

Kerradel v. Ngaraard State Pub. Lands Auth., 14 ROP 12 (2006)

**SESARIO KERRADEL,
Appellant,**

v.

**NGARAARD STATE PUBLIC LANDS AUTHORITY,
Appellee.**

CIVIL APPEAL NO. 05-039
LC/E 01-405

Supreme Court, Appellate Division
Republic of Palau

Argued: November 14, 2006
Decided: November 20, 2006

Counsel for Appellant: David J. Kirschenheiter

Counsel for Appellee: William L. Ridpath

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

Appeal from the Land Court, RONALD RDECHOR, Associate Judge, presiding.

MILLER, Justice:

Appellant Sesario Kerradel appeals from the Land Court's determination of ownership concerning a parcel of land located in Ngaraard State and designated as Cadastral Lot No. 011 E 12 on Cadastral Plat No. 011 E 00 (Court Exh. A). After holding a hearing on January 18, 2005, the Land Court determined **¶13** that the lot at issue corresponds to Tochi Daicho Lot No. 505 and awarded the land to appellee Ngaraard State Public Lands Authority ("NSPLA"). Kerradel appeals, arguing that the Land Court's decision was based on a long-running mistake regarding the location and ownership of another parcel, Tochi Daicho Lot No. 506.

BACKGROUND

On May 14, 2001, Kerradel filed a Claim of Land Ownership for Tochi Daicho Lot No. 505. Kerradel claims that what is commonly referred to as Lot 505 is really Tochi Daicho Lot No. 506. The Government is listed as the owner of Lot 505 in the Tochi Daicho of Ngaraard State. Lot 506, on the other hand, is listed as the property of Klemellong, Kerradel's grandfather. *See* Kerradel Exh. 1, Kerradel Exh. 2, Trial Transcript ("T.T.") at 11. Although there is a dispute regarding the correct Tochi Daicho lot number, it is clear that Kerradel is claiming ownership of Cadastral Lot No. 011 E 12 on Court Exhibit A. T.T. at 18-19 and 61. The Land Court initially

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dismissed Kerradel's claim on the ground that it was an untimely attempt to obtain the return of public lands. The Appellate Division of the Supreme Court reversed and remanded, finding that Kerradel could proceed to the extent that he was asserting that his title to the land was superior to that of the government. *Kerradel v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185 (2002).

Because the Government is listed as the owner of Lot 505 in the Tochi Daicho of Ngaraard State, there is a presumption that NSPLA is the owner of that property. *Mesebeluu v. Uchelkumer Clan*, 10 ROP 68, 70 (2003). In his attempt to overcome this presumption, Kerradel has presented a number of arguments over the past decade. In 1995, Kerradel sent a letter to the Land Claims Hearing Office ("LCHO") asserting that the lot awarded to him in 1989 as Tochi Daicho Lot No. 506 was really a part of Lot 539 which had been improperly subdivided in 1985.¹ In a motion and affidavit filed with the Land Court in August 2001, Kerradel asserted that Lot 505 (the lot at issue in this case) was actually a part of Tochi Daicho Lot No. 506. Since Lot 506 had already been awarded to Kerradel in 1989, he apparently wanted to monument his expanded claim and have the ownership of Lot 505 governed by the 1989 ruling. At the January 2005 hearing before the Land Court and in his opening brief, Kerradel relies on his assertion that Cadastral Lot No. 011 E 12 is not Tochi Daicho Lot No. 505, but rather Lot 506. Reverting to his 1995 argument, Kerradel claims that the 1989 Determination of Ownership that purports to award Lot 506 is mistaken because the parcel mentioned in that Determination is really a part of Tochi Daicho Lot No. 539.

The 1989 determination that Kerradel owned Tochi Daicho Lot No. 506 referred to the parcel as "Cadastral Lot No. 012 E 02; Tochi Daicho Lot No. 506; land known as *Ngesung*; Area: 12,413 square meters more or less as shown on the Division of Lands and Surveys [as] Cadastral Plat No. 012 E 02." On the same day that Lot 506 was awarded to Kerradel, the LCHO awarded Tochi Daicho Lot No. 539 to Kerradel's family. Following the determination that Kerradel owned Lot 506, he used the property as collateral for a \$2100 loan, opposed a subsequently-filed quiet title action on the ground that the LCHO had already conducted a formal hearing and L14 awarded Lot 506 to Kerradel, sold the property for \$10,000, and stipulated that Lot 506 now belonged to two other individuals and that he had "no right, title or interest" therein.

The Land Court found that Kerradel's claim that the lot awarded in 1989 was really Tochi Daicho Lot No. 539 was unsubstantiated and concluded that his testimony regarding the nature of the 1989 proceedings and the alleged clerical error was not credible. The Land Court also found that, in light of Kerradel's conduct following the 1989 Determination of Ownership, he was barred from relitigating the ownership of Lot 506. In a footnote, the court also noted that Kerradel has twice before raised the argument that the 1989 proceedings involved only Lot 539 and/or that the reference to Lot 506 in the 1989 Determination of Ownership was a mistake. The argument was rejected both times, and the Land Court found that Kerradel should not be permitted to assert the same argument a third time. Having determined that no error in the prior award of Lot 506 occurred and/or that Kerradel is barred from raising such an error, the Land Court concluded that the lot at issue in this litigation is properly identified as Tochi Daicho Lot No. 505 and that Appellee NSPLA is the owner of that lot.

¹At the time, Kerradel acknowledged that there had been a hearing on Cadastral Lot No. 012 E 02, Tochi Daicho Lot No. 506, in March of 1989.

DISCUSSION

We review the Land Court's findings of fact for clear error. *Aribuk v. Rebluud*, 11 ROP 224, 225 (2003). Under this standard, the findings of the lower court will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this Court is left with a definite and firm conviction that a mistake has been made. *Espong Lineage v. Airai State Pub. Lands Auth.*, 12 ROP 1, 4 (2004). Conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

A. Identification and Ownership of Lots

There is substantial evidence in the record to support the Land Court's determinations that (1) the LCHO awarded Lot 506 to Kerradel on April 28, 1989, and Kerradel knew of the award, (2) the lot at issue in this litigation is Tochi Daicho Lot No. 505, and (3) NSPLA is the owner of Lot 505. The Determination of Ownership issued in favor of Kerradel in 1989 identifies the subject parcel as "Cadastral Lot No. 012 E 02; Tochi Daicho Lot No. 506." The parcel awarded in 1989 was reported to be approximately 12,413 square meters, a size that comports with the 3,843 tsubo listed for Lot 506 on the Tochi Daicho. Kerradel Exh. 1.² Both Kerradel's April 27, 1988, claim for Lot 506 and the subsequent Determination of Ownership are evidence that the lot was, in fact, considered and adjudicated in 1989. Immediately following the determination that Kerradel owned Lot 506, Kerradel made no attempt to correct the mistake of which he now complains or to appeal the determination. In fact, Kerradel held himself out as the owner of Lot 506 to obtain loans, defend his title, and transfer ownership of the parcel. He repeatedly identified his property as Tochi Daicho Lot No. 506, Cadastral Lot No. 012 E 02 and there is no indication that he ever objected to the separate award of Lot 539 to his family. It was not until Kerradel had borrowed money against and then sold his interest in Lot 506 that his allegations of mistake and clerical error emerged. The Land Court's determination that Lot 506 was awarded to Kerradel in 1989 and that he was aware of that determination are amply supported in the record.

Kerradel's contention that the lot at issue in this litigation, Cadastral Lot No. 011 E 12, is really Tochi Daicho Lot No. 506 was based entirely on his testimony that the 1989 Determination of Ownership regarding Lot 506 was mistaken. Having concluded that no mistake was made, the Land Court determined that Cadastral Lot No. 011 E 12 corresponds to Tochi Daicho Lot No. 505. Kerradel challenges this finding on the ground that there was no evidence establishing the location of Lot 505. Until recently, Kerradel's own submissions recognized that Cadastral Lot No. 011 E 12, the land everyone agrees is at issue in this case, is alternatively known as Tochi Daicho Lot No. 505. The claim document that initiated this

²In addition and contrary to Kerradel's argument in his opening brief, Chiokai's acquisition record for Lot 539, filed on March 27, 1985, shows that the sail-shaped parcel of land identified as Cadastral Lot Nos. 012 E 02 includes two separate Tochi Daicho lots. In Chiokai's drawing, Lot 539, which was the subject of his claim, is located above the road. Lot 506 is shown as the bottom portion of the sail and is located below the road. Because that lot was not part of Chiokai's land, it is crossed out. Kerradel Ex. 4. Chiokai's acquisition record does not support Kerradel's claim that Lot 539 includes Cadastral Lot No. 012 E 02 or that Lot 506 is located somewhere other than as shown in Chiokai's drawing.

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litigation identifies the contested parcel as Tochi Daicho Lot No. 505. When Kerradel filed his “Motion to Allow Claim and Continuance” and the supporting affidavit on August 31, 2001, he acknowledged that “Cadastral Lot No. 011 E 12” and “Tochi Daicho Lot No. 505” correspond to the same parcel of land. At the time, he argued that Lot 506 encompassed the neighboring parcel, Lot 505. The Land Court was not under any obligation to credit his recent testimony that Lot 505 actually corresponds with Cadastral Lot No. 011 E 18, especially where Kerradel had made contradictory statements in the past and his testimony on other related issues lacked credibility. *See Estate of Ngiramechelbang v. Ngardmau State Pub. Lands Auth.*, 12 ROP 148, 151 (2005) (finding that court may choose to disbelieve even uncontradicted testimony). The Land Court’s finding that Lot 505 corresponds to Cadastral Lot No. 011 E 12 is not clearly erroneous.

