IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

AIRAI STATE PUBLIC LANDS AUTHORITY,
Appellant,
v.
GHANDI BAULES and EMERACH BAULES,
Appellees.

Cite as: 2020 Palau 6
Civil Appeal No. 19-022
Appeal from Case No. SP/N 09-024

Argued: February 10, 2020
Decided: March 20, 2020

Counsel for Appellant .... Mariano W. Carlos
Counsel for Appellees .... Raynold B. Oilouch

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
GREGORY DOLIN, Associate Justice
KATHERINE A. MARAMAN, Associate Justice

Appeal from the Land Court, the Honorable Rose Mary Skebong, Acting Senior Judge presiding.

OPINION

PER CURIAM:

[¶ 1] Once again we are being asked to address a dispute over a parcel of land called *Ngerimel* (Cadastral Lots 013 N 02A and 013 N 02B) that has been running for over 40 years and has been appealed and remanded numerous times. Most recently, the case was remanded on the specific issue of whether the record showed, by clear and convincing evidence, that the deed at issue in this case was not delivered. Because we find the Land Court's determination that there was no delivery to be clearly erroneous, we now **REVERSE**.

BACKGROUND

[¶ 2] Because this is not the first time the matter is before us, familiarity of the reader with the facts is presumed and they are recapitulated here only to the extent necessary to the resolution of the narrow issue before us.

[¶ 3] During a 1978 Land Commission ("LCHO") hearing, the national Palau Public Lands Authority argued that *Ngerimel* was public land, while Baules argued it was his private property. Then, in 1983, Baules Sechelong,[1] Roman Tmetuchl, the Governor of Airai at that time, and a Japanese national, Suzuki, all signed a document entitled "Agreement" that, on its face, transferred ownership of the property to Airai State (which later transferred to Airai State Public Lands Authority ("ASPLA") by operation of law). *See* Airai Public Law No. A-1-03-90, Section 5 (Aug. 1990) ("All other public lands held by Airai State shall also be assigned to ASPLA.").

[¶ 4] A determination of ownership was not issued until 1986 in favor of Baules, who contended that the Agreement was not a valid conveyance. ASPLA appealed this determination,[2] both on the basis that the land was always public, as PPLA had argued before the LCHO, and on the basis of the quitclaim deed / Agreement. *See* Notice of Appeal, Civil Action No. 195-86 ("Appellee further quitclaimed by a written conveyance his claim to the property in question to Appellants.").

[¶ 5] In the most recent Appellate Division opinion in this case, handed down on May 13, 2019, this Court noted that "[t]here are two separate but related requirements to convey land through a deed: the form of the document itself and the execution of the document." *Airai State Pub. Lands Auth. v. Baules*, 2019 Palau 15 ¶ 11 (hereinafter *Baules I*). We analyzed the issue and explicitly held that "the Agreement satisfies the necessary form requirements to serve as a valid deed." *Id.* at ¶ 16. We remanded on the sole issue of :

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1 Appellees are Baules Sechelong's children, who apparently inherited his interest when he passed away. For clarity, this opinion will simply refer to this interest as "Baules."

2 During the pendency of the 1986 appeal and later appeals in this matter other parties also made claims to the property, but none of them remain except Baules and ASPLA.

> [W]hether Appellees have, under a clear and convincing evidence standard, successfully rebutted the presumption that there was effective delivery of the Agreement. In making this determination, the Land Court is limited to the existing record and may not hold any additional hearings or consider new evidence.

[¶ 6] On September 13, 2019, the Land Court issued its "Decision on Remand." The Land Court concluded that the evidence clearly and convincingly demonstrated "that there was no effective delivery of the document purporting to be a transfer of ownership of Ngerimel from Baules Sechelong to Airai State Government / Airai State Public Lands Authority ('Agreement' or '1983 Agreement')." Decision on Remand at 1. ASPLA appealed, and we now reverse.

STANDARD OF REVIEW

[¶ 7] The appellate review standard for factual determinations is for clear error. *See*, *e.g.*, *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4. Under the clear error standard of review, "[t]he factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion." *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009). "Where there are several plausible interpretations of the evidence, the Land Court's choice between them shall be affirmed even if this Court might have arrived at a different result." *Eklbai Clan v. KSPLA*, 22 ROP 139, 141 (2015).

