Riumd v. Tanaka, 1 ROP Intrm. 597 (1989)
BENGED RIUMD, et al.,
Appellees,

v.

MASAE TANAKA and MOBEL DELEMEL,
Appellants.

CIVIL APPEAL NO. 16-86
Civil Action No. 76-86

Supreme Court, Appellate Division
Republic of Palau

Appellate decision
Decided: April 18, 1989

Counsel for Appellees: J. Roman Bedor, T.C.

Counsel for Appellants: Johnson Toribiong

BEFORE: MAMORU NAKAMURA, Chief Justice; ARTHUR NGIRAKLSONG, Associate Justice; and FREDERICK J. O'BRIEN, Associate Justice.

NGIRAKLSONG, Associate Justice:

Tmetbab and Rikel were sisters. Their mother was Kenrad. Rikel, the older sister, married Sengai. Sengai and Rikel adopted Tmetbab.

Tmetbab married Delmel. Their children are Mobel Delmel, Ngiraboi Delmel (deceased before trial) and Mrs. Benged Riumd. Mobel Delmel's children are Aichi Delmel and Mrs. Masae Tanaka. Aichi was either adopted by Tmetbab and Delmel, grandparents, or at least lived with them for part of his life.

The dispute in this case involves land known as Ochelochel in Ngetkib, Airai State. The issue is whether ⊥598 Ochelochel is Mobel Delmel individual land or family land entrusted to Mobel Delmel to administer for himself and the plaintiffs.

The plaintiffs are Benged Riumd, Aichi Delmel and Patrick Delmel. The defendants are Mobel Delmel and his daughter, Mrs. Masae Tanaka. The parties are blood brothers, a sister and a son and daughter of the oldest male, Mobel Delmel. Mobel's son is a plaintiff and the daughter and Mobel are defendants.

None of the parties introduced a record of the Japanese Tochi Daicho for the land in dispute. The records for Airai State were either lost or destroyed during World War II.

Plaintiff Benged Riumd testified that the land in dispute was given to Tmetbab by her adoptive father, Sengai, and that Tmetbab told Mobel Delmel, he being the oldest son, to register the land during the Japanese Land Survey (1938-1940) in his name as the trustee and to administer the land on behalf of himself and his brothers and a sister. (Tr. 8-12).

The testimony establishes that at certain periods between 1936 to after World War II, Mrs. Riumd, her husband, her parents, Sengai, Mobel, wife Augusta, Patrick Delmel, Aichi Delmel and Mrs. Tanaka had lived and or farmed on the land as a family. (Tr. 7, 37, 37-40.) Mrs. Riumd and Aichi Delmel testified that the land belongs to their mother Tmetbab. *Id.*

Defendant Mobel testified that Ochelochel was registered under his name as his individual land. He claims that Sengai gave it to him because Mobel was a "son of his ⊥599 child [Tmetbab]." (Tr. 54). No other reasons were given for this claim.

Mrs. Riumd borrowed $1,000.00 from the late Francisco Morei to finance Mobel's trip to the United States to attend the funeral of their brother, Ngiraboi. Mobel conceded that Mrs. Riumd gave him some money. There is no dispute that the amount owed to Morei eventually totaled $4,000.00.

There is dispute, however, as to whether Ochelochel was pledged as a surety for the loan from Morei. Mrs. Riumd denied that Ochelochel was used as a surety for the loan. She testified that Morei is a close relative of her husband and that was a good enough consideration for the loan.

Mobel claims that Ochelochel was used as a surety and that Morei was to get the land upon default of payment. Mobel thereafter asked his daughter, Mrs. Masae Tanaka, to pay the loan, which she did. Mobel then executed a deed of transfer conveying Ochelochel to his daughter, Mrs. Tanaka, on October 31, 1984. The plaintiffs upon learning of this land transfer filed this lawsuit on April 10, 1986.

