Heirs of Drairoro v. Dalton, 7 ROP Intrm. 162 (1999)

HEIRS OF DRAIRORO, et al.,
Appellants,

v.

MARGARITA DALTON,
Appellee.

CIVIL APPEAL NO. 12-97
Civil Action No. 354-93

Supreme Court, Appellate Division
Republic of Palau

Argued: December 7, 1998
Decided: February 26, 1999
Amended: May 19, 1999

Counsel for Appellants Heirs of Drairoro et al.: Mariano W. Carlos

Counsel for Appellant Florentine Yangilmau: Yukiwo P. Dengokl

Counsel for Appellee Margarita Dalton: Mark Doran

Counsel for Cross-Appellee Thomas Patris: Clara Kalscheur

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

MILLER, Justice:

This appeal arises from an action to quiet title in four parcels [1] of land located in the ⊥163 village of Echang on Ngerkebesang Island. The Trial Division awarded title to all four parcels to Appellee Dalton, finding that her grandfather, Jesus Borja, had been owner of all the disputed land prior to the Japanese seizure and occupation of Ngerkebesang during World War II. Appellants, descendants of individuals from the Southwest Islands who were settled in Echang after a typhoon destroyed their homes in 1904, contend that the Trial Division's ruling was error, and that the settlers themselves held title to the land at the time of the seizure. We affirm the Trial Division's decision in part, reverse it in part, and remand the case for further proceedings.

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[1] The parcels at issue are Tochi Daicho Lots Nos. 1587, 1588, 1589, and 1590. In the Cadastral resurvey, Lot 1587 became Lot 27 A 10, while the remaining Lots were consolidated into Lots 27 A 12, 27 A 14, and a portion of 27 A 13. Unless otherwise noted, lot numbers in this opinion are the Tochi Daicho lot numbers.

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BACKGROUND

In 1904, following destruction of their homes in the Southwest Islands by a typhoon, men named Drairoro, Balthazar, and Tahaserimeng were rescued and re-settled on lands donated by the clans of Ngerkebesang, in the current village of Echang. Prior to World War II, portions of Echang were sold or leased by the owners to Japanese interests, and with the outbreak of war, the remainder of Ngerkebesang, including all of Echang, was seized by the Japanese for military purposes. Following the war, the Trust Territory Government became custodian of all lands formerly held by the Japanese, including Echang. A dispute between the clans of Ngerkebesang and the Trust Territory Government over ownership of the lands resulted in a settlement in 1962, in which the Trust Territory conveyed all of Ngerkebesang to the clans and "those claiming ownership through, from or under the clans." In addition, the 1962 settlement gave the residents of Echang a use right to those lands.

Appellants, who are various descendants of the original settlers from the Southwest Islands, claim that since the clans gave their ancestors the lands of Echang in fee simple, title to those lands today rests with them.[2]

Appellee Dalton, on the other hand, is granddaughter of Jesus Borja, whom she claims owned the lands in question at the time of the Japanese seizure. [3] Dalton claims that, in the early 20th century, Ibedul Tem, grateful for a boat that Borja had built for him, took Borja to the top of a hill in Echang, faced towards the ocean with his arms spread apart, and told Borja that all the land between the Ibedul's outstretched arms would henceforth be his. Dalton contends that Borja and his family farmed on the property granted by the Ibedul up until the Japanese seized it.

Trial of this matter involved numerous witnesses and documents. In the end, however, the Trial Division's decision to award the property to Dalton, as an heir of Borja, was based largely on a 1981 Summary and Adjudication issued by the Land Commission which never became final, but which suggested that several of the disputed ