Estate of Etpison v. Sukrad, 7 ROP Intrm. 173 (1999)

ESTATE OF ETPISON,
Appellant,

v.

VALENTINA SUKRAD, WILLY WALLY, JR., and SUMIE ELBELAU,
Appellees.

CIVIL APPEAL NO. 59-97, 61-97
D.O. Nos. 12-185,12-186,12-187,12-188

Supreme Court, Appellate Division
Republic of Palau

Argued: December 9, 1999
Decided: March 10, 1999
Petition for rehearing denied: April 14, 1999

Counsel for Appellant: Christina M. Ragle

Counsel for Appellees Willy Wally, Jr. and Valentina Sukrad: Raynold B. Oilouch

Counsel for Appellee Sumie Elbelau: Johnson Toribiong

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

BEATTIE, Justice:

This is an appeal from Land Court Determinations of Ownership relating to land known as Lemel, located in Ngerchemai Hamlet, Koror. The land at issue consists of five lots, designated as lot numbers 181-224, 181-230E, 181-230H, 181-230J and 181 -230L. All of the lots are within Tochi Daicho Lot 561.

All parties agree that the land was at one time owned by Obakerbau, who is registered as the owner in the Tochi Daicho. When he died, his son, Omengkar Wally ("Omengkar") inherited the land. It is also undisputed that in 1963 Omengkar sold a 400 tsubo portion of Tochi Daicho, lot 561 to Kebekol Mariur ("Kebekol"). The parties agree that the sale included at least lots 181 - 224, 181-230E, 181-230H and 181-230J. The dispute centers on what happened to the lots after the sale to Kebekol.

According to the Estate of Etpison ("Estate") all of the lots were conveyed to Kebekol, who then conveyed them to Ngiratkel Etpison ("Etpison"). The Estate contends that Etpison acquired the land in two transactions, one in 1964 and one in 1985. There are several deeds from

Kebekol to Etpison, all dated and recorded in 1985, which the Estate relies upon to support its claim.

Sumie Elbelau ("Elbelau"), who only claims lot 181-230H, testified that Kebekol sold the lot to her in 1964 before the sale to Etpison. She built a house on the lot and has been living there since 1964.

Willy Wally, Jr. ("Wally") is a son of Omengkar. He and Omengkar's sister, Valentina Sukrad ("Sukrad") inherited Omengkar's interest in Lemel when Omengkar died. They claim that Kebekol reconveyed lots 181-224, 181-230E and 181-230J to Omengkar in 1964, prior to Kebekol's transaction with Etpison. [1] Thus, they claim ⊥174 these three lots as the heirs of Omengkar. In support of their claim, they point out that Omengkar lived on lot 181-224, using lots 181-230E and 181-230J for access, until he died in 1972. Additionally, in 1994 Wally tore down Omengkar's house and built a new one on lot 181-224, and nobody objected to his use and occupation of the lot until 1997 when claims were filed in this case.

LAND COURT DETERMINATION

The Land Court held that Elbelau was the owner of lot 181-230H based upon its finding that Kebekol had sold it to her in 1964 before Kebekol's sale to Etpison. The Estate does not dispute the finding that the sale to Elbelau preceded the sale to Etpison. The Estate contends, however, that Etpison was a bona fide purchaser for value without notice of Elbelau's claim. Elbelau had no deed of record at the time of the Etpison purchase, and Etpison recorded his deeds in 1985. Under 39 PNC § 402, a transfer of ownership of land is not valid against any subsequent purchaser of the same land if the subsequent purchaser buys it in good faith, without notice of the prior transfer, and is first to record his deed. [2] Therefore, the Estate claims that the Land Court erred in awarding the property to Elbelau.

Contrary to the Estate's contention, there is an abundance of evidence that Etpison had notice of Elbelau's interest in the property. First, at the time of the sale to Etpison, Elbelau was living on the land. A purchaser is charged with constrictive notice of the claim of an occupant of the purchased land insofar as a reasonable inquiry would have disclosed the claim. *Ueki v. Alik*, 5 ROP Intrm. 74, 78 (1995). Second, one of the deeds conveying the property to Etpison states that Kebekol would "be responsible to solve problems involving houses within the boundary of this property."

We review the findings of the Land Court under the clearly erroneous standard. Under that standard, if the factual findings made by the Land Court are "supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, those findings

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[1] The alleged reason for the reconveyance is that Kebekol paid for the land by giving Omengkar a boat. The boat broke down shortly thereafter, so Omengkar gave it back and Kebekol reconveyed the land to Omengkar.

[2] Because the parties do not raise the issue, we do not address the question whether the recording statute applies where one claimant acquires his interest before the enactment of the statute and the subsequent purchaser acquires his interest after the enactment.

will not be set aside unless this Court is left with a definite conviction that a mistake has been committed." *Elbelau v. Semdiu* , 5 ROP Intrm. 19, 22 (1994). The Land Court was not clearly erroneous in rejecting the Estate's contention that Etpison had no notice of Elbelau's claim.

The Estate further argues that the Land Court erroneously held that Elbelau acquired the land by adverse possession. We do not read the Land Court decision as holding that there was an acquisition by adverse possession. Although the Land Court did note that Elbelau had open and exclusive use and occupation of the land for thirty years, it did not hold that the use and occupation--rather than the sale by Kebekol--is what gave Elbelau title. It merely viewed Etpison's lack of objection as additional evidence that he did not own the land. *See Mesubed v. Iramek*, Civ. App. 47-97 (January 15, 1999), slip op. at 2.

⊥175 The Land Court found that Kebekol reconveyed lots 181-224, 181-230E and 181-230J to Omengkar prior to Kebekol's sale of the lots to Etpison. Therefore, it awarded these lots to Wally and Sukrad, as the heirs of Omengkar.

