

Tmiu Clan v. Ngerchelbuchebe Clan, 12 ROP 152 (2005)

**TMIU CLAN,
Appellant,**

v.

**NGERCHELBUCHEB CLAN,
Appellee.**

CIVIL APPEAL NO. 03-042
LC/S 00-274

Supreme Court, Appellate Division
Republic of Palau

Decided: July 5, 2005¹

Counsel for Appellant: Salvador Remoket

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Counsel for Appellee: Raynold B. Oilouch

BEFORE: LARRY W. MILLER, Associate Justice; LOURDES F. MATERNE, Associate Justice; J. UDUCH SENIOR, Associate Justice Pro Tem.

Appeal from the Land Court, the Honorable DANIEL N. CADRA, Senior Judge, presiding.

PER CURIAM:

The Land Court determined that Ngerchelbuchebe Clan acquired title to a piece of Tmiu Clan land through adverse possession after one of its members lived there for over 20 years. Tmiu Clan appeals and argues that the Land Court erred in its application of Palau's adverse possession doctrine. We affirm the Land Court's determination.

BACKGROUND

Based on the "Angaur Land Settlement" surveys, the Tmiu Clan was awarded a deed to Lot No. 12-317, as shown on Angaur Land Settlement Map No. PAN-1, Serial No. 355. During later land registration efforts, however, additional claims to the land were accepted for adjudication. This case concerns claims filed for the portion of Lot 12-317 identified as Lot 317D on the Bureau of Lands and Surveys Worksheet No. 2002 S 10. The parcel of land is located in Ngermasech Hamlet, Angaur State and is known as "Delutaoch/Ngidilbech."

The Land Court found that, beginning in the 1950s, a woman named Llach from

¹After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. ROP R. App. P. 34(a).

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Ngerchelbuchebe Clan farmed Lot 317D. The Land Court specified that she was using the land without permission of Tmiu Clan and through her membership in Ngerchelbuchebe Clan. Llach left Palau sometime in 1967 or 1968, and her sister Masako took over farming the lot and continues to occupy Lot 317D today. Again the Land Court found that Masako had never requested or received permission from Tmiu Clan to use the land. The Land Court also noted in its findings of fact that although Masako is married to Orrenges Thomas, who is a first cousin to Carlos Salii, a member of the Tmiu Clan, she remained on the land through her membership in Ngerchelbuchebe Clan.

Based on these findings, the Land Court concluded that Ngerchelbuchebe Clan acquired title to Lot 317D by adverse possession. The Court determined that Llach and Masako's continuous farming of the land, without permission from Tmiu Clan, satisfied the requirements of adverse possession sufficient to vest in Ngerchelbuchebe Clan title to the property. Tmiu Clan appeals this determination.

ANALYSIS

We review the Land Court's findings of fact under the clearly erroneous standard, under which the findings will not be set aside as long as they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless we are left with a definite and firm conviction that a mistake has been made. *Rechucher v. Ngirmeriil*, 9 ROP 206, 210-11 (2002). And we review a Land Court's conclusions of law *de novo*. *Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150, 151 (2003).

Title to land can be acquired by adverse possession if such possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for 20 years. *Arbedul v. Rengelekel a Kloulubak*, 8 ROP Intrm. 97, 98 (1999). Where any one of these elements is lacking, L154 adverse possession does not apply. *Otobed v. Ongrung*, 8 ROP Intrm. 26, 28 (1999).

Tmiu Clan argues that, because of Orrenges's relationship to Salii, a member of the Tmiu Clan, the Land Court erred in concluding that Masako and Orrenges's occupation of the land was hostile or adverse. We have held that the existence of a family relationship between the landowner and the adverse possessor defeats the requirement that the possession is hostile or adverse. *Ucherremasch v. Rechucher*, 9 ROP 89, 92 (2002). And this principle has been applied to relatives by marriage, *id.*, relatives by customary adoption, *Osarch v. Kual*, 2 ROP Intrm. 90, 92 (1990), and even to members of the same clan, *Sebal v. Tengadik*, 7 ROP Intrm. 149, 151 (1999). Although the Land Court framed the issue as being whether first cousins are sufficiently close family members to negate adverse possession, we need not decide that issue in order to resolve the appeal.

