

Badureang Clan v. Ngirchorachel, 6 ROP Intrm. 225 (1997)

**BADUREANG CLAN,
Appellant,**

v.

**TEMAEL NGIRCHORACHEL,
Appellee.**

CIVIL APPEAL NO. 8-96
Civil Action No. 13-95

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: September 2, 1997

Counsel for Appellant: Yukiwo Dengokl

Counsel for Appellee: Moses Uludong, T.C.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; R. BARRIE MICHELSEN, Associate Justice; and ALEX R. MUNSON, Part-time Associate Justice.

PER CURIAM:

This appeal involves a claim for the land Esilek, located in Koror State. The Palau District Land Commission (“Commission”) issued a Determination of Ownership (“DO”) on July 7, 1976 indicating that the property belonged to Appellee, Tema el Ngirchorachel (“Tema el” or “Appellee”), who was the only claimant to appear before the Commission and to assert ownership of the property. Appellant, Badureang Clan (“Clan”), claims its failure to participate in the Land Commission proceedings was a result of fraud or misrepresentation. The trial court found that the Appellant’s theory regarding fraud failed as a matter of law and fact. We affirm the trial court’s decision.

ANALYSIS

This case raises only two issues: (1) whether Appellant’s argument that Appellee misrepresented material facts in the proceedings before the Commission is properly before this Court; and (2) whether the trial court’s finding that Appellee had no **L226** knowledge of any potentially fraudulent behavior on the part of his mother was clearly erroneous.

1. Temael's Misrepresentation

Appellant argues that the record indicates that Temael, as the only claimant to Esilek, misrepresented at the Land Commission proceedings that the strong, senior members of the Badureang Clan, which was listed on the Tochi Daicho as the owner of the property, had notice of Temael's claim to Esilek. Appellant further argues that the Land Commission relied upon this misrepresentation in issuing the DO, and therefore that Temael obtained the certificate of title by means of fraud.

Regardless of the merits of the Clan's claim, the claim must fail on appeal because appellant did not make this argument to the trial court. *Sugiyama v. Ngirausui*, 4 ROP Intrm. 177, 179 (1994)(Issues must be raised before the trial court.). The trial court in its January 3, 1996 Decision ruled against appellants on the fraud issue, without resolving all of the factual issues of the case, on the grounds that the allegations of fraud were directed against Temael's mother rather than himself. The trial court noted that "[t]here was no allegation that Temael made any representation, fraudulent or otherwise, nor was there any theory presented on which his mother, Ebil-Tulik Yaisang, could be considered his agent acting under his authority." Decision at 3. Thus, appellant has waived his right to make this argument to the Appellate Division.¹

2. Misrepresentation By Temael's Mother

Appellant's second argument is that the trial court's 1227 finding that his mother was not acting as Temael's agent is clearly erroneous. At trial, Appellant claimed that Temael's mother had been directed by the senior members of the Clan to claim Esilek, and that she agreed to do so. Appellant argued that she did not claim Esilek on behalf of the Clan so that her son Temael would be the sole claimant before the Land Commission. On appeal, Appellant asserts that there is a "well disguised fraudulent connection between Appellee and his mother." Appellee argues that the evidence reveals that Appellee knew that his mother was to represent the Clan with respect to its claim for Esilek, and it was clearly erroneous for the trial court to find otherwise.

Appellant concedes that there is no direct evidence that Temael knew of any fraud and acknowledges that it can only point to circumstantial evidence in support of its argument. In making its case that the trial court's finding that Temael had no knowledge of any fraud was

¹ Appellant asserted at oral argument that the issue had been preserved in his complaint. Although the complaint alleged that Temael had misrepresented certain facts, it is nevertheless clear from a review of the proceedings that this theory of liability was not actually argued at trial. Therefore, the trial court did not make any factual finding in connection with this claim. We note that if successful, appellant's claim regarding Temael's misrepresentation would prejudice appellee, because it would require a remand to the trial court to make the necessary factual findings that could have been made at trial. Thus merely raising this claim in the complaint, without further argument to the trial court, fails to preserve the claim. *See U.S. v. Carlson*, 900 F.2d 1346, 1349 (9th Cir. 1990) (one exception to the general rule that an issue cannot be raised for the first time on appeal is where the issue presented is purely one of law and the opposing party will not suffer any prejudice as a result of raising it on appeal for the first time.)

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clearly erroneous, Appellant relies on the following facts in the record: 1) Appellee was 45 years old at the time of the Land Commission proceedings, and was a strong senior member of the Clan; 2) Appellee's mother did not testify at the hearing, even though she was present and was in the best position to know whether Esilek had been given to Temaël; 3) when the determination of ownership was issued in 1976, it was served on Appellee's mother, not Appellee; and 4) Appellee knew that the property had belonged to the Clan, but said he was merely following his mother's instruction that Esilek had been given to him. In sum, Appellant appears to argue that if there had been any fraud by Temaël's mother, then Temaël must have known about it.

Unless the Court is left "with a definite and firm conviction that a mistake has been committed," *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994), it will uphold the trial court's findings of fact. Although the facts asserted by the Appellant certainly could lead to the conclusion that Temaël would have had knowledge of any fraudulent scheme on his mother's part, the circumstantial evidence is clearly not so compelling that it leads to the Court to the inexorable conclusion that Temaël must have known of any fraud. Thus, we uphold the trial court's findings as not clearly erroneous.

CONCLUSION

For the reasons stated above, the judgment of the trial **L228** court is AFFIRMED.