

Obak v. Joseph, 11 ROP 124 (2004)
NATSUO OBAK,
Appellant,

v.

MELISSA JOSEPH,
Appellee.

CIVIL APPEAL NO. 02-047
LC/B 01-570 & 01-571

Supreme Court, Appellate Division
Republic of Palau

Argued: February 20, 2004

Decided: April 8, 2004

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Counsel for Appellant: David Kirschenheiter

Counsel for Appellee: Moses Uludong, T.C.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable J. UDUCH SENIOR, Senior Judge, presiding.

MILLER, Justice:

Natsuo Obak (“Natsuo”) appeals from the Land Court’s determination of ownership concerning a parcel of land located in Ngermid Hamlet and known as Ilukes (“the land”). The land is identified in the Tochi Daicho as Lot Nos. 214 and 215 and designated as Cadastral Lot Nos. 013 B 06 and 013 B 07, respectively. After holding a hearing, the Land Court determined that Melissa Joseph (“Melissa”) owned the land. Because Melissa’s ownership of the land can be inferred from her and her father’s performance of acts consistent with ownership over a period of fifty years without any objection from Natsuo or his father, we affirm the Land Court’s determination.

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BACKGROUND

The parties agree that the land was originally owned by Sngaid, who is listed in the Koror Tochi Daicho as the individual owner of Tochi Daicho Lot Nos. 214 and 215. However, the parties disagree as to what became of the land after Sngaid died intestate in 1941. Although there was an eldecheduch for Sngaid after he died, the land was neither discussed nor distributed at the time of the eldecheduch, and there was no applicable statute of descent and distribution at the time of his death.

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Sngaid was married at least twice and had several children. One of Sngaid's children with his first wife was named Obak. Obak was the father of claimant Natsuo Obak. After Sngaid and Obak's mother divorced, Obak went away to live with his mother. Sngaid also had a brother named Tumchub. At some point during the Japanese time, perhaps while Sngaid was still alive, Tumchub sold the land to Siou Ucherbelau, also known as Kunibert Joseph ("Joseph"). Joseph was the adoptive father of claimant Melissa Joseph. Tumchub's authority to sell the land was disputed both in the Land Court and on appeal.

After he bought the land from Tumchub, Joseph filed a public claim to the land in June of 1974. Joseph also granted permission to his nephew, Abel Suzuky ("Suzuky"), to plant crops and farm the land from about 1970 until 1984, when Suzuky moved to Angaur. Upon his death in May of 1981, Joseph willed the land to Melissa as his adopted daughter. Melissa testified that she had prepared a document about eight or nine years before the hearing wherein she had obtained the signatures of several people in Ngermid who knew that the land called Ilukes belonged to her father.

Natsuo Obak testified that he has a claim to the land as the only child of Obak, who was the son of Sngaid. Natsuo asserted that Obak inherited the land at the time of Sngaid's death, and Natsuo inherited the land at the time of Obak's death. Natsuo testified that he did not know of any sale of the land and did not know of Suzuky's use of the land. Neither Natsuo nor his father ever used or occupied the land, and Natsuo testified that he had only been to the land once, in January of 2001. Natsuo testified that his father told him at a hearing in 1972 that the land was theirs and had not been sold, so he should continue to claim the land. Natsuo also testified that his father claimed the land in 1972 and 1976. However, there is no record of either Obak or Natsuo ever filing a claim or objecting to Joseph's or his family's use of or claim to the land until Natsuo filed his claim on March 2, 1994.

In its decision, the Land Court's determination that Melissa Joseph owned the land was based in large part on the doctrines of stale demand and equitable estoppel. The court concluded that Natsuo's claim was barred by the doctrine of stale demand because neither Natsuo nor his father had asserted a claim to the land from the time of Sngaid's death in 1941 until Natsuo's claim was filed in 1994, even though Suzuky had farmed the land for 14 years and Joseph had publicly claimed ownership of the land in 1974. The court further held that Natsuo was estopped from disputing Tumchub's authority to sell the land to Joseph where he and his father had, by their silence and inaction, failed to object to the sale of the land.

However, the Land Court also found that, based on a preponderance of the evidence, Tumchub conveyed valid title to the land to Joseph. The Land Court reached its determination of ownership based in part on ¶127 its finding that Joseph's actions corroborated his claim of ownership while Natsuo's and Obak's failure to perform any act consistent with ownership for nearly fifty years went against a finding that they were the true owners of the land. The Land Court explained that:

[h]ere, there was no evidence that Natsuo or his father performed any act

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consistent with their claim of ownership from the Japanese time until today. There is no evidence that Natsuo or his father farmed or used this land . . . or gave their permission to other people to use the land. One might reasonably think that an owner would perform at least some act consistent with a claim of ownership over a period of 45 years. Natsuo's failure to perform any act consistent with ownership of this land goes against a finding that Natsuo or Obak is the true owner of this property.

On appeal, Natsuo argues that the Land Court's application of the doctrine of stale demand was misplaced because stale demand is actually a part of either adverse possession or laches. Further, Natsuo asserts that his claims should not be barred by an application of laches, stale demand, or equitable estoppel because his lack of knowledge concerning Melissa's claim to the land excused his delay in filing his own claim, and his delay did not prejudice Melissa. Natsuo also argues that Melissa is not entitled to the land under a theory of adverse possession because there was no continuous, open, and notorious use or possession of the land for the necessary period of 20 years. Finally, Natsuo contends that his due process rights were violated because he was not given notice that the Land Court would raise equitable arguments on Melissa's behalf and he was not given a chance to respond to these arguments.