In applying adverse possession, the Land Court made several key factual findings based on the credibility of the witnesses who testified, and it is well-settled that the trial judge is best situated to make credibility determinations and that we will generally defer to those decisions. *Palau Cmty. Coll. v. Idid Clan*, 10 ROP 143, 149 (2003); *Ngirasechedui v. Whipps*, 9 ROP 45,

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47 (2001). Specifically, as relevant to the family relationship issue, the Land Court found credible evidence establishing that Llach, Masako, and Orrenge all occupied the land through Llach's and Masako's membership in Ngerchelbuchebe and not through any connection with or permission from Tmiu Clan.

Familial relationships affect adverse possession because where an occupier is related to the landowner, it might be assumed that he occupies the land by permission. However, the Land Court reviewed Salii's testimony and concluded that Tmiu Clan considered Orrenge's possession of the land to be adverse and hostile and that Tmiu Clan wanted him to vacate the property. According to Salii's testimony, he was to convey the Clan's objection to Orrenge but declined to do so because Orrenge was a relative. In addition to this testimony, the Land Court specifically found that neither Orrenge nor Masako ever had permission from Tmiu Clan to live on the land. Accordingly, their occupation of the property was hostile to Tmiu Clan, despite Orrenge's familial tie to Salii.²

Tmiu Clan also maintains that Ngerchelbuchebe Clan never actually or constructively possessed Lot 317D and so cannot not be the owner by adverse possession. Tmiu Clan points out that Orrenge was not a member of Ngerchelbuchebe and that there was no evidence that he was acting on its behalf. Tmiu Clan also argues that Masako never testified and that Orrenge's testimony was unclear as to whether she was occupying the land at the behest of her clan.

The Land Court's specific findings of fact contradict Tmiu Clan's assertions. As noted, the Land Court explicitly found that Orrenge and Masako were occupying the land "through her membership in **L155** Ngerchelbuchebe Clan," and Orrenge's testimony supports this finding:

Q: And you are not, you and your wife Masako are not living on this land through Tmiu Clan, is that right?

R: No. Through Ngerchelbuchebe. Because my wife is, uh, ourrot of Ngerchelbuchebe Clan.

(Tr. at 240). It cannot be said, therefore, that the Land Court's finding was clearly erroneous. And based on that finding, it was entirely proper for the Land Court to conclude that Ngerchelbuchebe Clan satisfied the requirements of adverse possession through Masako's possession of the land. *Jackson v. Gallegos*, 30 P.2d 719, 727 (N.M. 1934) ("That possession by permission or license from an owner is in law deemed possession by the latter seems well settled."); *Foote v. Kearney*, 290 P. 226, 228 (Wash. 1930) ("It is not necessary that the person claiming title by adverse possession should have been in personal occupation of the land. Possession by an agent . . . inures to his benefit and satisfies the requirements of the statute of limitations.")³

²We further doubt the relevance of Orrenge's relationship to Salii given that their relationship was through Salii's father's family but Salii's membership in Tmiu Clan is through his mother's family. Accordingly, Orrenge's connection with the landowner -- Tmiu Clan itself -- is even more attenuated than that of first cousins.

³Even if we were to conclude that Ngerchelbuchebe Clan could not obtain title to the land via adverse

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Finally, Tmiu Clan asserts that Ngerchelbuchebe Clan's claim to the land is barred by the statute of limitations because the deed giving Tmiu Clan title to the land was issued in 1962 but Ngerchelbuchebe Clan failed to submit its claim until 2001. Thus, Tmiu Clan argues, Ngerchelbuchebe Clan's claim falls outside the 20-year statute of limitations applicable to claims for recovery of interests in land. 14 PNC § 402(a)(2).

Adverse possession and the statute of limitations are generally considered together, but usually the same party is relying on both doctrines -- arguing that they have occupied the land for longer than 20 years, thus satisfying the adverse possession requirements, and that the landowner failed to bring an action against an unlawful occupier within the 20-year limitations period and so the claim is now barred. *Andres v. Desbedang Lineage*, 8 ROP Intrm. 134, 135 (2000). There is no requirement that a party claiming ownership through adverse possession file any claim whatsoever. To the contrary, it is the failure of the titleholder to bring suit within 20 years that is the basis for awarding ownership to the occupier through adverse possession.

CONCLUSION

We affirm the Land Court's determination that Ngerchelbuchebe Clan acquired title to the property by adverse possession.

possession by one of its members, Tmiu Clan still cannot prevail on this appeal because Masako herself would be entitled to ownership of the land.