

Andreas v. Masami, 5 ROP Intrm. 205 (1996)
SEBASTIAN ANDREAS,
Appellant,

v.

DWIGHT MASAMI,
Appellee.

CIVIL APPEAL NO. 12-95
Civil Action No. 186-94

Supreme Court, Appellate Division
Republic of Palau

Opinion
April 15, 1996

Counsel for Appellant: J. Roman Bedor

Counsel for Appellee: Oldiais Ngiraikelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice.

MILLER, Justice:

The Land Claims Hearing Office ("LCHO") issued a determination that appellee Dwight Masami was the individual owner of Temporary Lot 182-122, part of Tochi Daicho Lot 580, located in Iyebukel Hamlet of Koror State. Appellant Sebastian Andreas appealed the LCHO's determination to the Trial Division of the Supreme Court, which affirmed Masami's ownership. Andreas now appeals from the trial court's decision.

Appellant argues that the LCHO lacked subject matter jurisdiction over this dispute because it involves a "boundary dispute," rather than a dispute about ownership of the property. Appellant further contends that the trial court's decision to affirm the LCHO's determination regarding ownership is clearly erroneous in light of the lack of evidence regarding the sale of the property. Appellant also argues that to the extent that there is evidence of a conveyance of the property, the Statute of Frauds voids the conveyance because it is not in writing.

For the reasons set forth below, we reject appellant's arguments and affirm the trial court's decision.

A. The LCHO's Jurisdiction

Appellant cites no authority in support of his argument that a boundary dispute lies outside the jurisdiction of the LCHO.¹ We find that argument without merit. The determination of property boundaries is inherent in the determination of ownership. The Palau Lands Registration Act requires a survey of the boundaries of the property to be performed prior to registration. 35 PNC § 1108. In addition, Section 7 of the LCHO Rules and Regulations explicitly refers to boundary disputes. Thus, determining boundaries as part of determination of ownership is part and parcel of the LCHO's duties under the statute and as contemplated by the regulations.

B. Whether the Trial Court's Findings Were Clearly Erroneous

Appellant's argument that the trial court's finding of ownership is clearly erroneous should also be rejected. There is sufficient evidence in the record to support the LCHO's and the trial court's finding that appellee is the owner of the property. First, appellant admitted that the land in question was given to the appellee. Second, there is testimony that appellant's father, Trolii, sold the land to Kesolei, who in turn sold it to appellee's father, Masami Siksei, in the 1960s. Third, DLM Map SK 289-68, which indicates that the property was sold to Siksei in or before 1968 and was introduced into evidence before the LCHO, corroborates the sale. Finally, appellant testified that the map was prepared in accordance with the sale to Siksei. Therefore, the trial court's acceptance of the LCHO's determination regarding ownership was not clearly erroneous.

In light of this evidence, appellant's argument based on the Statute of Frauds must also fail. The Statute of Frauds was enacted by the Palau Legislature in 1976 and first became effective as of April 1, 1977, pursuant to Public Law No. 6-3-2 § 7. As noted above, the LCHO found and there is evidence to support the conclusion that the property was sold to Siksei in or before 1968 and well before 1977. The Statute of Frauds is thus inapplicable in this instance. Accordingly, the judgment of the trial court is AFFIRMED.

¹ Appellee contends that the court should reject this argument because it was not raised below; however, it is well-established law that lack of subject matter jurisdiction is a defect that cannot be waived. *See* 5 Am. Jur. 2d *Appellate Review* § 691 (1995).