The Trial Court made the following findings of fact and conclusions of law:

1. There is insufficient evidence to decide whether Sengai or Tmetbab owned Ochelochel;

2. The oral testimony that purports to establish the content of the Tochi Daicho to show that Mobel Delmel owns Ochelochel in fee simple is not credible;

⊥600 3. The conduct of Mobel Delmel throughout all these years is consistent with his duties as a trustee and administrator of Ochelochel rather than as an owner in fee simple;

4. Mobel Delmel is the trustee and administrator of Ochelochel for himself and his brothers and a sister;

5. That the family owns the land in joint-tenancy; and

6. The attempted transfer of Ochelochel to Mrs. Tanaka is void.

Defendants Mobel Delmel and his daughter, Mrs. Tanaka, appeal the judgment of the Trial Court. Defendants/appellants state that the Trial Court made an error in ruling that Ochelochel is family-owned and in nullifying the quitclaim deed transferring the land to Mrs. Tanaka. Plaintiffs/appellees argue that quitclaim deed necessarily has to be nullified because the land is family-owned. Mobel did not obtain their consent to convey Ochelochel and therefore the conveyance is void.

LEGAL ANALYSIS

We affirm the Trial Court in holding that Ochelochel is family-owned and that Mobel Delmel is the trustee and administrator for himself and the plaintiffs. We reverse the Trial Court in holding that the family ownership of the land is one in joint tenancy.

⊥601 Defendants/appellants argue that the content of the lost Tochi Daicho on Ochelochel was established orally by a preponderance of evidence that Mobel Delmel was the individual owner of the property. This being the case, the presumption as a matter of law is in favor of the correctness of the finding that Mobel Delmel is the owner in fee simple of Ochelochel. Defendants/appellants cite *Bechab v. Klerang, et al.* , 1 TTR 284 (1955), *Osima v. Rengiil, et al.* , 2 TTR 151 (1960), *Ngirudelsang v. Etibek*, 6 TTR 235 (1953), *Edeyaoch v. Timarong*, 7 TTR 54 (1974), and *Rekewis, et al., v. Ngirasowei*, 2 TTR 536 (1964).

SUFFICIENCY OF EVIDENCE

Rule 52 of ROP Rules of Civil Procedure provides that, "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the Trial Court to judge the credibility of the witnesses."

Our Rule 52 is identical to Rule 52(a) of the United States Federal Rules of Civil Procedure. The United States Supreme Court has given a meaning to the "clearly erroneous" standard in a recent case.

> This standard plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently. The reviewing court oversteps the bounds of its duty under Rule 52 if it undertakes to duplicate the role of the lower court . . . . ⊥602 If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous.

Anderson v. City of Bessemer , 460 U.S. 1054, 105 S.Ct. 1504, 84 L. Ed. 2d 518 (1985). The court noted that it is possible for a reviewing court to find clear error even in a fact finding purportedly based on a credibility determination. This may occur when "documents or objective evidence . . . contradict the witness story" or when the story itself is "so internally inconsistent or implausible on its face that a reasonable fact finder would not credit it." 105 S.Ct. at 1512-13.

> But when a trial judge's finding is based on his decision to credit the testimony of one or two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error.

105 S.Ct. at 1513. This rule calling for deference to the factual findings and inferences of Trial Court is based in great part on the fact that "only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said," 105 S.Ct. at 1512. Considerations of judicial efficiency have also been cited as calling for such a rule. *Id.* We adopt the interpretation articulated in *Anderson*.

⊥603 Applying the *Anderson* standard, we find that the Trial Court's finding that there is insufficient evidence to support Mobel Delmel's claim is not "clearly erroneous."

