

SIROM, Plaintiff

v.

PIRANIS, Defendant

Civil Action No. 394

Trial Division of the High Court

Truk District

April 24, 1968

Action involving ownership and use rights in land on Ta Island, Mortlock Islands. The Trial Division of the High Court, E. P. Furber, Temporary Judge, held that the granting of use rights in lineage land in the Mortlocks did not constitute transfer of ownership although lineage could not oust holder of use rights without good cause.

] Truk Land Law-Mortlock Islands

Once it is established that a piece of land in Mortlocks is lineage land, the granting of use rights in it, even to a member of the lineage, is not any more readily to be presumed to constitute a transfer of ownership than in the case of permission to use granted to an *afokllr*.

2. Truk Land Law-Mortlock Islands

The holder of use rights to lineage land in the Mortlocks is entitled to harvest from trees which he has planted on the land as long as he lives and the trees last as long as he fulfills his obligations to his lineage.

3. Truk Land Law-Mortlock Islands

In the Mortlocks a lineage is entitled to divide up lineage land provided they do so after fair consideration of the matter and subject to the use rights held by another, and the lineage cannot oust the one holding the use rights without showing good cause.

---

FURBER, *Temporary Judge*

This action came on to be heard upon the Master's Report. Neither side having asked to be heard upon the report, and neither side having responded in any way when the case was called at the opening of the sitting at which this matter came on for hearing, the action was taken under advisement without argument.

After an examination of the entire file, including the transcript of evidence taken before the Master, the Master's Report is approved.

OPINION

This action involves the ownership of and use rights in a piece of coconut land located on Ta Island in the Mortlock Islands of the Truk District. The dispute arose because of a desire by the plaintiff Sirom and at least part of his lineage, to divide the land into four parts, and the defendant Piranis' objection to having it divided. It is not too clear how carefully this was considered by the lineage as a whole or to exactly what extent the plaintiff Sirom wishes to oust the defendant Piranis, or to what extent, if any, the defendant Piranis is endeavoring to deny the lineage's ownership, but it appears to the court that both sides are trying to stress their rights in disregard of their traditional obligations to each other to cooperate

and to advance their mutual interests. The situation is similar in many respects to that dealt with by this court in the case of *Augusta Fred v. Fatiol Airinios*, 3 T.T.R. 274. It is quite clear from the testimony that the land in question is lineage land and was so acknowledged by the defendant Piranis' predecessor in possession, but that Piranis has been permitted by the lineage to have possession and use of the land for a long time with the result that the coconuts now on the land have been planted by him. As held in the *Augusta Fred* case cited above, those to whom use rights in lineage land have been assigned, still hold under the lineage and subject to its control in accordance with local custom, no matter how long they or their predecessors in interest may have been in possession.

[1] Once it is established that a piece of land in the Mortlocks is lineage land, the granting of use rights in it, even to a member of the lineage, is not any more readily to be presumed to constitute a transfer of ownership than in the case of permission to use granted to an *afokur*, which was discussed in *Nusia v. Sak*, 1 T.T.R. 446. *Nitoka v. Neseper*, 2 T.T.R.12.

[2, 3] The court holds that the defendant here is entitled to harvest from the trees which he has already planted on the land in question as long as he lives and the trees last, provided he fulfills his obligations to his lineage, and that the lineage is entitled to divide up the land provided they do so after fair consideration of the matter and subject to the defendant Piranis' use rights, but they cannot oust him without showing good cause. The court further holds that sufficient cause for ousting him has not been shown in this instance.

It is, therefore,

Ordered, adjudged, and decreed as follows:-

1. As between the parties, both of whom live on Ta

Island in the Mortlock Islands of the Truk District, and all persons claiming under them, the land known as Pelieluk, located on said Ta Island, is owned by the lineage within the Sapunipi Clan which uses the men's house Uenifol (sometimes referred to as the Uenifol lineage), of which lineage both parties are members, and the defendant Piranis owns use rights therein subject to the supervision and control of the lineage in accordance with Mortlockese custom, so long as he fulfills his obligations to the lineage. No just cause for interfering with his harvesting from the trees which he has planted on the land has been shown.

2. This judgment shall not affect any rights-Of-way there may be over the land in question.

3. No costs are assessed against either party.

4. Time for appeal from this judgment is extended to and including July 23, 1968.