

SHONIBER v. SHONIBER

HERBERT SHONIBER, Plaintiff

v.

SARI SHONIBER, Defendant

Civil Action No. 345

Trial Division of the High Court

Ponape District

March 28, 1969

Action to determine ownership of land in Kolonia, Ponape District. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that land held under German title document could not be disposed of by will and that adoption of person did not preclude his taking under such document.

1. Ponape Land Law-German Land Title-Succession

A will of land was contrary to the express prohibition against testamentary disposition contained in the German land code.

2. Ponape Land Law-German Land Title-Succession

Passage of land through brothers and sisters was contrary to the system of land tenure contained in the German land code.

3. Ponape Land Law-German Land Title-Succession

The adoption of a natural child into some other family does not prevent the child from inheriting land held under one of the German title documents.

BURNETT, *Associate Justice*

This action comes before the court on plaintiff's Motion for Summary Judgment, in which he contends that, on the basis of undisputed facts developed at pre-trial conference, no factual issues remain to be determined and that on the law he is entitled to recover.

The land which is the subject of this action is registered under standard form German land deed number 304/305, Porakied, Kolonia, Ponape District, in the name of Namwei Shoniber who died about 1947. The plaintiff, Herbert Shoniber, is the oldest son of Ernest Shoniber, who was the eldest son surviving Namwei. Ernest died in 1963. This action was commenced by the plaintiff following notice given him by defendant in April of 1968 that he must leave the land.

Defendant contends that Ernest lost his right of inheritance since he was adopted by another family when only a small child and returned to live with Namwei only after the war, some time in 1946. It is admitted that Ernest lived on the land from the time of his return until his death in 1963.

[1,2] Defendant contends further that it was the will of Namwei that the land pass through the brothers and sisters and that she, as the eldest of Namwei's children has primary rights to the land. As the court held in *Likidimus*

v. *Likidimu*8, 4 T.T.R. 331, in which judgment was entered this date, a will, such as is claimed by the defendant, can be given no legal effect since it is contrary to the express prohibition against testamentary disposition contained in the German land code and is contrary to the system of land tenure therein contained.

[3] The only issue remaining, which is clearly one of law, is whether Ernest lost the right of inheritance which was clearly his in accord with Section 2 of the German land code, by reason of having been adopted by another family. The only other instance in which I find the court has been confronted with this question is in the case of *Ladore v. Ladore*, 1 T.T.R. 21, in which the court said in its third conclusion of law:-

"... the standard form of German title document does not make any mention of excluding from inheritance a natural child who has been adopted into some other family. The court holds that such adoption does not prevent a child from inheriting land held under one of these title documents."

I conclude therefore that, upon the death of Namwei, Ernest Shoniber succeeded him as the owner of the land and, upon the death of Ernest, this plaintiff succeeded him as the oldest surviving son. It follows that plaintiff's motion must be granted and judgment entered for the plaintiff.

It is, therefore, ordered, adjudged, and decreed as follows:-

1. As between these parties and all those claiming under them, the land registered under standard form German land deed number 304/305, Porakied, Kolonia, Ponape District, is owned by the plaintiff, Herbert Shoniber, with all of the rights and subject to all of the obligations incident to such ownership under the German land code as heretofore modified or amended by law.

2. No costs are assessed against either party.