Secharmidal v. Techemding Clan, 6 ROP Intrm. 245 (1997)

SHIPRIT SECHARMIDAL,
Appellant,

v.

TECHEMDING CLAN,
Appellee.

CIVIL APPEAL NO. 17-96
Civil Action No. 484-92

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: September 23, 1997

Counsel for Appellant: Raynold B. Oilouch

Counsel for Appellee: Moses Y. Uludong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

MICHELSEN, Justice:

This appeal represents the latest effort of these land claimants to litigate ownership of parcels that Appellant argues, and Appellee disputes, were part of a property known as "Derbai." *See also Techemding Clan v. Mariur* , 3 ROP Intrm. 116 (1992). What appears to be a straightforward case contains, upon closer review, a number of complicating issues, but we believe the Trial Division properly found its way through the legal thicket, and we affirm the judgment below in all respects.

We will state the comparatively easy part first. In this litigation Shiprit Secharmidal filed a complaint to quiet title to the southeastern panhandle of Cadastral Lot 046 B 027, found on Cadastral Plat 046 B 00. This Lot number is the same parcel as Lot K-119 on sketch map SK-532/78. The disputed section, approximately sixteen by sixteen meters, is where Kebor Masang of Techemding Clan has lived for the last thirty years. Secharmidal argued that the panhandle was erroneously considered by the Land Commission as part of K-119 when in 1981 it issued a determination of ownership to Techemding Clan. The evidence showed, as fairly summarized in Appellant's brief, that his father

⊥246 showed up at the monumentation but instead of putting his markers on the land, he [Secharmidal's father] only reminded the Land Commission officials conducting the monumentation that he had previously claimed the land and that it was his land already.

We will be discussing the basis for his claim shortly. Suffice it to say here that his father did not file claim to the property during those proceedings in 1979, did not attend the hearing for K-119, and filed no appeal. The determination of ownership was issued in February 1981, and encompassed the area that Secharmidal now claims in this case.

The obvious argument for the Defendant Clan in this latest round of litigation is the preclusive effect of the Land Commission's 1981 Determination of Ownership. An unappealed determination of ownership issued pursuant to 67 TTC § 115 precludes a later claim to the subject property. This rule applies to persons who chose not to participate in those proceedings. *Bilamang v. Oit* , 4 ROP Intrm. 23 (1991). That normally would be the end of the matter, and Secharmidal would be precluded in 1992 from challenging the 1981 determination. However, it turns out that there were separate proceedings, both before and after 1979, that also read as if they are the final word, and it must be determined whether such proceedings impact on the otherwise conclusive effect of the 1981 hearings.

The 1960 Determination of Ownership

In 1960, the Palau District Land Title Office issued "Determination of Ownership No. 172" for a parcel called "Derbai" to Secharmidal Tengatel, Shiprit Secharmidal's father. As noted by the Trial Division:

> Because the evidence does not show the location of precise boundaries of the parcel covered by Determination No. 172, it is not possible to tell how much of the subject property was involved in that determination. However, since it included at least part of the subject property, the court must consider how Determination No. 172 impacts on the instant case.

Secharmidal argues here that by the terms of 67 TTC § 112 (as amended by Secretarial Order 2969, section 8) the Land Commission and its land registration teams were bound by this prior determination of ownership, and consequently the Land Commission ⊥247 was without jurisdiction to decide ownership of any property within the boundaries of Determination No. 172. We disagree. As amended by Secretarial Order 2969, the section read:

> Neither an adjudicatory body referred to in Section 3 of the Secretarial Order 2969 nor a Commission nor a land registration team, however, shall endeavor to redetermine any matter already decided between the same parties or those under whom the present parties claim, by a Court, an adjudicatory body referred to in Section 3 of Secretarial Order 2969, Commissions, and land registration teams shall accept such prior determinations as binding on such parties without further evidence than the judgment or determination of ownership.

As this Court has previously noted in *Rurcherudel v. Airai State* , 1 ROP Intrm. 620, 622 (1989), section 112 is, to put it mildly, "ambiguous." The 1980 Trust Territory Code published by Michie Company tried to make sense of the language by placing a period after "Court," and

then starting a new sentence. The substitution of the period for the comma corrects the garbled structure as originally worded. However the Michie Company's version of the Code was never enacted as positive law, and in any event came too late to affect the 1979 Land Commission hearings here, so we are stuck with the Order's broken syntax.[1]

Before the Secretarial amendment, Section 112 specifically included "a Land Title Officer's Determination of Ownership" as a document that the Land Commission "shall accept as binding on the parties." *See* 67 TTC § 112. In light of the purposes of the amendment, which have nothing to do with limiting the evidentiary value of prior land title proceedings, we believe that both before and after the Secretarial Order's makeover of section 112, Land Title Officer determinations were entitled to res judicata effect. ⊥248 *Rurcherudel* at 623.

