

Rengiil v. Debkar Clan, 16 ROP 185 (2009)

ALBERTA RENGIL,
Appellant,

v.

DEBKAR CLAN,
Appellee/Appellant,

v.

AIRAI STATE PUBLIC LANDS AUTHORITY and JONATHAN KOSHIBA,
Appellees.

CIVIL APPEAL NO. 08-012
LC/N 00-276 (B)

Supreme Court, Appellate Division
Republic of Palau

Decided: June 17, 2009

Counsel for Rengiil: Ernestine Rengiil

Counsel for Debkar Clan: J. Roman Bedor

Counsel for ASPLA: John K. Rechucher

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; and ALEXANDRA F. FOSTER, Associate Justice.

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Appeal from the Land Court, Associate Judges ROSE MARY SKEBONG, SALVADOR INGEREKLII, AND RONALD RDECHOR presiding.

PER CURIAM:

This is the second appeal of a land court determination of ownership concerning the lands Irisong, Ngermiich, Ngerchemel , and Oltebadelkaeb in Ngeruluobel Hamlet, Airai State. The lands are also described as Lots 166-11144, 166-11144C, 166-11144C1, 166-11139, 166-11139A, 166-11139C, 166-11139C-1 and 157-11127.

BACKGROUND

The original Land Court determination in this case was issued April 26, 2000, and awarded Lot 166-11139C-1 to Jonathan Koshiba (hereinafter, “Koshiba”) and all the rest of the lots to Airai State Public Lands Authority (“ASPLA”). On appeal, this Court remanded the case

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for further proceedings to evaluate the claims under a superior title theory, as opposed to a return of public land theory. *Espong Lineage v. ASPLA*, 12 ROP 1, 6 (2004). In particular, the Land Court was instructed to evaluate the contention of claimants Debkar Clan, Toshiwa Kyota (“Kyota”), and Albertang Rengiil (“Rengiil”) that the Japanese had used the land without acquiring title. In evaluating such a claim, the Land Court would weigh Appellants’ evidence and testimony against that of ASPLA on an equal footing.

On remand, the Land Court determined that Lot 166-11139C-1 belongs to Jonathan Koshiha, who bought it from ASPLA; Lots 166-11144C and 166-11144C-1 belong to Debkar Clan; a part of Lot 166-11144 belongs to Iyechar Lineage (as determined by an earlier court proceeding); and the rest of the contested land belongs to ASPLA. Determination of January 15, 2008 (“Jan. 15 Determination”). The claims of Rengiil, Kyota, Obdei Iyar, and Espong Lineage were unsuccessful in their entirety. Debkar Clan, Kyota, and Rengiil¹ appeal the Land Court’s decision. Kyota and Rengiil claim the land through a chain of ownership from Debkar Clan. All three Appellants argue that the Land Court erred in awarding the land claimed by Debkar Clan to ASPLA. Additionally, Rengiil claims that the Land Court erred in awarding the land she claimed to Debkar Clan.

A. Debkar Clan’s Claims

Debkar Clan asserts that all of Irisong and Ngerchemel belong to the Clan, except for the land that was sold by the Clan to Kyota. The Clan contests the Land Court’s determination that the lands became public during the Japanese occupation of Palau, asserting that the lands were always owned by the Clan and merely leased or used by the Japanese.

In support of its claim, Debkar Clan presented to the Land Court documents which are purported to be receipts for rent payments made by the Japanese to the Clan. Additionally, p.187 Debkar Clan presented a document signed by a Clan representative, granting the government an easement over the land for the Compact Road. Debkar Clan argues that the form establishes that Airai State and the Republic of Palau recognize the Clan’s ownership of the land. At the hearing, the Clan also relied upon the record of the earlier land court hearing and presented testimony from members of Debkar Clan. The Land Court found that the documents Debkar Clan presented related only to Lots 166-11144C and 166-1114C-1, as well as other land previously awarded to Rengiil. The Land Court determined that the rest of the land was public land from the time of the Japanese Administration.

Debkar Clan asserts that the Land Court committed clear error in awarding the lots to ASPLA on the grounds that the Clan’s evidence conclusively established its ownership. Additionally, Debkar Clan alleges that neither ASPLA nor its predecessors filed a claim, so ASPLA should not be considered a proper claimant.

B. Rengiil’s Claims

¹Rengiil names Debkar Clan as the Appellee in her filing, because she claimed the land that the Land Court determined was owned by Debkar Clan. However, Debkar Clan is also an Appellant in this case.

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Appellant Rengiil claimed Lots 166-11144C and 166-1114C-1 as land given to her at the eldecheduch of her adoptive father, Sob, a title-bearing member of Debkar Clan. She argues that Debkar Clan owned a large amount of land and she was given those two lots from the larger area of Clan land. Rengiil asserts that the Land Court erred in awarding this land to Debkar Clan, rather than to her. Her testimony established that she helped Sob monument patches of land, within the disputed area, owned by the Clan. Rengiil claims the two lots were shown to her by Sob as the land she would receive. Additionally, Rengiil alleges that Debkar Clan withdrew its claim to those two lots.