We also find that all of the cases cited by the defendants/appellants are distinguishable from this case. In the *Bechab* case, it was not disputed that the Japanese Land Survey listed the land in question as the individual land of the defendant's predecessor in interest, Kitalong. No member of the clan ever lived on the land or objected to Kitalong's claim. Kitalong alone and defendant Klerang, successor in interest, were the only ones who lived on the land. In the *Osima* case, the facts are almost the same. Defendant's predecessor in interest claimed the land as his individual land even before the Japanese Land Survey began in 1938. The claim was well known to senior members of the clan who did not object. And the Tochi Daicho clearly showed that the land was the individual property of the defendant's predecessor in interest. In the *Etibek* case, the Tochi Daicho showed that the Tikei clan owned the land in dispute and is administered by defendant Etibek. This became a court case due to the ineptitude of a Land Registration Team and the then Palau District Land Commission which ignored the record, the law and placed the ownership in someone else. In the *Edeyaoch* case, the parties stipulated that the land in question was registered in the Japanese Tochi Daicho in the name of the plaintiff's father as his individual property and there was no claim that ⊥604 the land belongs to the clan or lineage. Finally, in the *Rekewis* case, representatives of the two groups of the clan met, discussed and agreed that the land in dispute should be listed in the Tochi Daicho as defendant Ngirasowei's individual property. The Japanese Land Office in Ngerchelong had expressed a concern that the proposed listing of Ngirasowei as the individual owner might be a problem. An investigation followed and it was again decided that Ngirasowei should be listed as the individual owner of the land in question.

In all these cases, a record of the Tochi Daicho was either admitted in evidence or its content was submitted under stipulation of the parties. Second, in all of these cases, the conduct of the prevailing parties is consistent with the presumption in favor of the correctness of the

Tochi Daicho. We find that these two facts distinguish these cases cited by appellants from this case.

We accordingly affirm the Trial Court's holding that Ochelochel is family-owned and Mobel Delmel is the trustee and administrator of the land for himself and the plaintiffs.

In affirming the Trial Court's holding that Ochelochel belongs to the family of Delmel, we necessarily affirm the Trial Court's nullifying and voiding the quitclaim deed transferring Ochelochel from Mobel to Mrs. Tanaka. "One cannot convey away land which does not belong to him." *Edeyaoch, supra*, at 58. Even if Mobel Delmel, as the oldest male of the family, is the head of the family, he still does not have the ⊥605 authority to dispose of the family's land without the consent of the family. *Ngirchongerung v. Ngirturong*, 1 TTR 71.

After holding that Ochelochel is family-owned and that Mobel Delmel, as the oldest male, is the trustee and administrator of the land, the Trial Court proceeded to characterize the family ownership as a "joint-tenancy."

Joint-tenancy is a common law form of co-ownership of land or personal property. The quality of this form of co-ownership is the unity of ownership of the joint tenants. Blackstone described the quality as a four fold unity; "the unity of interest, the unity of title, the unity of time and the unity of possession, or in other words, joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same possession." C.J. Moynihan, Introduction To The Law Of Real Property (1962), at p. 217. The most important characteristic of a joint tenancy is that when a joint tenant dies, his interest disappears with him and the entire ownership continues with the surviving joint tenants. *Id.* at p. 220. The deceased joint tenants's interest does not go to his heirs or pass under his will.

Although a joint tenant may alienate his undivided interest through various ways, the result may be foreign to Palauan custom. For purpose of illustration, assume the family ownership of Ochelochel is in joint tenancy and that Mobel Delmel, in his attempt to alienate the entire property, has alienated his undivided interest to Mrs. Tanaka. The transfer ⊥606 destroys the unity of title and time. Mrs. Riumd, Patrick Delmel and Aichi Delmel remain joint tenants with respect to an undivided 3/4 interest of Ochelochel. Mrs. Tanaka becomes a tenant in common with respect to the 1/4 interest conveyed by Mobel.

With the specific requirements of joint tenancy, let alone tenancy in common and other forms of co-ownership, and in the absence of any discussion of the co-ownership at the trial, we believe the Trial Court improvidently characterized the family ownership as one in joint tenancy. Accordingly, we reverse the Trial Court's holding that the family ownership of Ochelochel is in joint tenancy.

We hold that Ochelochel is a family-owned land and Mobel Delmel, as a trustee for himself, Mrs. Riumd, Patrick Delmel and Aichi Delmel, shall administer the land pursuant to Palauan custom.[1]

---

[1] Our ruling does not foreclose remedies that may be available to Mrs. Tanaka.

CONCLUSION

We affirm the Trial Court's holding that Ochelochel is family-owned land and that Mobel Delmel is the trustee thereof. The family ownership of the land and its administration is and shall be pursuant to Palauan custom. We reverse the Trial Court's holding that the family ownership of Ochelochel is one in joint tenancy.