

Ibelau Clan v. Ngiraked, 13 ROP 3 (2005)
IBELAU CLAN,
Appellant,

v.

NGIRAITAOCH NGIRAKED,
Appellee.

CIVIL APPEAL NO. 03-042
LC/F 01-948 and 01-949

Supreme Court, Appellate Division
Republic of Palau

Argued: July 11, 2005
Decided: October 4, 2005

Counsel for Appellant: Johnson Toribiong
Counsel for Appellee: Pro se

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
LOURDES F. MATERNE, Associate Justice.

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

PER CURIAM:

This appeal arises from a Land Court Determination of Ownership awarding Tochi Daicho Lot No. 1140 to the appellee, Ngiraitaoch Ngiraked (“Ngiraitaoch”). On appeal, the Clan requests that we vacate the Determination of Ownership of Tochi Daicho Lot No. 1140 and award that property to the Clan. The Clan contends that the Determination of Ownership should be vacated because (1) the property was alienated from it without the consent of its senior, strong members and (2) the alienation violated Palau’s statute of frauds.

Pursuant to its authority under 35 PNC § 1304(a), the Land Court issued a public notice that it was going to determine the ownership of Tochi Daicho Lots 1140 and **L4** 1141. Simane Sugiyama, on behalf of the Clan, and Ngiraitaoch timely filed claims of ownership.¹ After holding a hearing on the above properties, the Land Court found that the Tochi Daicho listed the Clan as the owner of lots 1140 and 1141. The Land Court also found that prior to his death on February 11, 1981, Ngeruangel Matiloch bore the chief title of Mad ra Ibelau, a title of the Clan. Shortly after his death an eldecheduch was held for him. The Land Court found that the senior

¹ Although Simane claimed the land as her individual property on her written claim forms, she did not clearly state that she claimed the land as individual property during the hearing. Because the lots are listed in the Tochi Daicho as belonging to the Ibelau Clan, the Land Court dismissed her individual claims and construed her claims as on behalf of the Clan.

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strong members of the clan, Obechou Delutaoch and her brother Ngirabedechal Nobuo, distributed Lot 1140 to Ngeruangel Matiloch's grandson, Ngiraitaoch, as his individual land. Both of them died in the early nineteen-nineties.

After the eldecheduch, Ngirabedechal went into the forest accompanied by Uong ra Etei Merur and Adelbai Renguul. There, they staked out Ngiraitaoch's land with rebars. After obtaining further permission from the senior strong members, Ngiraitaoch built his house on the land. At the time of the hearing, he had lived there for three years.

The only dispute before the Land Court was whether the Clan's lands were given to Ngiraitaoch at the eldecheduch. The Land Court concluded that the Clan's only basis for denying that this occurred was testimony that Obechou never told her daughter, Simane, that the Clan had given the land to Ngiraitaoch. The Land Court determined that merely because her mother did not tell Simane about it did not mean that the land had not actually been given to Ngiraitaoch. Moreover, the Land Court noted that other members of the Clan and other people in attendance at the eldecheduch had testified that the land was distributed to Ngiraitaoch at the eldecheduch.

The Land Court found the testimony of Ngiraitaoch's witnesses credible, while it found the testimony of the Clan to be not credible. The Land Court based its credibility finding on the fact that the Clan's witnesses had not attended the eldecheduch. The Land Court also noted that it did not believe Simane's testimony that her mother never told her that the Clan distributed the land to Ngiraitaoch. The court found it difficult to believe that her mother never mentioned the land during the eight years that Simane cared for her after the eldecheduch. The Land Court concluded that Simane was lying, and it awarded Lot 1140 to Ngiraitaoch.

On appeal, the Clan contends that Lot 1140 was alienated without the consent of the senior strong members. Specifically, the Clan asserts that Simane and her mother, Obechou, were senior strong members who did not consent to the alienation. We review the Land Court's findings of fact for clear error. *Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150, 151 (2003).

The Land Court found that the senior strong members of the Clan at the time of the land alienation were Obechou and Ngirabedechal. Although the Clan claims that Simane is a senior strong member of the clan, the only support they offer for their claim is that Simane is an ochell member of the Clan through her adoption to Obechou. Although this establishes that she was a strong member of the clan, this does not show that she was a **15** senior strong member of the Clan. Accordingly, the Clan has not demonstrated that Simane's consent was necessary to alienate the land.