Secharmidal's complaint in this case is not that the Land Commission refused to give res judicata effect to evidence offered by him during the proceeding. Rather, he suggests that section 112 meant that "the Land Commission was barred from redetermining ownership of the disputed portion, regardless of whether or not Appellant or his father appeared at the Land Commission hearing." He argues this is an issue of authority or jurisdiction.

However, section 112 is not the section that specifies the jurisdiction of the Land Commission. That section is 67 TTC § 101 and the jurisdiction was, geographically, very broad. The Land Commission was "authorized and empowered, subject to the provisions of this chapter to determine the ownership of **any land in its district**." *Id.* (Emphasis added). Adjudicating the land encompassed by the 1960 Determination of Ownership was, therefore, within its jurisdiction. Indeed, the language of section 112 clearly contemplates that evidence presented to the Land Commission would include evidence of prior land proceedings. Section 112 instructed the Commission how to handle such evidence. It "shall accept such prior determinations as binding on such parties without further evidence than the judgment or determination of ownership." Section 112 cannot be said to impose a jurisdictional limitation.

Although Secharmidal could not have successfully argued before the Land Commission that it was without jurisdiction because of section 112, he was certainly free to argue the res judicata effect of the 1960 determination during those proceedings. *Rurcherudel v. Airai State*, 1 ROP Intrm. 620 (1989); *Uchellas v. Etpison* , 5 ROP Intrm. 86 (1995). Failure to give res judicata effect to Land Office determinations can constitute reversible error. *Kloteraol v. Ulengchong*, 2 ROP Intrm. 145 (1990) (upholding Trial Division reversal of Land Commission for failure to give preclusive effect to Land District Office determination).

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[1] The 1985 Palau National Code, whose drafters relied in part on the Michie Company's publication when drafting it [see Introduction p. iv], picked up the Michie Company's correction of the sentence structure. See 35 PNC 930(b) (1985 ed.). The Code became effective in 1985, so it would not have impacted upon the 1979 Land Commission hearing here. It is unlikely that for cases after 1985 the Code's use of the Michie Company language will make a difference, because when any inconsistencies are found between the Palau Code and former law, "substantial weight shall be given to those [prior] enactments in interpreting the law." RPPL No. 2-3 3(3).

We also note the provision has now been repealed and replaced.

But he did not make that argument. Appellant waited eleven years, then sued on the basis that his father's determination of ownership preceded, and therefore negated, the Clan's later determination of ownership. However, as in *Bilamang* the Clan's 1981 determination of ownership has preclusive effect and consequently the Trial Division correctly decided that Secharmidal, who had notice of the Land Commission proceedings, is bound by the resulting determination of ownership.

Even if we were to decide that both Determinations are entitled to equal weight, then the Restatement (Second) of ⊥249 Judgments § 15 (1982) provides guidance:

> When in two actions inconsistent final judgments are rendered, it is the later, not the earlier, judgment that is accorded conclusive effect in a third action under the rules of res judicata.

Under the Restatement approach, the 1981 determination would be accorded res judicata effect. However, Appellant counters that he is not bound by the 1981 determination, because he did not receive notice of it.

While Appellant concedes he had initial notice, he argues he was not provided notice of the issuance of the 1981 Determination. He points out that Determinations of Ownership must be duly served, 67 TTC § 114, and since he was not served, he should not be bound.

Section 114 of Title 67 states that notices of determinations of ownership shall be given "in the same manner" as provided for notices of hearings for land registration hearings in section 110. However, it does not state who is to receive such notices. Appellant suggests that since section 110 provides that "all parties shown by the preliminary inquiry to be interested" should receive notice of the land registration team hearing, that is the same group of people who should receive notice of the final Land Commission determination of ownership. Put another way, Appellant believes the Land Commission must serve its determinations on all persons who were "interested" at the preliminary inquiry, even if they later withdrew their claims, or never even filed one. The statute does not require service on that large a class. Parties to the proceedings before the Land Commission may appeal. 67 TTC § 115. The corollary is that non-parties cannot appeal. *Ulenchong v. LCHO*, 6 ROP Intrm. 174 (1997). Since Secharmidal's father never filed a claim, he was not a party before the Land Commission, had no right to appeal, and consequently cannot object to not being served.