STANDARD OF REVIEW

This Court reviews the Land Court's factual findings under the clearly erroneous standard. *Tesei v. Belechal*, 7 ROP Intrm. 89, 90 (1998). Under this standard, if the Land Court's findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made. *Id.* This Court will usually defer to the Land Court's findings regarding the credibility of witnesses. *Kerradel v. Elbelau*, 8 ROP Intrm. 36, 37 (1999). The Land Court's conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

DISCUSSION

The most basic premise of Natsuo's theory of ownership appears to be that Tumchub never had any authority to sell the land to Joseph because the land passed automatically to Obak upon Sngaid's death and to Natsuo upon Obak's death. At the time of Sngaid's death in 1941, there was no applicable statute of descent and distribution, and no distribution of the property was made at his eldecheduch. *See* Palau District Code § 801; *Ruluked v. Skilang*, 6 ROP Intrm. 170, 170-71 (1997). Natsuo contended below, and the Land Court appeared to agree, that if it is not otherwise disposed of by the decedent's will or at an eldecheduch, a decedent's land automatically passes to his children. However, as we have recently explained, [¶128](#) “[t]his is an incorrect statement of the law.” *Ikluk v. Udui*, 11 ROP 93, 95 (2004) (quoting *Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150, 152 (2003)). While we have upheld determinations to that effect in the past, “we have expressly ‘left open the possibility that [the] evidence . . . might support a different result,’ and thus ‘we have yet to formulate a single rule to deal with’ these circumstances.” *Ikluk*, 11 ROP at 95 (quoting *Matchiau v. Telungalek ra Klai*, 7

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ROP Intrm. 177, 179 (1999) and *Tangadik v. Bitlaol*, 8 ROP Intrm. 204, 205 (2000)). “Rather, consistent with our usual approach to customary matters, we have gone no further than to say that ‘the property passes to the proper customary heir or heirs’ and ‘who the customary heir happens to be is a question of fact to be established by the parties before the Land Court.’” *Ikluk*, 11 ROP at 95 (quoting *Dirrabang*, 10 ROP at 152). Thus, while the Land Court may determine that, under custom, a decedent’s land passes to his or her children, it is not bound to do so, particularly where, as here, no expert testimony to that effect was introduced.¹

Because of the Land Court’s mistaken belief that it was bound to follow the line of cases awarding a decedent’s land to his or her children if the land was not otherwise distributed, the court’s determination of ownership relied heavily on the doctrines of stale demand and equitable estoppel. However, in a separate line of reasoning supporting its determination, the Land Court cited *Mesubed v. Iramek*, 7 ROP Intrm. 137, 139 (1999), for the proposition that a party’s action or inaction is relevant to a determination of ownership. In *Mesubed*, the deceased landowner’s nephew moved onto the land, built a house, and lived there in excess of 20 years without any objection from the decedent’s daughter. In upholding the lower courts’ decisions awarding the land to the nephew, the *Mesubed* court explained that “[w]hile not conclusive, it is certainly relevant when determining ownership that a claimant has not performed any acts consistent with ownership for a significant period of time.” *Id.* (citation omitted). Due to the daughter’s failure to perform any act consistent with ownership over a period of nearly forty years, the Court concluded that the nephew’s uncontested occupation of the land suggested that he was the proper heir. *Id.*

Mesubed is one of a line of cases holding that a court may infer a valid transfer of land to a claimant when that claimant has occupied the land without objection for a significant period of time. In a similar case, this Court explained that:

[w]hile possession of land is not always an indication of ownership, we believe it [is] a fair inference that occupation of the land by appellee’s family following [the landowner’s] death and for the past thirty or more years is indicative of a tacit or *de facto* disposition of the land to them.

Elewel v. Oiterong, 6 ROP Intrm. 229, 233 (1997). The results in these cases do not depend on equitable theories such as adverse possession, stale demand, or equitable estoppel, but instead depend on presumptive proof of an adverse disposition of the land at some time in the past. As we stated in *Ikluk*, [¶129](#) “[i]mplicit in these cases is the premise that although there may be no direct evidence of the disposition of a property, evidence of an individual’s use and possession of the property may be relevant in ascertaining ownership.” *Ikluk*, 11 ROP at 96. Here, the Land Court looked to Joseph’s history of performing actions consistent with ownership to support its finding that Tumchub had conveyed valid title to the land to Joseph.

Although the Land Court based its determination in this case primarily on the doctrines of stale demand and equitable estoppel, the import of *Mesubed* and other similar cases is to show

¹We also note that although the Land Court found that Obak went to live with his mother after her divorce from Sngaid, it made no further finding as to whether this affected his right to inherit Sngaid’s land.

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ownership in and of itself, not ownership by stale demand or equitable estoppel. As in *Mesubed*, the instant case presents a fact situation where the chain of ownership of the contested property went unchallenged by Natsuo or his father for roughly fifty years after Sngaid's death. Neither Natsuo nor his father ever occupied, used, or publicly claimed the land, while in contrast, Melissa and her father performed acts consistent with ownership. Based on these findings, the Land Court did not err in finding that Melissa was the rightful owner of the land at issue in this case.

CONCLUSION

For the foregoing reasons, we affirm the Land Court's determination of ownership.