DISCUSSION

[¶ 8] For the reasons that follow, we hold that Appellees' failed to meet the burden we set forth in *Baules I*, and that the Land Court's contrary factual finding was clearly erroneous. As we explained in *Baules I*:

> Legally sufficient delivery of a deed occurs when the grantor has transferred the deed to the grantee with the intent that it presently become operative as a conveyance of title. In evaluating whether delivery has occurred, the controlling factor is the intention of the grantor to make delivery, which is to be inferred from the circumstances preceding, attending and following the execution of the deed. Consequently, whether the requisite intent to make delivery existed and whether the grantor executed an

> intention to pass title by a sufficient delivery are both questions of fact and generally for the fact finder.

2019 Palau 15 ¶ 19 (internal citations, quotations, brackets, and ellipses omitted). In *Baules I* we held that, in determining the effectiveness of deed delivery from Baules to ASPLA, the Land Court applied an incorrect (preponderance, rather than clear and convincing evidence) legal standard. Accordingly, we reversed and remanded for redetermination of the delivery question under the correct standard. This was a limited, not a general remand. As we explained in *Rengulbai v. Klai Clan*, 22 ROP 56, 62 (2015):

> Limited remands explicitly outline the issues to be addressed by the lower court and create a narrow framework in which the lower court must operate. . . . The point of the limited remand is to inform the lower court that a discrete issue has caused the need for review, but that complete reconsideration is unnecessary and unwarranted.

(Brackets and citation omitted). "Creat[ing] a narrow framework" is precisely what our opinion did by setting out the "sole question on remand" and limiting the Land Court to the "existing record."

[¶ 9] The Land Court correctly identified the issue on remand as whether there was effective delivery, which requires a determination of whether Baules "intend[ed] to transfer ownership when the Agreement was signed." *Id.* at ¶ 2. The Land Court's decision was clearly erroneous, however, because it both considered irrelevant evidence and failed to consider evidence that was directly relevant.[3]

[¶ 10] First, the Land Court's conclusion that "[i]t is quite clear from the evidence that the 1983 Agreement was made in anticipation of some future occurrence," is squarely foreclosed by our prior decisions in this matter. In *Baules I*, this Court expressly held that the Agreement is, in fact, a conveyance of title. Land Court's factual finding that the 1983 Agreement "was made in

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[3] In addition, the Land Court appears to have failed to fully effectuate this Court's prior holding that the Agreement constituted a deed. The Land Court described the Agreement as a "document purporting to be a transfer of ownership" of the property. To the extent that the phrase "purporting to be" indicates skepticism that the Agreement was sufficient to transfer ownership (if in fact it was delivered), we note that the Land Court was foreclosed from reaching such a conclusion by our prior holding to the contrary. *See Baules I*, at ¶ 7; *Rengulbai v. Baules*, 2017 Palau 25 ¶ 17.

anticipation of some future occurrence" is inconsistent with our prior holdings that the Agreement itself is a *deed*. This clearly erroneous finding cannot be used to provide clear and convincing evidence of a lack of delivery.[4]

[¶ 11] Delivery was either effective or not effective at the time of execution. Nonetheless, as the Land Court correctly appreciated, what the parties did after executing the Agreement may provide evidence of their state of mind at the time of execution. The problem is that the Land Court focused not what *Baules* did but on what Airai State and Suzuki did, or did not do, after entering into the Agreement. Absent some evidence that other parties' actions were coordinated with the transferor, such actions shed little to no light on the transferor's state of mind.