The Clan also contends that Obechou, whom the court found was a senior strong member of the Clan, did not consent to the alienation. The Clan asserts the claim Obechou filed to lot 1140 substantiates their contention. The Land Court, however, specifically noted that Obechou's claim was prepared and signed by her daughter Simane. Simane testified that she based Obechou's claim on her mother's failure to tell her that the land was alienated at the

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eldecheduch. The Land Court found Simane's statement not credible. We defer to this credibility finding, and consequently, do not find that Obechou's claim to the land supports an inference that she did not consent to the alienation. See *Tmiu Clan v. Ngerchelbuchebe Clan*, 9 ROP 43, 45 (2001) (appellate court defers to trial court's credibility findings and reverses credibility findings only in extraordinary cases).

Furthermore, the Land Court's finding that Obechou consented to the alienation was supported by the testimony of the current chief of the Clan, Isidoro Tutii, who stated that the land was given to Ngiraitaoch. Other witnesses testified that it was announced at the eldecheduch, attended by Obechou, that the land would be given to Ngiraitaoch. This evidence supports the Land Court's finding that Obechou consented to the alienation. Accordingly, we affirm the Land Court's finding that the Lot 1140 was alienated with the consent of the senior strong members of the clan. See *Tangelbad v. Siwal Clan*, 9 ROP 169, 172 (2002) (trial court's factual 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).

The Clan's second argument on appeal is that the alienation of land violated Palau's statute of frauds because the transfer to Ngiraitaoch was not memorialized in writing. The statute of frauds states:

(a) Except for a lease for a term not exceeding one year, no estate or interest in real property, and no trust or power over or concerning real property, or in any matter relating thereto, can be created, granted, assigned, transferred, or declared, otherwise than:

...

(2) By a deed of conveyance or other instrument in writing signed by the person creating, granting, assigning, transferring, surrendering, or declaring the same. . .

39 PNC § 501.

The statute of frauds became effective as of April 1, 1977. See *Andreas v. Masami*, 5 ROP Intrm. 205, 205 (1996). The alienation of Lot 1140 took place in 1981 and is thus subject to the statute of frauds. The Land Court found that under *Rengiil v. Ngircheokebai*, 1 ROP Intrm. 197, 200 (Tr. Div. 1985), Palauan custom did not require written evidence to effect a binding transfer of land, and thus ruled that the transfer of Lot 1140 was not required to be in writing. In *Rengiil*, however, the Trial Division addressed a transfer of land that occurred prior to the enactment of the statute of frauds. We therefore disagree with the Land Court and find that the statute of frauds did require the **16** transfer of Lot 1140 to be put in writing.

We decline, however, to invalidate the entire transfer of land to Ngiraitaoch. We find that the equitable doctrine of part performance applies and preserves a portion of the land transfer. The doctrine of part performance is a traditional exception to the statute of frauds. 73 Am. Jur. 2d *Statute of Frauds* § 447 (2001). Under the doctrine of part performance, the statute of frauds defense to enforcement of an oral contract can be avoided if there has been a partial

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performance of the contract. *Id.* at § 311. The doctrine of part performance also applies to alienation of land accomplished by gift. *See Parkhurst v. Boykin*, 94 P.3d 450, 458 (Wyo. 2004) (quoting John S. Herbrand, Annotation, *Exceptions to Rule that Oral Gifts of Land are Unenforceable Under Statute of Frauds*, 83 A.L.R. 3d 1294, § 2 (1978 and Supp. 2003)). An oral gift of land may be removed from the statute of frauds when, in reliance upon the gift, the donee has acted in such a way that failure to enforce the gift would cause injustice. *Id.*

There are three requirements for the part performance exception to apply: (1) the proof of the oral gift of land must be clear and convincing; (2) the land in question must be identified with reasonable certainty; and (3) the donee must take possession of the land and make substantial improvements in reliance on the gift. *Parkhurst*, 94 P.3d at 460. Here, the Land Court found that there was a clear agreement to give Ngiraitaoch the land. Lot 1140 has been identified. Furthermore, Ngiraitaoch took possession of the land and built a house on the land, which constitutes a substantial improvement in reliance on the gift. *See Parkhurst*, 94 P.3d at 459 (a change of residence, accompanied by the donee's possession of the land supports an exception to the rule that oral gifts of land are unenforceable under the statute of frauds). The facts of this case, thus, support the application of the doctrine of part performance.

We do not think, however, that the doctrine of part performance applies to the entire gift of land. The lot contains approximately 10,740 square meters of land. Ngiraitaoch has not made substantial improvements on all of that property. The doctrine of part performance applies only to that portion of the land that he has improved, namely, the portion of the land on which his house sits. We therefore remand this case to the Land Court to make findings as to the boundaries of the property to which the doctrine of part performance applies, and to issue determinations of ownership in favor of both the Clan and Ngiraitaoch consistent with this opinion.

CONCLUSION

The Determination of Ownership of Lot 1140 is hereby vacated and the case is remanded to the Land Court.