The 1990 litigation

There was a sequel to this controversy. The Appellant argues that notwithstanding the Land Commission determination of ownership, the land was subject to yet another adjudication in 1990. In that case, judgment was entered in his favor, and against Techemding Clan. Consequently he argues that he is entitled to prevail in this litigation.

Secharmidal's argument, if accepted, would vault him past the ⊥250 1981 determination of ownership and entitle him to argue his judgment is last in time, and he prevails because of section 15 of the Restatement of Judgments quoted above.

The judgment in 1990 stated "Defendants Kebekol Yano Mariur, Itaru Ishigawa, and Shiprit Secharmidal... are the true owners of that land known as Derbai." The judgment does not provide enough information to determine whether "Derbai" includes that part of K-119 claimed by Appellant here, so the pleadings must be examined, and that requires a trip through a procedural muddle.

On September 25, 1990 Techemding Clan filed a complaint asking that Defendants Mariur and Ishigawa be ejected from lots adjacent to K-119, and that a judgment issue declaring the Clan as owners of those lots. A motion for a temporary restraining order was also contemporaneously filed. The request for injunctive relief was denied after a contested hearing on September 27, 1990. The order denying relief states: "Pursuant to the agreement of parties Defendants shall file their motion for summary judgment... October 1, 1990, and a hearing thereon shall be October 4, 1990."

On October 1, 1990, defendants Mariur and Ishigawa filed an answer and a "motion for partial summary judgment". The motion and memorandum of law concluded: "Defendants pray that this Court enter Summary Judgment in this case dismissing Plaintiff's claim with prejudice and confirming Defendants' ownership of their respective parcels."

On the same date, defendants' counsel filed a motion to intervene and an "intervenor's complaint" on behalf of Shiprit Secharmidal. [2] It was granted on the record at the beginning of the October 4th hearing.

From the Intervenor's pleading it can be gleaned that he did not contest the Defendants' title to their lots. He alleged his father "sold part of [Derbai] to [Defendant] Mariur, gave a small portion of it to [Defendant Ishigawa] and retained the lower part of the land for himself." Intervenor's complaint at para. 12. The purpose of the intervention was to expand the scope of the litigation and obtain "quiet title to the lower portion of the original Tochi Daicho Lot No. 961." That portion was not at issue ⊥251 in the litigation until mentioned in the intervenor's complaint. It is this latter parcel that is at issue in this appeal.

Therefore, before the Court on October 4, 1990 was the motion for summary judgment of

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[2] Although the intervenor's complaint does not mention Secharmidal in the caption, the body of the pleading, or the prayer for relief, we will liberally construe the intervenor's complaint to be Secharmidal's.

Mariur and Ishigawa, and the motion to intervene by Secharmidal. The Intervenor filed no summary judgment motion. Appellant seems to suggest that since the oral argument on that date explained Appellant's position, that presentation justified granting summary judgment in his favor. Oral motions for summary judgment are not permitted under the rules. Rules 7(b)(1) and Rule 56(c), ROP R. Civ. Pro. Even if he had filed a motion for summary judgment on October 4, 1990, the adverse party was entitled to ten days notice of the motion by the terms of Rule 56(c), ROP R. Civ. Pro. This rule should be "strictly enforced." *Powell v. United States* , 849 F.2d 1576, 1579 (5th Cir. 1988). "The ten-day notice period required by Rule 56 is necessary because summary judgment forecloses any future litigation of a case." *White v. Texas American Bank/Galleria*, 958 F.2d 80, 83-84 (5th Cir. 1992).

The Intervenor did file an "affidavit in support of defendants' motion for summary judgment", which concluded;

> it appears very clear to me and should be clear to this Court that the Plaintiffs are suing the Defendants in bad faith and this Court must enter an order dismissing their unfounded claims.

This statement cannot be construed to be asking for affirmative relief for himself.

For us to hold that Intervenor's request for affirmative relief is part of the 1990 judgment, we would have to accept that, within moments of having his motion to intervene granted, the Appellant implicitly made an oral motion for summary judgment, and that the court implicitly granted it. It is more of a leap than we can justifiably take. The 1990 judgment can only be construed to be a judgment concerning the motions of record before the Court, and therefore the 1990 judgment was not a decision of the parcel at issue here.

Having looked on both sides of the timeline from 1981, we see no reason that the Clan's 1981 determination of ownership should not be given conclusive weight, and affirm the Trial Division.