[¶ 12] Even if Airai State and ASPLA's actions were probative with respect to Baules' state of mind, it is difficult to see how their actions show (much less clearly and convincingly) that at the time of execution Baules did not intend to presently divest himself of legal rights to the land. The judgment below makes much of the fact that Airai State failed to record the deed. But recordation has never been held to affect the validity of the deed as between parties to the deed; it only serves to protect subsequent bona fide purchasers for value who are not on notice of the transaction. *See*, *e.g.*, *Fitzgerald v. Wynne*, 1 App. D.C. 107, 121 (D.C. Cir. 1893) ("It may, therefore, be stated in general and nearly unqualified terms, that between the parties to the deed . . . the validity of the deed is not affected by the want of record.") (quoting 3 Washb. on Real Prop., 283). *Cf. Techeboet Lineage v. Baules*, 2019 Palau 21 ¶ 11 (noting that oral transfers of land were valid prior to the statute of frauds taking effect in 1977 and no recordation is required); *Ongalk ra Teblak v. Santos*, 7 ROP Intrm.1 n. 5 (1998) (indicating that a grantor who fulfills the requirements of the recording statute may convey good title to a person who does not). We fail to see how lack of recordation can be evidence of a failure of delivery.

[¶ 13] The Land Court also found that "[i]n addition to its failure to formally record the agreement, Airai State took almost no action that would indicate that it had any interest in the land. It did not execute any leases or perform any activity on the property, despite the language of the agreement." *Id.* at 2. This finding is

[4] The Land Court also fails to specify precisely what this "future occurrence" is, making it difficult for us to evaluate its findings.

not supported by the procedural history of this case. In support of this finding, the Land Court noted that Baules "obtained a Determination of Ownership from the Land Commission and aggressively contested Airai State's appeal of the determination." It is illogical to suggest that in doing so Baules actively protected his interests but Airai State—the very party Baules was litigating against before the Land Commission and on appeal—was not acting to protect its interest in the land.[5] ASPLA has continued to contest this case and assert its interest up to the present day. While it is true that ASPLA never leased or developed the property, declining to enter into contracts over disputed land may be a mark of prudent management and hardly speaks to the state of mind of another party decades prior. ASPLA's restraint in this case should be praised rather than resulting in the loss of title to the property.

[¶ 14] Oddly, the Land Court completely discounted the fact that ASPLA *did* in fact take affirmative steps to preserve its interest in the land. Although the Land Court acknowledged that on January 23, 1985 ASPLA sent a letter to the Land Commission stating that the Agreement "executed between Baules Sechelong and Governor of Airai State representing this State on June 1, 1983 clearly showing that this land is public land of Airai State," it concluded that the letter is meaningless because supposedly one of the individuals who signed it did not know its contents.

[¶ 15] As an initial matter, we presume the regularity of the government's records, *e.g. Latif v. Obama*, 666 F.3d 746, 750 (D.C. Cir. 2011), and we will not leap to impeach such records on the basis of the supposed ignorance of the public servants who affixed their signatures to them. Presuming that none of the members of ASPLA were properly executing their duties based on the self-serving testimony of one member of that body many years later would be contrary to "the presumption that public officials follow the laws and regulations governing them." *Ucherremasech v. Wong*, 5 ROP Intrm. 142, 146 (1995). Even if were inclined to second-guess the content of the letter on the basis of knowledge (or lack thereof) of its contents by the one of the signatories, the testimony before the Land Court simply does not support its conclusions.

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5 Indeed, at oral argument Baules' counsel essentially conceded this point

[¶ 16] The letter in question was signed by Geggie Anson, a member of the ASPLA.[6] Anson's testimony (delivered on February 1, 2018, or more than 33 years after she signed the letter) reads as follows:

> Q: You were, were you a member, you were a member of the Airai State Public Land Authority when Airai State Public Land Authority filed an appeal concerning the land in question?
>
> A: Who filed a claim?
>
> Q: You don't remember signing a notice of appeal concerning this land?
>
> A: During Tmetuchel's time?
>
> Q: Yes.
>
> A: There were so many documents that we signed and we don't know where they were going.

Transcript of Proceedings, Civil App. No. 18-027 p. 58 (filed Sept. 26, 2018).

[¶ 17] We are hard-pressed to find where in this testimony Anson indicated that she—or anyone else—was unaware of the contents of the letter to the Land Commission. Her comment that ASPLA members signed many documents "and we don't know where they were going," at best indicates that, due to the volume of documents being signed, she did not recall this specific one. Furthermore, Anson was not even being asked about the 1985 letter, but rather the 1986 Notice of Appeal. *See id*. Furthermore, Anson's signature on these documents was inconsistent with her claiming a portion of this same land as a representative of the Klai Clan,[7] and she was queried about this inconsistency. Notably, when Anson was asked whether her Clan's claim "mean[t] that this land is not the property of the government," she responded "No, no!" *Id.* at 57. Thus, nothing in her testimony indicates that either she or other members of ASPLA were unaware

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6 The fact that Anson is also Baules' daughter was not mentioned by the Land Court. While we do not intimate that familial relationship caused Ms. Anson to testify falsely, a reasonable trier of fact would have considered this relationship in evaluating the testimony.

