallese customary land law that a transfer of land interests must be approved, in all circumstances, by the *iroij lablab*. *Limine v. Lainej*, 1 T.T.R. 231. *Lalik v. Elsen*, 1 T.T.R. 134. *Lajeab v. Lukelan*, 2 T.T.R. 563. *Muller v. Maddison*, 5 T.T.R. 471.

[3] The evidence further indicates the plaintiff's *dri jermal* interests were vested long before Jebel attempted to assign those interests. Land interests, once they have vested and have been established for a long time, may

not be cut off by the *alab* without consent of the *iroij lablab* and the *iroij lablab* may not approve an attempted termination of vested interest without good cause. There was no showing the *alab*, even if he had the acquiescence of the *iroij lablab*, had good cause for terminating plaintiff's vested *dri jermal* rights.

Plaintiff's *alab* interest descended in accordance with the custom from Emel, the predecessor *alab*. *Beklur v. Lijablur*, 2 T.T.R. 556.

The defendant's attempt to oust plaintiff from the land in question on the theory of superior right acquired by will was not in accord with Marshallese custom and was contrary to law because of his failure to establish probative evidence of his entitlement to the land interests.

It is ordered, adjudged, and decreed:—

1. The plaintiff Neikabun rightfully holds *alab* and *dri jermal* interests in Barbarbun *Wato*, Mejit Island, Marshall Islands District, and that plaintiff and those claiming through her are entitled to use and occupancy of the land without interference from the defendant Mute and those claiming through him.

2. That the defendant Mute and those claiming through him have no right, title or interest in the land in question as against the plaintiff and those claiming through her.

3. Plaintiff shall be allowed costs as may be claimed and approved in accordance with law.