Kerradel’s last contention on appeal is that the Land Court erred when it determined that NSPLA is the owner of Cadastral Lot No. 011 E 12, Tochi Daicho Lot No. 505. The Tochi Daicho listing for Ngaraard State gives rise to a presumption that the government owns Lot 505. *Mesebeluu v. Uchelkumer Clan*, 10 ROP 68, 70 (2003). Because this is not a return-of-public-lands case, Kerradel has the burden of showing by clear and convincing evidence that the Tochi Daicho listing was wrong. *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 168 (2004). Kerradel argues that his testimony regarding the location of the government’s land on the other side of the road toward the hills and the fact that the government has never used Lot 505, Cadastral Lot No. 011 E 12 was unrebutted and therefore precludes a finding that NSPLA owns Lot 505. T.T. at 12-13 and 24. The Land Court had already determined, however, that Kerradel’s testimony in this dispute was not credible. With respect to the location of government lands, Kerradel’s blanket assertion that the government owned all of the lands to the west of the road was thrown into doubt through further questioning and the Tochi Daicho listing which shows private ownership of lots west of the road. T.T. at 13-15; Kerradel Exh. 2. Nor was it error to afford little, if any, weight to Kerradel’s assertion that the government L16 never used Lot 505. Although a party’s failure to act in a manner consistent with ownership over a long period of time is relevant to a determination of ownership (*Obak v. Joseph*, 11 ROP 124, 128 (2004)), Kerradel acknowledged that the government had once proposed putting a road through Lot 505 and there is no indication that Kerradel ever attempted to utilize the land he now claims to own. Kerradel did not make a clear and convincing showing that the Tochi Daicho identification of the government as the owner of Lot 505 was wrong.³

The Land Court’s findings regarding the location and ownership of the relevant lots were not clearly erroneous.

³Kerradel also produced a map purporting to show that government lands in this part of Ngaraard State do not extend to the sea at any point. Kerradel Exh. 6. Although Kerradel Exhibit 6 purports to be a Government Land Index, it is not clear who created this map, what time frame is depicted, or how the borders denoted on the map compare to the Cadastral parcels depicted on Court Exhibit A and Kerradel Exhibit 3. Kerradel testified that he had seen maps identifying Cadastral Lot No. 011 E 02 as private property, at which point his attorney marked Kerradel Exhibit 6 without confirming that this was one of the maps Kerradel had seen and without asking any questions that might explain the import of this map. T.T. at 23. Kerradel himself testified to facts which conflict with the boundaries shown on the Government Lands Index. *See* T.T. 38 and 56 (asserting that Lot 505 corresponds to Cadastral Lot No. 011 E 18, which is not shown as government land on Kerradel Exhibit 6).

B. Estoppel

“Estoppel is a bar which precludes a person from denying or asserting anything to the contrary of that which has been established as the truth by his own deed, acts, or representations, either express or implied.” *Kerradel v. Besebes*, 8 ROP Intrm. 104, 105 (2000) (quoting 28 Am. Jur.2d *Estoppel and Waiver* § 1) (internal ellipses omitted). Following the 1989 determination that Kerradel owned Lot 506, Cadastral Lot No. 12 E 02, he used the property as collateral for a \$2100 loan, opposed a subsequently-filed quiet title action on the ground that the LCHO had already awarded the lot to Kerradel, and sold the property for \$10,000. These acts are inconsistent with Kerradel’s current arguments that he was never awarded Lot 506 and/or that Lot 506 is actually located at Cadastral Lot No. 011 E 12.

Kerradel argues that the Court should ignore the lot numbers discussed in the Land Court determinations and subsequent transfer documents and instead focus on the land itself when evaluating his current theory that the land awarded to him in 1989 was not Lot 506 but rather a portion of Lot 539. Even if the Court assumes that an error was made in 1989, Kerradel’s actions bar him from attempting to correct that error at this late date. Kerradel filed a claim for Lot 506 in 1988 and, when it was awarded to him, remained silent for six years. Only after Kerradel had sold the lot and divested himself of all right, title, or interest therein did he find fault with the Land Court’s 1989 determination. If, as Kerradel now maintains, Lot 539 encompasses both Cadastral Lots 12 E 01 and 12 E 02, then he encumbered and ultimately sold land that belonged to his family, not to him. Either way, Kerradel has no legal or equitable claim to this Court’s assistance: either he sold land that did not belong to him or, having sold property based on the representation that it was Tochi Daicho Lot No. 506, he now seeks to undo the prior adjudication in an effort to claim even more L17 land. In such circumstances, the doctrine of estoppel applies and the Land Court’s finding that Kerradel is barred from challenging the 1989 Determination of Ownership will not be disturbed on appeal.

C. Res Judicata

Because the Land Court’s determination of ownership in favor of NSPLA is affirmed on other grounds, this applicability of the doctrine of res judicata need not be decided.

CONCLUSION

For the reasons set forth above, we affirm the Land Court’s determination of ownership.