7 The letter is addressed in another portion of Anson's testimony, in which she states that she knew properties by their traditional names, not their lot numbers, which is why she didn't realize that a portion of her Clan's land had ended up part of these lots, and could also explain why she signed the Notice of Appeal. *See* Transcript of Proceedings Vol. II, Civil App. No. 14-006 p. 66-67 (filed Aug. 29, 2014). The Clan is no longer a party to this case.

of the letter or did not intend by sending the letter to assert ASPLA's interest in this property.

[¶ 18] As for Suzuki, there is testimony that he wanted to develop this and other properties in Airai for residential purposes, which is presumably why he agreed to put up the money for ASPLA to purchase this land and lease it to him. It is not clear from the record why Suzuki's other projects did not move forward. However, whether or not Suzuki ultimately pursued his dreamed-of business ventures is not relevant to whether Baules intended to deliver the deed to this property *to ASPLA*. Suzuki would have been unable to develop this property because in 1986 the Land Court determined that Baules owned the property. Therefore, ASPLA could not lease the property to Suzuki. It would be unwise for an investor to build on property which they did not have a clear legal right to utilize for a long enough period to recoup their investment. It also seems highly unlikely that Suzuki would have been able to get the appropriate business and building permits to build on land to which someone else had a Certificate of Title.

[¶ 19] Next, the Land Court found that "the Agreement was not intended to convey ownership at the time it was made," which was "quite reasonable under the circumstances since Baules was still awaiting a decision from the Land Commission regarding the success of the claim." Decision on Remand at 2. But if Baules had always owned the land, he could transfer his ownership in 1983, even though the Land Commission did not declare that he owned the land until several years later. Alternatively, if we assume that Baules did not own the land until the Land Commission made its determination, when that occurred title would pass immediately and automatically under the Agreement, under the doctrine of after-acquired title. *See* 31 C.J.S. Estoppel and Waiver § 22 ("Under the doctrine of after-acquired title, a deed may have the effect of passing to the grantee a title subsequently acquired by the grantor."). As we explained in *KSPLA v. Idid Clan*, 22 ROP 66, 67 (2015) "a superior title claimant asserts that the land has been his all along, while a return of public lands claimant concedes that the government owns the land but must show that it was taken wrongfully." Although the basis for Baules's initial claim in 1978 is not entirely clear, whichever way that claim is evaluated, Baules could sign a valid and binding quitclaim deed in 1983.

[¶ 20] The Land Court also ignored Baules' own admission that he understood that he was transferring title to the property at the time he signed the document. In 1989, Baules stated in an answer to an interrogatory that "[t]he land ***which was conveyed*** to State of Airai pursuant to Agreement on June 1, 1983 had been terminated by the parties involved and is null and void at present time pursuant to Status [sic] of Fraud 39 PNC 504." ASPLA Ex. L, Records from Civil Action No. 195-186, Baules's Answers to Interrogatories (filed June 29, 1989) (emphasis added). Thus, Baules essentially admits that he did, in fact, convey the land to Airai. Although he also believed that the conveyance was void because of the statute of frauds, that belief is neither correct[8] nor, more importantly, relevant to the evaluation of his state of mind *at the time the agreement was signed*.

