

Ramarui v. Eteet Clan, 13 ROP 7 (2005)

YASKO RAMARUI,

Appellant,

v.

ETEET CLAN, Represented by Hilaria Lakobong,

Appellee.

CIVIL APPEAL NO. 04-022

LC/B 04-29

Supreme Court, Appellate Division
Republic of Palau

Argued: September 12, 2005

Decided: October 4, 2005

Counsel for Appellant: Salvador Remoket

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 RONALD RDECHOR, Associate Judge, presiding.

SALII, Justice:

Yasko Ramarui (“Yasko”) appeals the Land Court’s Determination of Ownership in favor of Eteet Clan (“Clan”). Yasko raises two issues on appeal. First, she contends that the Land Court erred in finding that the senior strong members of the Clan did not consent to the sale of the subject property. Second, Yasko contends that the Land Court erred by finding that she did not establish adverse possession of the subject property. Because the record shows that Yasko has not established clear error in the Land Court’s **L8** findings, the Determination of Ownership is affirmed.

The current dispute is over Tochi Daicho Lot No. 273, Cadastral Lot No. 054 B 11, located in Idid Hamlet, Koror State. The land was registered to the Clan in the Tochi Daicho. In 1976, Yasko and her husband Valentine entered the land and began planting. They asked Santos Ngoderii (“Ngoderii”) if they could purchase the land, and he told them that they needed to get the approval of Clan member Hilaria Lakobong. Hilaria denied Valentine and Yasko permission to purchase the property. She did, however, give them permission to continue farming the land.

On December 10, 1978, Ngoderii and two other men, Ngiratecheckii and Rubeang, signed a deed of transfer purporting to transfer ownership of the property to Valentine. Additionally, the deed was signed by Ucherriang as a witness. After Valentine’s death, Yasko succeeded to any interest that he might have had in the land.

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In 2004, both Yasko and the Clan claimed ownership of the land. After a hearing, the Land Court held that the deed of transfer giving the land to Valentine lacked authority because it was made without the consent of the senior strong members of the Clan. The Land Court specifically found that Hilaria, who was adopted by a senior female member of the Clan, was a senior strong member of the Clan who withheld consent to the transfer.

The Land Court also found that Yasko's alternate claim, that she acquired title to the land through adverse possession, failed because she lacked the required elements of hostile and continuous use. Regarding the element of hostility, the Land Court stated that the attempt to purchase the land from the Clan in 1978 negated any hostility present when Valentine and Yasko first began planting on the land. Moreover, Hilaria gave Valentine and Yasko permission to farm the land and their use of the land was consistent with that permission, and therefore not hostile. The Land Court also found that Valentine and Yasko did not possess the land continuously for the statutory period. The Land Court made this finding based on its personal observations of overgrowth viewed during a visit to the land during the hearing. Because of the significant overgrowth, the Land Court found it likely that Valentine and Yasko had ceased farming the land prior to the expiry of the twenty year statute of limitations. The Land Court therefore awarded the land to the Clan.

On appeal, Yasko contends that the Land Court erred in finding that Hilaria was a senior strong member of the Clan whose consent was necessary to alienate the Clan land. Yasko argues that Hilaria was not a senior strong member because she was younger than her sister Ucherriang who was alive at the time and controlled matters for the clan. Yasko asserts that because Ucherriang was older, Hilaria's consent was not needed.

We review Land Court findings of fact for clear error. *Orak v. Temaël*, 10 ROP 105, 108 (2003). Under the clearly erroneous standard, a court's findings of fact 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. *Rechucher v. Ngermeriil*, 9 ROP 206, 210 & n.7 (2002).

Yasko asserts that Hilaria's consent was not needed because Ucherriang was a strong member of the Clan who was more senior than Hilaria. However, the Land Court took judicial notice of the customary law [19](#) principle that the consent of *all* senior strong members is necessary for a conveyance of clan land. This principle has been noted in numerous cases. *See Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 44 & n.8 (1998) (citing *Ngiradilubch v. Nabeyama*, 3 ROP Intrm. 101, 105 (1992), and *Ngiraloi v. Faustino*, 6 ROP Intrm. 259, 260 (1997)). Admittedly, this principle does not necessarily control in all cases because custom is a question of fact wherein each case is decided on the basis of its own record. *See Arbedul v. Emaudiong*, 7 ROP Intrm. 108, 110 (1998). However, where the court takes judicial notice of a custom, absent proof of some contrary custom, that judicially-noticed custom is conclusive in that case. *Cf. Otobed v. Etpison*, 10 ROP 119, 121 (2003) (no error where Land Court took judicial notice of custom, that, absent proof of some contrary custom, the individually-owned land of a decedent will be presumed to pass to his children). In this case, Yasko did not provide custom evidence contrary to the principle recognized by the court that the consent of all senior

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strong members is necessary to alienate clan land. She failed to enter any evidence that, under custom, Ucherriang's seniority was such that her consent alone was sufficient to alienate the land. The Land Court made a factual finding that Hilaria was a senior strong member of the Clan. Although Ucherriang was more senior than Hilaria, Yasko has not shown that, under custom, Hilaria was a not a senior strong member in her own right. Accordingly, the Land Court's finding that Hilaria's consent was needed to alienate the land will be upheld.

Yasko also claims that the Land Court erred in finding that she failed to establish adverse possession. In order to obtain title to land by adverse possession, the possession must be actual, continuous, open, visible, notorious, and hostile, and under a claim of title or right for over 20 years. *Andres v. Desbedang Lineage*, 8 ROP Intrm. 134, 135 (2000). There can be no adverse possession where any element is lacking. *Otobed v. Ongrung*, 8 ROP Intrm. 26, 28 (1999). The Land Court found that Yasko did not establish the required element of continuous possession during the statutory period.¹ The Land Court based its finding that Yasko did not occupy the land continuously during the statutory period on its personal observation of overgrowth made during a visit to the land during the hearing. The court noted that there were mature trees growing next to the cultivated trees, in such close proximity that the trees could not have been planted intentionally. The Land Court found that the growth was the result of "wild propagation that would have been cut back if the land was used in the manner and for the length of time that Yasko contends it was."

Yasko has made no arguments regarding the Land Court's finding that the overgrowth on the property was inconsistent with continuous possession of the property. Although she claims that she harvested the land two days before her land court hearing, this does not establish that she harvested the property continuously during the statutory period. As she provides no basis for overturning the Land Court's factual findings that the condition of the land showed that it was not possessed continuously, we affirm the Land Court's finding that adverse possession was not established.²

¶10 Because Yasko has failed to prove clear error in the Land Court's findings, the Determination of Ownership in favor of Eteet Clan is AFFIRMED.

¹ The Land Court also found that Yasko did not establish the required element of hostility. We decline to address this finding as it will not affect our decision.

² Yasko did not raise the issue of whether the Land Court judge is an expert in growth qualified to make such determinations, and therefore, we will not consider such an argument.