The Land Court gave Lots 166-11144C and 166-1114C-1 to Debkar Clan. The court stated that Rengiil was “noticeably silent about monumenting any lands beyond the two lots,” and determined that those two lots were the entirety of Clan land. Additionally, the court determined that Rengiil was only given 4,000 tsubos of land by Sob and she had already received that amount in a different case. For those reasons, the court gave the lots at issue to Debkar Clan.

Rengiil denies that she was silent about monumenting a claim, asserting that her testimony described several other lots that she monumented for members of Debkar Clan, as well as Lots 166-11144C and 166-1114C-1. Rengiil titled her appeal against Debkar Clan because she seeks a determination that she, and not the Clan, was entitled to Lots 166-11144C and 166-1114C-1. However, she also asserts that the Clan is entitled to more land than the Land Court found.

C. Kyota’s Claims

Kyota claims Lots 166-11139C and 166-11139C-1 under the theory that he is a *bona fide* purchaser of those lots. He appeals the Land Court’s determination of ownership of those lots in favor of Jonathan Koshiha. Kyota asserts that he purchased the land from Debkar Clan in 1978. Over the past thirty years, Kyota has cleared the land, planted a farm and built a house on the land. Kyota asserts that neither the Trust Territory government nor the Airai municipal government gave notice of any interest in the land by filing a claim or responding to the notice he posted before he purchased the land. p.188

The Land Court noted that Kyota’s claim relies upon Debkar Clan’s original ownership of the land. Because the Land Court found that the land is public land, not Debkar Clan’s land to sell, it denied Kyota’s claim. Additionally, to the extent Kyota asserted adverse possession, the Land Court denied that argument on the grounds because adverse possession cannot be asserted against the government.

D. ASPLA's Argument

ASPLA urges the Court to affirm the Land Court's determination that the vast bulk of the contested land is public. In support of its assertion that the land was public, ASPLA presented several witnesses who testified that the Japanese Government used the contested lands before the war and submitted as evidence a claim for return of public land for the land Ngerchemel, filed by Tmewang Iyechaderteluang, not a party to this case. This claim was submitted to show that the land was public land. Also submitted was a lease agreement for the land Irisong between Waikasang Tellei as lessee and the Trust Territory government as lessor. Finally, ASPLA presented as a witness Alexander Taro Ngiraingas, who testified that, when working for Palau District Land & Surveys, he assisted with surveying and mapping Palau, including the placement of boundary markers, from 1976-1977. He testified that, in this capacity, he learned from older Palauans who had assisted with land monumentation during the Japanese Administration how the Japanese marked public versus private land. Specifically, he learned that monuments indicating Japanese Administration land were larger than monuments indicating private land and were marked with a Japanese character "Kang" facing the public land.

ASPLA also presented evidence from the Lands & Surveys Office as to where the Japanese monuments with the inscription "Kang" were located in the relevant area. Using Ngiraingas' testimony as a basis, ASPLA connected the monuments to show that Ngerchemel, Irisong, and Oltebadelkaeb were within the area monumented as public land during the Japanese Administration.

STANDARD OF REVIEW

This Court reviews the Land Court's findings of fact for clear error. *Ibelau Clan v. Ngiraked*, 13 ROP 3, 4 (2005). The factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Palau Pub. Lands Auth. v. Ngiraorang*, 13 ROP 90, 93 (2006). The Land Court's conclusions of law are reviewed *de novo*. *Id.*

DISCUSSION

A. Debkar Clan

Debkar Clan argues that its evidence clearly establishes its ownership of the contested lands and the determination otherwise is clear error. This Court does not agree. The Debkar Clan's documentary evidence, receipts for rent payments made to the Clan by Japanese tenants and a form seeking an easement for the Compact Road on the contested land, does not establish ownership. The receipts detail payments made, but do not specify the land being rented or if the p.189 land was owned by Debkar Clan. As for the easement, the form is a standard form, seeking the authorization of all landowners and claimants to specific pieces of land, ensuring that the easement is valid whichever claim succeeds. Under these terms, a request that Debkar Clan authorize the easement is not a concession that the Clan owns the land.

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The Land Court clearly did not credit Debkar Clan's testimonial evidence, to the extent that it contradicted ASPLA's ownership. The Land Court's determinations about the credibility of witnesses are not reexamined by the Appellate Court. *Sungino v. Blaluk*, 13 ROP 134, 137 (2006) ("[I]t is not the duty of the appellate court to test the credibility of the witnesses, but rather to defer to a lower court's credibility determination.") (internal quotations and citations omitted); *Worswick v. Kedidai Clan*, 14 ROP 160, 161 (2007) ("The trial judge is best situated to make credibility determinations and the Appellate Division will generally defer to the lower court's findings regarding the credibility of witnesses and evidence.").

The Land Court's factual decisions, including witness' credibility and whether the land was public under the Japanese Administration, will be upheld by this Court as long as there is sufficient evidence in the record to make those decisions objectively reasonable. An examination of the record reveals that there is enough evidence to support the Land Court's decision. The evidence presented concerning the placement of Japanese monuments delineating public and private land under the Japanese Administration, supported by the testimony of Ngiraingas, is independently sufficient relevant evidence to allow a reasonable trier of fact to conclude that the contested land is public. Accordingly, that is the end of the Appellate Court's inquiry into those determinations.