[¶ 21] The Land Court also relied on the fact that Baules leased the land to Daewoo (a construction company that leased the land for a number of years during the pendency of this dispute), whereas ASPLA never tried to commercially exploit the land. The lease in question, however, is entirely unhelpful to Baules' case. The lease had several lines where lessors were meant to attach their signatures. Notably, the document was meant to be signed not only by Baules but also by the other individuals and entities who had live claims to the property at that time. ASPLA was listed as one such claimant and lessor. The Governor of Airai would ordinarily be the person signing such a document on ASPLA's behalf. However Tmewang Rengulbai, the then-Governor of Airai, did not do so. The record does not indicate why Governor Rengulbai did not sign the lease, but it is worth noting that he himself became an individual claimant to the very same land

[8] Baules' interrogatory answer was an incorrect statement of the law. First, it is § 502 that relates to contracts for the sale of lands, and it simply provides that such a contract "shall be void unless the contract or some note or memorandum is in writing, and signed by the party to be charged, or by his lawful agent under written authority." In this case, the requirements are met because the Agreement was in writing and signed by Baules. Baules' belief that the deed can be "terminated" is a mistake of law. "In general, a mistake of law occurs "'where a party, having knowledge of the facts, is ignorant of the legal consequences of his conduct or reaches an erroneous conclusion as to the effect thereof.'" *Akiwo v. ROP*, 6 ROP Intrm. 105, 107 (1997) (quoting 34 Am. Jur. 2d Mistake, Accident, or Surprise § 8 (1971)). *See also Great W. Sugar Co. v. Mrs. Alison's Cookie Co.*, 749 F.2d 516, 521 (8th Cir. 1984) ("The law is well settled that a contracting party generally may not escape its contractual responsibilities by claiming that it was unilaterally mistaken."). While the Agreement is a conveyance, not an ordinary contract, the logic of these contract cases applies, *mutatis mutandis*, to this case as well.

10 years later.[9] Regardless, the lease with Daewoo was not executed until sixteen years after the Agreement, and it strains credulity to imagine that the failure of ASPLA, represented at that time by a different Governor who later testified under oath that he was personally unaware of the proceedings related to this property, to sign the lease is indicative of what Baules intended in 1983.

[¶ 22] It is true that Baules' own actions contesting that ASPLA owned the property and entering into a lease with Daewoo even after he signed the Agreement could indicate that he never intended the Agreement to transfer title to Airai State. But it is just as likely that he wanted to have his cake and eat it too—to receive funds for the property from Suzuki and at the same time attempt to retain ownership of the property and receive rent from Daewoo. Another possibility is that he simply changed his mind about the Agreement, or that he thought it would be easier to attempt to retain ownership of the property than to pursue the consideration he was owed by a foreign national. Most likely, as he himself testified in 1989, he simply labored under a misapprehension that the conveyance could be "terminated" in the future. But the law presumes, absent clear and convincing evidence to the contrary, that Baules meant what he said in the Agreement at the time he said it. In the present circumstances, where the extrinsic evidence leaves the question of Baules' intent wide open, by definition that evidence does not "clearly and convincingly" negate the presumption of delivery. Therefore, we cannot say that a reasonable fact finder could have found that presumption to have been properly rebutted.

[¶ 23] Finally, the Land Court considered the testimony of Johnson Toribiong, who represented Airai State at the time the Agreement was made and drafted it, in connection with the fact that there is no evidence the Agreement was ever recorded in the recording books in the Clerk of Court's office. *See Estate of Olkeriil v. Ulechong v. Akiwo*, 4 ROP Intrm. 32, 46-47 (1993) ("The term 'duly recorded' is not defined by the statute, but we interpret it to require some form of entry into the recording books" at the Clerk of Court). Although as an appellate tribunal we do not reweigh witness credibility, *e.g. Urebau Clan v. Bukl Clan*, 21 ROP 47, 49-50 (2014), we note that Torbiong's testimony was not particularly

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[9] In 2009, by then former Governor Rengulbai claimed that he had been unaware of the earlier Land Court proceedings and that *Ngerimel* actually encompasses a portion of another property that Rengulbai inherited from his father. *See Rengulbai*, 2017 Palau at ¶ 6.

clear or consistent. This is entirely understandable because, as Tobriong himself repeatedly pointed out, the transaction took place quite a long time ago. Precisely because memories fade, it is the written document that serves as the best evidence of the parties' intentions, not the hazy recollections of attorneys offered into evidence decades later.

