

Belibei v. Belibei, 14 ROP 96 (2007)

**HERMAN BELIBEI,
Appellant,**

v.

**HESUS BELIBEI,
Appellee.**

CIVIL APPEAL NO. 06-009
Civil Action No. 04-160

Supreme Court, Appellate Division
Republic of Palau

Decided: April 17, 2007¹

Counsel for Appellant: Carlos H. Salii

Counsel for Appellee: Clara Kalscheur

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
JANET HEALY WEEKS, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate Justice,
presiding.

MILLER, Justice:

Appellant Herman Belibei appeals the Trial Division's order partitioning the land he co-owns with his brother Appellee Hesus Belibei and awarding a share of past rental payments and legal fees. The facts are not in dispute and Herman only raises an issue concerning whether he owned the land outright and whether the Trial Division erred by not having Hesus pay a portion of funeral expenses. Having considered the arguments of the parties, we affirm the judgment of the Trial Division.

In August 1999, the Land Court awarded certificates of title for the land known as Olkeriil² to Hesus and Herman as co-owners. The losing claimant, Obodei Iyar, 197 appealed against Hesus and Herman. *See Iyar v. Becheserrak*, 9 ROP 154 (2002). Hesus defended the appeal, but Herman did not participate in the appeal. This Court affirmed the Land Court decision and a new certificate of title was issued in November 2003 to Hesus and Herman as co-

¹Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral arguments pursuant to ROP R. App. P. 34(a).

²Olkeriil is situated in the Ochelochel area of Ngetkib Hamlet of Airai State and consists of two lots, Lot No. 037 N 12 and Lot No. 037 N 11, as shown on Cadastral Plat No. 037 N00.

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owners. *Id.* Hesus and Herman began having difficulties in co-owning the land, partially due to Herman leasing portions of the land to three tenants and not paying Hesus any of the rental profits. Unable to resolve their differences, Hesus filed a court action to partition the land equally between them, recover rent owed him as co-owner, and recover legal fees for defending their land in the appeal. The Trial Division partitioned the land and awarded Hesus the rental profits and legal fees. Factual findings of the lower court are reviewed using the clearly erroneous standard. *Temaungil v. Ulechong*, 9 ROP 31, 33 (2001). This Court employs the *de novo* standard in evaluating the lower court's conclusions of law. *Hanpa Indus. Corp. v. Black Micro Corp.*, 12 ROP 29, 32 (2004).

Herman claims that he is sole owner of Olkeriil because his father's will gave him the property. The certificate of title issued by the Land Court states that Herman and Hesus co-own Olkeriil. A certificate of title to land is prima facie evidence of ownership. *Irikl Clan v. Renguul*, 8 ROP Intrm. 156, 158 (2000). Herman did not participate in the appeal of the Land Court determination. A party is bound by the determination of ownership of land from which the party fails to file an appeal. *Pedro v. Tiakl*, 8 ROP Intrm. 221, 222-23 (2000); *see also Nakamura v. Isechal*, 10 ROP 134, 136 (2003) ("an unappealed determination of ownership issued by the Land Commission precludes a later claim to the subject property."). Herman is precluded from challenging the certificate of title and the Trial Division properly found Herman and Hesus to be co-owners of Olkeriil.

Herman argues that, notwithstanding the usually preclusive effect of the certificate of title, evidence concerning the ownership of the land was tried by consent pursuant to Rules of Civil Procedure 15(b). We see no basis for this contention. The proper road for Herman to contest ownership was to show, by clear and convincing evidence, that the Land Court proceedings that led to the issuance of the certificate of title violated his right to due process. *Ucherremasech v. Wong*, 5 ROP Interim. 142, 147 (1995). Having offered no evidence of violation of due process, the evidence concerning the ownership of land was simply immaterial. As they are co-owners, Hesus was within his rights to ask for a partition and the Trial Division did not err in equally partitioning the land between the co-owners. *See* 59A Am. Jur. 2d *Partition* §§ 1, 6 (2003).

Beyond erroneously arguing he is the sole owner of the land, Herman does not contest the award of the rental payments and legal fees. Instead, Herman contends that the Trial Division should have made Hesus pay for half of their father's funeral expenses. Collecting past rental payments and legal fees defending the property are incident to an action to partition land. *See* 59A Am. Jur. 2d *Partition* §§ 111, 153, 154 (2003). Funeral expenses unrelated to the land are not part of an action to partition land. The Trial Division properly excluded the funeral expenses from its consideration of monetary awards.

For these reasons, the Trial Division's 198 judgment is affirmed.