Debkar Clan also argues that the government never properly filed a claim and should not, thus, be considered a claimant. Clearly, the Land Court found that the Government had filed a claim. This finding is reviewed, like other factual findings, under the clearly erroneous standard. Debkar Clan asserts that the only claim filed was for different land. However, the Government submitted a document that claimed all lands considered to be public, a category that would include the contested land. Considering the lack of evidence substantiating Debkar Clan's assertion and the evidence showing that the Government did file a claim, it cannot be said that the Land Court's decision that the Government filed a claim is clearly erroneous.

For the foregoing reasons, the Land Court's decision in favor of ASPLA is **AFFIRMED**.

B. Kyota

Kyota purchased the land he claims from Debkar Clan. Accordingly, the success of his claim depends upon a Land Court determination that the land was truly owned by Debkar Clan before it was sold to him. The Land Court found that the land sold by Debkar Clan to Kyota was public land which did not belong to Debkar Clan, making the sale to Kyota void. For the reasons stated above, this Court has affirmed the Land Court's decision. Accordingly, Kyota's claim cannot succeed.

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C. Rengiil

Rengiil's claim is based on the theory that the land she claims belonged to Debkar Clan and was passed to her through her adoptive father Sob. The Land Court found Rengiil's testimony, that she helped Sob monument the claimed land on behalf of Debkar Clan, credible. However, the Land Court did not accept her argument that those lots were given to her.

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The Land Court accepted Ngemelas Kitalong's testimony that Rengiil was given only 4,000 tsubos of land out of the land Ngerchemel, in contrast to Rengiil's own claim that she was given the entirety of Ngerchemel. The Land Court noted that Rengiil had been given approximately 4,000 tsubos of land in another case. The court then determined that Lots 166-11144C and 166-11144C-1 were land that had been monumented on behalf of Debkar Clan and remained in Debkar Clan's possession.

Rengiil argues that the Land Court erred in giving the land to Debkar Clan on two grounds: that the clan withdrew its claims for the land and that the Land Court erroneously described her testimony as "noticeably silent about monumenting any lands beyond these two lots." Jan. 15 Determination at 9.

1. Withdrawal of Claim

In support of her argument that Debkar Clan withdrew its claim to Lots 166-11144C and 166-11144C-1, Rengiil points out testimony at the first hearing, prior to remand, in which Debkar Clan told the Land Court, on the subject of withdrawal, "these are members of Debkar Clan, we are one in person and we will withdraw our claim and they will represent us to pursue the claim." Rengiil also notes that in their closing argument in that case, Debkar Clan conceded that the land claimed by Rengiil was given to her by Debkar Clan and Debkar Clan is not claiming that land. In contrast, Debkar Clan asserts that it did not withdraw its claim. The Clan supports this assertion with the fact that it argued its claim to those lots on appeal and at the hearing on remand, without any objection by Rengiil.

The record shows that Rengiil did not object to Debkar Clan's claim of the land below. An argument that was not raised before the Land Court cannot be raised on appeal. Accordingly, Rengiil is deemed to have forfeited that issue. *Kotaro v. Ngirchechol*, 11 ROP 235, 237 (2004) ("No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited that issue."); *Rechucher v. Lomisang*, 13 ROP 143, 149 (2006).

2. Misstatement of Testimony

Rengiil's second argument is that the Land Court's description of her testimony as "noticeably silent about monumenting any lands beyond these two lots" is incorrect. The Land Court explained that, since Rengiil was helping monument land on behalf of Debkar Clan, it does not make sense that the entirety of the land monumented would have been given to her. Accordingly, Rengiil's silence about monumenting other land beyond the two lots at issue factors against that land belonging to her.

Rengiil argues that evidence shows that she monumented more land than that which she claimed. She asserts that much of the land she helped monument on behalf of Debkar Clan was p.191 land that the Land Court incorrectly determined was public. Rengiil points to her past testimony about various lands she monumented with Sob, which Sob gave to members of Debkar

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Clan, as well as prior Land Court adjudications, which awarded land she helped monument to members of Debkar Clan, including herself.

Rengiil is correct that the Land Court erred in saying that she was silent about monumenting any other lands. However, that error is harmless. The Land Court's reasoning, that, of the non-public land she helped monument for Debkar Clan, a large portion was given to her, while none of it remained for Debkar Clan, stands, whether Rengiil was "noticeably silent" or not. Because that misstatement does not undermine the reasoning or validity of the Land Court's statement, it is harmless and does not justify remand.

CONCLUSION

Because there is sufficient evidence to support the Land Court's conclusion that the land in question was public, the appeals of Debkar Clan and Kyota are **DISMISSED**. Additionally, because Rengiil did not raise the issue of Debkar Clan's waiver before the Land Court and because the Land Court misstatement was harmless error, Rengiil's appeal is **DISMISSED**. Accordingly, the decision of the Land Court is **AFFIRMED** in its entirety.