[¶ 24] In any event, "Toribiong testified that the Agreement was only an agreement intended to be kept at the Airai State office and not to be filed or recorded with the courts." The Land Court found that "logic dictates that Toribiong (as any attorney) would have advised his client to promptly record the deed." It is true that then, as now, the failure to record leaves one's "interests without protection as against a subsequent good-faith buyer, without notice, who record[s] his deed." *Rudimch v. Chin*, 3 TTR 323, 327 (1967). Toribiong also testified that "[d]uring that time, [Airai State] had a secretary so I just prepare[d] the documents and they file[d]" them. When asked for clarification, Toribiong said: "This was an agreement, I've forgotten. It was not supposed to be filed at the Court, but it went to the file of the State Government." He emphasized that the parties were trying to "resolve" their dispute "internally," and did not ask him to file the agreement, but rather "[t]hey just took it and left." 2018 Transcript at 22.

[¶ 25] Not much can be gleaned from this testimony in terms of parties' intentions regarding the nature of the agreement. Nevertheless, it is clear that ASPLA did not need to be particularly worried about having its claim cut off by a subsequent *bona fide* purchaser for value and without notice because at the time the Agreement was signed the dispute was still pending before the Land Commission. Thus, anyone attempting to purchase the land following the transfer from Baules to ASPLA would have been on notice of the ongoing judicial proceedings and could not have benefitted from the recording statute's safe harbor. Furthermore, Airai State may well have expected that, with the Agreement reached and Baules' interest having been transferred to Airai, the LCHO would soon issue it a Determination of Ownership that would allow Airai to obtain a Certificate of Title. That was never able to take place, however, because the LCHO awarded the land to Baules, precipitating several decades of ongoing litigation in which multiple other claimants intervened and further complicated the case.

[¶ 26] Even if Toribiong had a clear memory of the events surrounding the signing of the quitclaim deed in 1983, which he repeatedly indicated in his 2017 and 2018 testimony that he did not, it is not clear how he would have known the state of mind of Baules, who was not his client at the time.[10] He was, at the time, working for Airai State and simply "drafted this [Agreement] based upon what was, the instruction given to me." 2017 Transcript at 8. He specifically stated that then-Governor "Roman Tmetuchel explained it to me with Baules and the Japanese guys," present in the room. *Id.* at 5. More than once Toribiong testified that the Agreement was signed "and Roman gave it to one of the secretaries to file it . . . I guess in his office file or something." *Id.* He again stated later in his testimony "Roman Tmetuchel received the, took, took the Deed and g[a]ve it to the secretary." *Id.* at 8. It is therefore clear from Toribiong's testimony that Baules allowed the signed Agreement to leave his custody and be placed in the State government's file, all the while knowing that he and the Airai State government had been actively engaged in a legal dispute about title to the property which was the subject of the Agreement. This conduct makes no sense if Baules did not, at that time, actually wish to transfer ownership of the land. The Agreement is clear on its face and speaks for itself.

[¶ 27] Nor is this a case where an unsophisticated party signs a document without realizing its import. In 1983, Baules was a Senator as well as the Chief of a Clan, and this Court will take judicial notice of the fact that he was involved in multiple other court cases, including land claims. He was not an unsophisticated individual who was unaware of what he was doing. The fact that he later decided, apparently based on an incorrect belief that the Agreement was invalid under the Statute of Frauds, to continue to claim the land before the LCHO does not establish a lack of delivery by clear and convincing evidence.

[¶ 28] In summary, the Land Court analysis exceeded the scope of the remand, was inconsistent with our prior holdings in this matter, incorrectly put more weight on the actions of the other parties to the Agreement (long after it was executed) than on Baules' own statements in his discovery responses, and failed to acknowledge that both parties (not just Baules) consistently asserted their

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[10] Toribiong ultimately withdrew from the case, noting that he was representing Baules in other civil matters.

interests in the property. For these reasons, the Land Court's judgment cannot be sustained.

[¶ 29] This matter has bedeviled our judiciary for over 40 years. It is time for it to come to an end. Our prior decisions concluded that the agreement between the parties was a valid deed, and with the present holding that this deed was validly delivered, there is nothing left for the Land Court to decide. Accordingly, we remand the matter for entry of judgment in favor of Appellant.

CONCLUSION

[¶ 30] The judgment of the Land Court is **REVERSED** and the matter is **REMANDED WITH INSTRUCTIONS** to enter judgment for the Appellant.