

ANDREW, Plaintiff
v.
OTTO and INEUI, Defendants
Civil Action No. 150
Trial Division of the High Court
Truk District
July 23, 1963

Action upon Master's Report for determination of title to land on Fefan Island, in which plaintiff claims land under reversionary interest retained in informal "gifts" to Protestant Mission of lineage land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that such informal "gift" granted use rights to Protestant Mission with reversionary right in lineage when land is no longer used for missionary purposes; since the land had not been used for church services for past twenty years, land reverted to lineage.

1. Truk Land Law—Use Rights

Proper inference to be drawn from evidence of informal "gift" of land or permission to use land in Truk Atoll for missionary purposes is that gift is one of indefinite use rights for as long as land is used for missionary purposes specified, but that owners retain reversionary rights and are entitled to reacquire land if Mission use is discontinued.

2. Truk Land Law—Use Rights

Under Truk custom, word "gave" in informal "gift" agreement refers to use rights.

3. Real Property—Use Rights—Reversionary Interests

Where use of land in Truk Atoll for church services has been discontinued for over twenty years, missionary use for which land was given has been discontinued and use rights conditioned thereon are terminated.

FURBER, *Chief Justice*

This action came on to be heard upon the Master's Report on June 8, 1961, and was argued by the plaintiff Andrew and by Albert Hartmann as counsel for the defendants. The plaintiff stated, as he had in his complaint, that he

was acting on behalf of all the churches in the eastern part of Truk Atoll, as well as the Protestant Mission, but that the land in question belonged to the American Board of Commissioners for Foreign Missions and that he and the deacon of his church were taking care of it.

Counsel for the defendants admitted that permission had originally been given to the Protestant Mission to enter upon the land in question, but claimed it had not been sold to the Mission and was no longer being used as the site of a Mission. The Plaintiff Andrew admitted that church services on the land had been discontinued in 1936 "when the people became Catholic", that at about that time the last minister took down the church building and the minister's house and took the materials to Losap, and that since that time there had been no minister at Kuku. He stated that Dr. Harold F. Hanlin, the American Board's senior representative in this area, had said he would send for the document that shows the Mission's ownership, which Andrew believed was kept at the Board's main office in Boston, Massachusetts, but that he, Andrew, had not received it.

In view of these statements, the hearing was continued until further notice to let the plaintiff obtain the documentary evidence of Mission ownership supposed to be in Boston.

Later Dr. Hanlin inquired orally directly of the court about the status of this action, and Truk District Civil Action No. 144, and stated that the "United Church Board for World Ministries", incorporated in Massachusetts, had taken over the work in the Trust Territory of the American Board of Commissioners for Foreign Missions. Dr. Hanlin was informed of the status of both these actions by the Chief Justice's letter Serial 204 of September 18, 1961, copy of which is in the file in this action, and that both of these actions would normally come up

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for further consideration again at the next sitting of the Trial Division of the High Court in the Truk District, which was scheduled to begin on the first Tuesday in December. At the call of the list on the first Tuesday in December 1961, however, neither party responded, and this action was permitted to go over until the March–April 1962 sitting. At the call of the list at the opening of that sitting on March 19, 1962, no one responded on behalf of the plaintiff in this action but counsel for the defendants stated that he understood from the plaintiff that plaintiff had been unable to obtain any documentary evidence to support his claim. Counsel for the defendants therefore requested that the court decide the matter without further evidence or argument, and the case was thereupon taken under advisement.

From an examination of the transcript of evidence it is difficult to determine on what evidence the Master based the determination in the last clause of his second finding of fact, “when there were no more Protestant Christians in this place”, but the plaintiff Andrew at the hearing on the Master’s Report raised no objection to this finding and, in view of the admissions which he made at the hearing on the Master’s Report, it would appear that he was not damaged by this finding. The Master’s Report is approved subject to the interpretation of the word “gave” in the Master’s second finding of fact explained in the opinion below.

OPINION

[1, 2] This action is governed primarily by the same principles as *Joseph v. Onesi*, 2 T.T.R. 435, decided this day. As explained in the opinion in that action, it is believed that the proper usual inference to be drawn from evidence of informal “gifts” of land or permissions to use land in Truk Atoll for missionary purposes is that the gift is one of indefinite use rights for as long as the land is used

for the missionary purposes specified but that the owners retain the reversionary rights and that they or their successors are entitled to get the land back if the Mission use is definitely discontinued. The court therefore holds that the word "gave" in the Master's second finding of fact must be construed to apply to use rights in the land and not full title.

[3] In this instance, where it is admitted that the use of the land for church services has been discontinued for well over twenty years and the Mission has shown no interest in using it except as a possible source of food for persons engaged in mission activities elsewhere, the court considers under all of the circumstances that the use for which the land was given has been discontinued and holds that the Mission's use rights have therefore ceased.

JUDGMENT

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

1. As between the parties and all persons claiming under them, neither the plaintiff Andrew, who lives on Fefan Island, Truk District, nor the churches in the eastern part of Truk Atoll, nor the Protestant Mission, for both of whom the plaintiff makes claim in this action, has any rights of ownership in the lands formerly used by the Protestant Mission in Kuku Village on Fefan Island, Truk District, and known to the plaintiff as "Mission in Kuku" and to the defendants Otto and Ineui as Fanmeiter, Epino (sometimes written Epilo), and Nechinok (sometimes written Latinok), and neither the plaintiff Andrew nor those for whom he makes claim has any right to interfere with the actions of the defendants Otto and Ineui on said lands.

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

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3. The defendants Otto and Ineui are awarded such costs, if any, of this action as they 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.