Salii v. Omrekongel Clan, 3 ROP Intrm. 212 (1992)

GLORIA G. SALII AND CARLOS H. SALII,
Appellants,

v.

OMREKONGEL CLAN, represented by Espangel Esebei and Uodelchad Isebong,
Appellees.

CIVIL APPEAL NO. 28-90
Civil Action No. 638-89

Supreme Court, Appellate Division
Republic of Palau

Appellate decision
Decided: November 12, 1992

Counsel for Appellants: Carlos H. Salii

Counsel for Appellees: Yoshiharu Ueda

BEFORE: ARTHUR NGIRAKLSONG, Acting Chief Justice; ROBERT A. HEFNER, Part-Time Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice

PER CURIAM:

BACKGROUND

In June, 1985, Uodelchad Isebong, the head female title holder of Omrekongel Clan and Espangel Esebei, the head male title holder, agreed to sell a piece of land on Ketund Mountain on Ngarkebesang Island to Carlos and Bilung Gloria Salii. The senior members of the clan gave Espangel permission to sell a portion of Ketund below the first loop of the Old Japanese Road. The portion of Ketund above ⊥213 the first loop of the Old Japanese Road is considered by the clan to be the "Comb of Ngarkebesang", or the seat of a god and therefore holy.

In negotiating the purchase, Bilung agreed not to build on the holy part of Ketund, but told Isebong she wanted a lot from which she could overlook Aimeliik, Koror and Malakal, and one high enough that no one could build above it. A Warranty Deed, dated June 24, 1985, prepared by Carlos Salii, was then executed and recorded (the "Warranty Deed"). The deed described the land as follows:

> that certain portion of land (mountain) known as KETUND located on the east/northeast side of said mountain, as close to the top of said mountain as possible, and facing Koror, the exact boundaries of which to be identified by

survey at a later date and to contain an area of approximately 2,000 tsubos.

Thereafter, during the summers of 1985 and 1986, appellants began clearing a portion of Ketund overlooking Aimeliik, Koror and Malakal between the first and second loop of the Old Japanese Road. A Certificate of Title to Lot No. 017 A 12, was then issued to appellants on June 30, 1989, which was in turn canceled on November 1, 1989 by the Land Claims Hearing Office. Appellees then filed an action for declaratory relief, appellants counter-claimed and a trial was held in October, 1990.

The trial court found that no contract of sale existed which set forth a description of the property to be purchased. It then looked to the deed itself to see if it contained a legally adequate description but concluded that there was no meeting of the minds because the deed was uncertain as to the: 1) description of the property; 2) configuration of the lot; or 3) size of the lot to be ⊥214 purchased. It therefore invalidated the deed and the sale and refused to order that the canceled Certificate of Title be declared valid.

On Appeal, appellants assert that the trial court erred by: 1) concluding that the Warranty Deed was ambiguous on its face and therefore void after improperly considering certain extrinsic evidence in the form of a 1986 "split map"; and 2) refusing to sua sponte recuse itself which in turn denied appellants a fair trial.

ANALYSIS

In order for a deed to operate as a legal conveyance of title, the land intended to be conveyed by the grantor must be described with sufficient definiteness and certainty to locate and distinguish it from other lands of the same kind. *Cox v. Hart* , 145 U.S. 376, 12 S.Ct. 962 (1892); *Carpentier v. Montgomery*, 80 U.S. 480, 20 L.Ed. 698 (1872). If the land intended to be conveyed cannot be identified from the deed, with the aid of extrinsic evidence, the deed is inoperative. *Id.*; 23 Am. Jur. 2d., *Deeds*, 48. A deed which purports to convey a specific part of a tract but which does not definitely or adequately locate the part is ineffective as a legal conveyance. The area to be conveyed and its location in relation to the larger tract must be specified. 23 Am. Jur. 2d., *Deeds*, 52.

The trial court committed no error by concluding that the Warranty Deed is void because it does not describe the property to be conveyed with sufficient clarity. Appellee may have agreed to ⊥215 sell Appellants some land on Ketund, but the Warranty Deed does not, on its face, dispel all doubts or uncertainty as to the locations, size or configuration of that land. It refers to a particular side of Ketund Mountain, but fails to specify anything further which could be used to definitively identify the lot envisioned by the parties. It does not even definitively state the precise amount of land to be purchased. These ambiguities could not be resolved by a contract or other writing memorializing the sale because none was executed. They could also not be resolved in favor of the grantee since it was the grantee who prepared the ambiguous deed. Moreover, there is substantial evidence in the record to support the trial court's conclusion that the parties differed in their understanding of the boundaries of the lot.

Appellants' argument that it was clearly erroneous for the trial court to look to extrinsic evidence to interpret the deed is without merit. A trial court may look to extrinsic evidence in attempting to resolve ambiguities in a deed. *Id.*, at Sec. 214, 221, 236. Appellants maintain that the trial court mistakenly tried to fit the 2,000 tsubos they claim they bought into one of three lots existing in 1986, instead of measuring it into the one lot that existed in June, 1985 when the deed was executed. Here, the trial court examined a map that was prepared in 1986, after the deed was executed, in an attempt to ascertain the intent of the parties and possibly to give effect to a failed deed. Having already determined that the 1985 deed was fatally ambiguous on its face, however, it was unnecessary for the court to examine this ⊥216 additional evidence, but it was not error to do so.

Appellants' claim that they were denied a fair and impartial trial because the trial judge did not recuse himself is also not persuasive. There is not a scintilla of evidence in the record to support their claim.

The trial court's decision is AFFIRMED, and REMANDED for determination of precise amount of purchase price and interest owed by appellee's to appellants; for a hearing to determine the value of the improvements made by appellants; and for judgment to be entered for said amounts in favor of appellants.