The Estate contends that it was clearly erroneous to find that Kebekol reconveyed the lots to Omengkar. One factor which was cited by the Land Court as evidence of the reconveyance was testimony that the land was given out at Omengkar's eldecheduch by Omengkar's relatives, including Kebekol. The Estate contends that in litigation relating to the estate of Omengkar, Wally and Sukrad both took the opposite position--that the land was not given out at Omengkar's eldecheduch. This is powerful impeachment evidence which shows that the testimony at before the Land Court was false, according to the Estate.

Although the conflicting contentions asserted in the estate proceedings and the Land Court hearing is enough to give any trier of fact pause, the Estate never informed the Land Court judge of the prior conflicting assertions of Wally and Sukrad. Although the Estate has directed our attention to the conflicting assertions, we are not triers of fact. Our task is to determine whether the Land Court was clearly erroneous in making its findings of fact. Where a party's contention that a finding is erroneous is based upon evidence that was not introduced at the trial, we cannot say that the trial judge was clearly erroneous in failing to take such evidence into account.

What transpired at Omengkar's eldecheduch was not the only evidence the Land Court relied upon in finding that Kebekol reconveyed the property to Omengkar. Omengkar occupied lot 181-224 until his death in 1972. Thereafter Wally lived on the lot and eventually tore down the old house on the lot and built a new house. He and his father both used the access road, consisting of lots 181-230J and 181-230E, for ingress and egress to lot 181-224. This use and occupation of the land was also important evidence which supported the finding that Kebekol reconveyed the land to Omengkar. Although there was no written instrument evidencing the reconveyance, we cannot say that it was clearly erroneous to find that Kebekol indeed reconveyed the land to Omengkar based upon the testimony that it was reconveyed and Omengkar's, and later Wally's, use and occupation of the land.

The Estate also argues that the Land Court erroneously awarded the land to Wally and

Sukrad based upon adverse possession. As we said regarding Elbelau's claim, the Land Court did not hold that Wally acquired the land by adverse possession. It only considered Omengkar's and Wally's use and occupation of the land without objection by Etpison as further evidence that Kebekol indeed reconveyed it to Omengkar prior to Kebekol's sale to Etpison.

The Estate claims that the conveyance to Etpison should prevail over the reconveyance to Omengkar because Etpison purchased the property without notice of the claim of Omengkar and recorded his deed when it was delivered to him in 1985. However, because Omengkar occupied the land in 1964 and Wally was living on the property at the time the 1985 deeds to Etpison, Etpison had notice of their claims. *Ueki v. Alik*, 5 ROP Intrm. 74, 78 (1995).

⊥176 LOT 181-230L

The Land Court determined that the Estate was the owner of Lot 181-230L based on its finding that "no one contested [the Estate's] claim to 181-230A, 230B, 230D & 230L." (Land Court Adjudication at 2). Thus the Estate was held to be the owner of those lots. Wally and Sukrad claim that the Land Court erred because they did indeed claim lot 181-230L.

The confusion over lot 181-230L arises largely from the fact that the Land Court used two different maps: one at the hearing, and another for its Adjudication. The map used at the hearing does not contain any lot that is labeled 181-230L. Instead, the land which was labeled as 181-230L on the second map is contained within the land labeled as 181-223 on the map used at the hearing. Wally's testimony shows the confusion caused by treating the two lots as one lot on the map used at the hearing. When the Land Court Judge first began asking questions in an attempt to ascertain what land Wally and Sukrad claimed, Wally answered "no" when asked "As for lot number 181-223, Willy you have no claim on it?" [3] Wally then asked if he could explain and was told "No. Answer the question raised by the court. Do you have any claim on 181-223 or not?" Wally stated that he was claiming part of lot 181-223B. [4] And, after more discussion, "What the Court would like to know is, do you Willy have a claim on lot number 181-223?" Wally answered. "That is correct." [5] The Judge then repeated the question and, again, Wally answered in the affirmative.

It is clear that the parcel of land that is designated as lot 181-223 on the map used at the hearing contains within it, not only lot 181-230L as shown on the post-hearing map, but numerous other lots shown on the post hearing map. In other words, the land which was once shown as a single lot, 181-223 on the map used at the hearing, was carved into numerous smaller lots on the post-hearing map upon which the adjudication was based. At the hearing, the judge took testimony from the claimants in order to determine what portion or portions of lot 181-223 was being claimed by each of the claimants.

Wally's testimony indicated that he and Sukrad were claiming the portion of lot 181-223 which serves as an access road to lot 224:

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[3] Tr. at pp. 31-32.

[4] Tr. At p. 32, L. 15-20.

[5] Tr. at p. 34, L. 3-6.

JUDGE: You are claiming the entire 181-224, part of 181 -223 but that is the excess [sic] road only?

WALLY: Only the excess [sic] road.[6]

Wally does not dispute the Land Court's determination that the access road consists of lots 181-230J and 181-230E, [7] and the Land Court determined that he and Sukrad were the owners of those lots.

⊥177 We review the Land Court's finding that Wally and Sukrad did not claim the land now known as lot 181-230L under the clearly erroneous standard. Based upon the testimony presented, we cannot say that the Land Court was clearly erroneous in finding that Wally and Sukrad did not claim lot 181-230L.[8]

CONCLUSION

For the foregoing reasons, the decision of the Land Court is AFFIRMED.

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[6] Tr. at p. 11, L. 3-6.

[7] Adjudication at p. 3.

[8] Wally and Sukrad did not appeal the finding that they did not claim lots 181-230A, 181-230B, 181-230D and other parts of 181-223.