Bausoch v. Tebei, 4 ROP Intrm. 203 (1994)

IN THE MATTER OF THE APPEAL FROM THE DECISION OF THE LAND CLAIMS HEARING OFFICE

ILLILAU BAUSOCH, et al
Appellants,

v.

NGIRAUNGIANG TEBEI,
Appellee.

CIVIL APPEAL NO. 44-91
Civil Action No. 329-90

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: May 13, 1994

Counsel for Appellants: Moses Uludong

Counsel for Appellee: Johnson Toribiong

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; PETER T. HOFFMAN, Associate Justice

BEATTIE, Justice:

The parties to this appeal [1] dispute the ownership of three parcels of land in Airai State. The three parcels are named Tuchoi, Itaoch and Ngermiich. At the time of the Japanese land survey Tebei summoned his nephews, Rechirei Bausoch and Ultirakl, to clear the land and to set the boundaries. Only Tebei attended the land registration hearing conducted by the Japanese administration. As the Tochi Daicho for Airai was destroyed during ⊥204 World War II, no record remains of the ownership determination made by the Japanese, nor of the Tochi Daicho listing of the properties.

All parties conceded before the LCHO that the Tochi Daicho for Airai is not available. When asked what the Tochi Daicho would have said, had it been available, appellant Rechirei Bausoch testified that it would have shown the properties were owned by Tuchoi Lineage with Tebei as trustee. Appellee Ngiraungiang Tebei testified that it would have listed the property as the individual property of Tebei.

The LCHO made no specific finding with respect to what the Tochi Daicho would have

[1] Appellants appeal on behalf of the Tuchoi Lineage.

revealed if it had not been destroyed. However, it held that Itaoch "will continue to be owned by Tuchoi Lineage" and that Ngermiich and Tuchoi "remain" as property of Tuchoi Lineage (emphasis added). This determination was based on LCHO findings that Ngiraungiang Tebei was not a child, either by blood or adoption, of Tebei; that these parcels were not discussed at Tebei's eldecheduch; and that the nephews and natural daughter of Tebei met and agreed that the parcels would remain in the Tuchoi Lineage with Dilubech Misech as trustee.

The trial division had no comment on the findings made by the LCHO. Instead, it focused on findings it thought the LCHO could have made. The trial division held that it was error for the LCHO to fail to consider evidence that the Tochi Daicho, if available, would show the property as Tebei's individual property. It concluded that if the LCHO had considered that evidence, "it could reasonably have found" that Tebei was listed as the ⊥205 individual owner in the Tochi Daicho. Then, giving the Tochi Daicho its presumption of accuracy, it "might have" determined appellee to be the owner. The trial division therefore reversed the LCHO and remanded the case with instructions that the LCHO consider the evidence concerning the Tochi Daicho listings for the properties.

DISCUSSION

We find no indication that the LCHO failed to consider the evidence that the Tochi Daicho, if it had not been destroyed, would show the property listed as the individual property of Tebei. It is clear that the LCHO elicited testimony from appellant Rechirei Bausoch and appellee Ngiraungiang Tebei concerning what they contended the Tochi Daicho would reveal if it were available. Although both agreed the property was listed under Tebei's name, they disagreed on whether he was listed as trustee for Tuchoi Lineage or as individual owner.

The trial division was concerned that, absent a finding on the Tochi Daicho listing for the properties, the Tochi Daicho presumption of accuracy could not be applied. It held that appellee was deprived of his chance to take advantage of the Tochi Daicho presumption of accuracy by the failure of the LCHO to make a finding on how the properties were listed in the Tochi Daicho. That holding was based on the trial division's misapprehension of our decisions concerning the Tochi Daicho's presumption of accuracy.

⊥206 In *Ngiradilubech v. Timulch* , 1 ROP Intrm. 625, 629 (1989), we emphasized that the Tochi Daicho provides valuable extrinsic evidence of ownership where otherwise the court would be left with only the conflicting testimony of witnesses to establish the identity of land owners in the more and more distant Japanese times. Where, as here, the Tochi Daicho has been destroyed or is otherwise unavailable, it loses its value as extrinsic evidence of the results of the carefully conducted land survey performed by the Japanese administration just before World War II.

If the Tochi Daicho has been destroyed, in order to determine its contents the court must resort to weighing the conflicting testimony of witnesses. A witness' testimony regarding how the property was listed in the Tochi Daicho is relevant and may properly be considered by the fact finder in making an ownership determination because the identity of a property's owner

during the Japanese times is generally an important piece of information to be used in tracing the property's ownership to present times. But where the Tochi Daicho itself is unavailable as extrinsic evidence and the court must weigh conflicting testimony in order to make a finding regarding the contents of a destroyed Tochi Daicho, there is no basis for giving it a presumption of accuracy. This is because, unlike cases where the Tochi Daicho is available for inspection, whatever advantage is gained by the accuracy of the Tochi Daicho listing is offset by the fact that it can never be known to a certainty just how the land at issue was listed therein.

Therefore, we hold that when the Tochi Daicho for an area ⊥207 is not available and the parties dispute the manner in which the property they are claiming was registered therein, although the court may make a finding concerning how the property was listed in the Tochi Daicho, no presumption of correctness attaches to the listing.

In *Ngiratereked v. Joseph*, Civil Appeal No. 3-92, Slip op. at 4 (December 17, 1993), we held that when reviewing an LCHO decision the trial division may adopt the LCHO findings in whole or in part and /or make new findings of its own. Here, the trial division neither adopted nor rejected any LCHO findings. Nor did it make any findings of its own, concluding that it could not do so[2]. Accordingly, we reverse and remand this matter to the trial division for further action consistent with our holdings in this case and in *Ngiratereked v. Joseph*.

REVERSED AND REMANDED.

[2] The trial division's decision was made before our decision in *Ngiratereked v. Joseph*.