

AUGUSTINE H. MOSES, Plaintiff-Appellant
v.
KUNIBERT JOSEPH UCHERBELAU, Defendant-Appellee
Civil Appeal No. 244
Appellate Division of the High Court
Palau District
December 4, 1981

Dispute over boundary lines between the owners of adjacent properties. The Appellate Division of the High Court, Nakamura, Associate Justice, held that the trial court properly found a binding agreement between two clans as to the disputed boundary, and therefore affirmed the judgment of the trial court.

1. Appeal and Error—Scope of Review—Weight of Evidence

Appellate Division's function is not to reweigh the evidence, and it will not set aside the findings of the trial court unless there is manifest error or the findings are clearly erroneous.

2. Palau Land Law—Boundary Lines

An unascertained or disputed boundary line dividing the lands of adjoining owners may be permanently and irrevocably established by a parol agreement of the adjoining owners.

3. Palau Land Law—Boundary Lines

Where members of two clans agreed to establish and did establish boundary lines which were later formalized in an official map, the boundary lines were known by the general populace, and acquiescence in the agreed upon boundary lines by both clans continued for a period of more than twenty years, and both clans accepted quitclaim deeds from the government based upon such boundary lines, the trial court properly found a binding agreement between the two clans with respect to the boundary lines.

4. Palau Land Law—Boundary Lines

In a dispute over boundary lines, trial court did not err in refusing to place disputed land in a constructive trust, on the basis that one of the parties submitted false information concerning the correct boundaries, since nothing in the record supported such an allegation.

5. Appeal and Error—Affirmance—Grounds

Judgment of the trial court was affirmed on appeal, where ample, competent evidence existed to support its findings and conclusions where challenged by the appealing party.

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Before BURNETT, *Chief Justice*, and NAKAMURA,
Associate Justice

NAKAMURA, *Associate Justice*

This action involves a dispute over boundary lines between the owners of adjacent properties, the Ucheliou and Orakiblai clans, on the island of Angaur.

Prior to World War II, monuments marked the boundaries of the various parcels of land on Angaur. However, these monuments were destroyed during the war. After the war, in order to reestablish the boundaries, the Trust Territory Government commenced an island-wide survey in 1950. This was accomplished by having owners and representatives of the clans meet with the surveyors and mark out the boundary lines of their respective properties.

In the case of the boundary lines in dispute, members of the Orakiblai and Ucheliou clans met with the government surveyors at their respective properties sometime in 1950 and proceeded to mark the boundaries between their two properties. Thereafter, a map numbered 355 was prepared from this 1950 survey and it became known as the official Angaur map. In 1962, this map was used as a basis for various Government quitclaim deeds which released all the Government's interests in the various parcels of land. Included in the quitclaim deeds issued by the Government were those for the Ucheliou and Orakiblai clans. The respective deeds followed the official Angaur map and the boundaries located thereon.

In 1977, the plaintiff, representing the Ucheliou clan, filed this lawsuit, alleging in substance that the defendant had, "deliberately submitted false information as to the correct boundaries of Ucheliou lands . . ." It is asserted that since the defendant had more to gain by making sure the Orakiblai clan received more land, the defendant misled the surveyors and the members of Ucheliou clan during the 1950 survey.

The trial court found that the plaintiff failed to prove allegations which would support a judgment in favor of the Ucheliou clan and the plaintiff appealed. On appeal, plaintiff-appellant raises numerous points of error, most of which are leveled at the trial court's findings of fact.

Appellant first challenges a number of findings of the trial court on the ground that they were contrary to the weight of the evidence. Appellant argues that the trial court erred in making the following findings: 1) that the boundaries in 1950 were uncertain and that members of Ucheliou and Orakiblai clans agreed to establish and did establish boundary lines; and 2) that there was little, if any, use made of the property which would put either party on notice of any dispute; and 3) that there was acquiescence on the part of Ucheliou clan to the boundary lines as established and published on Angaur map 355.

[1] While other conclusions may be reached by the evidence, we find after a review of the transcript of the testimony and documents that there is more than sufficient evidence to support the above findings of the trial court. As this court has repeatedly stated, its function is not to reweigh the evidence and we will not set aside the findings of the trial court unless there is manifest error or the findings are clearly erroneous. *Trust Territory v. Lopez*, 7 T.T.R. 449 (App. Div. 1976); *Calvo v. Trust Territory*, 4 T.T.R. 506 (App. Div. 1969); *Arriola v. Arriola*, 4 T.T.R. 486 (App. Div. 1968); 6 TTC § 355 (2).

Next, the appellant argues on appeal that the trial court committed reversible error in concluding that the establishment of the boundary lines is supported by the agreed boundary line theory.

[2] The rule supporting appellee's position is expressed in 12 Am. Jur. 2d Boundaries Section 78:

It is now a well-settled principle of law that an unascertained or disputed boundary line dividing the lands of adjoining owners may be permanently and irrevocably established by a parol agreement of the adjoining owners.

Such agreements are favored by the courts. *Crook v. Leinenweaver*, 224 P.2d 891, 100 C.A.2d 790 (1950), the

court said: "In a long line of cases the court has recognized the principle that where parties by mutual agreement fix a boundary line between their properties, acquiesce in the line so fixed and thereafter occupy their properties according to the line agreed upon, that line becomes the true boundary between them and will be binding upon the parties and their grantees . . ."

[3] The trial court found that the boundary lines between the two properties in question were uncertain and therefore, members of the Ucheliou and Orakiblai clans agreed to establish and did establish boundary lines which were later formalized in the official Angaur map. The boundary lines agreed to by both clans were published by the official Angaur map and, at least as early as 1962, the lines were known by the general populace of Angaur. Acquiescence in the agreed upon boundary lines by both clans continued for a period of more than twenty years. No objections or disputes were voiced by members of either clan, even though testimony established that members of the Ucheliou clan were aware of the boundary lines as shown on the official map. Both clans accepted quitclaim deeds from the government wherein the 1950 agreed upon boundary lines were used as a basis for the deeds. Not a single objection was heard until the 1970's or until the Micronesian Claims Commission awards were made based upon land ownership. We concur with the trial court's finding of a binding agreement between the two clans with respect to the boundary lines between their adjacent properties.

Finally, appellant argues that the trial court erred in refusing to place the land claimed by the Ucheliou clan in a constructive trust with the appellee as trustee. Appellant asserts again on appeal that the appellee deliberately submitted false information to the surveyors concerning the correct boundaries of the Ucheliou clan lands, and that to

allow the appellee to keep the land would result in unjust enrichment.

[4] We find nothing in the record to support such an allegation, and therefore find no error on the part of the trial court.

[5] This court is convinced from its examination of the record that ample, competent evidence exists to support the findings and conclusions of the trial court where challenged by the appellant. Accordingly, the judgment of the trial court is AFFIRMED.