

judgment for it. If they are unable to agree, that is to be reported to the court, so that the matter can be reopened and a Master appointed to take evidence on that issue.

It is ordered, adjudged, and decreed:—

1. Plaintiff Atalpet Simirait is the owner and entitled to possession of the land here in dispute, being that portion of the land Imwindol, Alokapw section, Madolenimw, Ponape District, owned by Simirait at the time of his death.
2. No costs are assessed.

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**RENSELIHNA PRENS, Plaintiff**

v.

**SUSAN, Defendant**

Civil Action No. 468

Trial Division of the High Court

Ponape District

March 9, 1972

Action to determine ownership of land in Uh Municipality, Ponape District. The Trial Division of the High Court, H. W. Burnett, Chief Justice, held that while neither party had any right to the land in question, defendant could continue to live on and subsist from the land during her lifetime.

**1. Ponape Land Law—German Land Title—Succession**

Paragraph 2 of the German land code, which prohibited inheritance by a female, remained unchanged until February 1, 1957 when the new inheritance law was adopted by Ponape District Order No. 8-57.

**2. Ponape Land Law—German Land Title—Succession**

The German land code in effect on Ponape prohibited testamentary disposition, and such prohibition remained in effect until Ponape District Order 9-57 which provided for the making of wills, effective March 22, 1957.

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**BURNETT, Chief Justice**

The dispute in this action concerns title and right of possession of the land Sakaralp, located in Mwand Peidi,

Uh Municipality, Ponape District. Both parties agree that the original registered owner was Rapael; beyond that point there is no agreement as to succession to his title. The German Land Document cannot be found.

Plaintiff's claim can be simply stated. It is her contention that Rensile was adopted by Rapael and succeeded to title upon the death of Rapael. Rensile died sometime during the war and plaintiff claims that he was succeeded in title by his older brother Prens, the father of the plaintiff. Prens died in 1953 and she claims title as his only child.

[1] Even if we accept as true all of the factual contentions made by the plaintiff, it is clear that her claim to title must fail. At the time of Prens' death in 1953, succession to title was still governed by the provisions of paragraph 2 of the German land code, which prohibited inheritance by a female. This remained unchanged until adoption of the inheritance law on February 1, 1957, by Ponape District Order No. 8-57. Consequently, even if Prens were the registered owner as of the time of his death, Renselihna could not have succeeded him.

[2] There was some inconclusive testimony that Prens had said the land was for Renselihna, but no clear evidence of a will or gift to her. It may be noted as well that the German land code prohibited testamentary disposition, which prohibition remained in effect until Ponape District Order 9-57 provided for the making of wills, effective March 22, 1957.

Defendant Susan likewise contended that she had been adopted by Rapael, and I accept this as true. She obviously, however, could not have received title upon his death for the same reasons which I have found to bar Renselihna's claim, that is, the prohibition in law against a female acquiring title by succession.

Susan makes the further contention that, since she was the one who cared for Rapael during his lifetime and dur-

ing his last illness, the Japanese surveyors confirmed title in her in 1941. She acknowledged, however, that she was given no documentary evidence at or following the hearing.

One witness, who was an interpreter for one of the Japanese surveying teams, did testify that Susan had been given the land, and that Rensile's right, as an adopted child to succeed Rapael, was denied on the ground that he failed in his obligation to take care of his father. I do not find the testimony of this witness to be at all convincing. He stated that he had not known either Rensile or Susan until the time of the hearing, some 31 years ago, yet professed to remember exactly what disposition was made at their hearing, which was only one of many. Additionally, such a determination, while it may well have been within the power of the surveying group, would have been an unusual one. I find it much more believable that, rather than confirming title, they instead acknowledged the right of Susan to remain on and to subsist from the land, a conclusion which would be considerably more consistent with established Ponapean custom and the practice of the administration at that time. I so find.

It is not disputed that Susan lived with Rapael and has remained on the land ever since his death. While I find that neither party has demonstrated a clear entitlement to ownership, it is obvious that Susan's rights in the land are the stronger, and her right to remain should be confirmed.

With only these parties and their evidence before it, the court is unable to say where rights of ownership lie in Sakaralp. Paragraph 2 of the German land code provided that, when an owner dies with neither a legal or adopted heir, the *Nanmwarki* and the "Governor" decide. This was amended by Public Law 3-17-59, effective November 24, 1959 (now Section 12-104 of the District Code), to read:—

*"Failure of succession.* If there is no successor, the disposition of the land shall be determined by the *Nanmwarki* and District

Administrator. Where there is no *Nanmwarki*, the chief magistrate with the District Administrator shall decide.”

It is, therefore, ordered, adjudged, and decreed:—

1. Neither the plaintiff Renselihna Prens, the defendant Susan Pretrick, nor any persons claiming under them, have any right of ownership in the land Sakaralp, in Mwand Peidi, Uh Municipality, Ponape District.

2. Susan shall have the right to continue to live on and subsist from the land for her lifetime.

3. No costs are assessed.

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OTNIEL EDMOND TULENKUN, Plaintiff

v.

VILLAGE GOVERNMENT OF UTWE, Defendant

Civil Action No. 415

Trial Division of the High Court

Kusaie, Ponape District

March 13, 1972

Action between village and upland owner to determine rights to filled shore lands. The Trial Division of the High Court, H. W. Burnett, Chief Justice, held that the government could not dispossess a landowner at will of rights conferred upon him by law and that the occasional use of filled land was permissive only and thus rights therein were in upland owner.

**1. Trust Territory—Land Law—Generally**

Neither the government, nor any part of it, can dispossess a landowner, at will, of a very real and substantial right conferred on him by law.

**2. Real Property—Shore Lands**

Provision of the Trust Territory Code relating to rights in areas below high watermark, does not give ownership of the land below the high watermark, but rather gives a right, under conditions of approval, to build improvements on the land, which improvements may be the property of the upland owner; ownership of the land remains in the government. (67 T.T.C. § 2(c))

**3. Real Property—Shore Lands**

Where the occasional use made of filled shoreland by village was permissive only, the village acquired no rights thereby. (67 T.T.C. § 2(c))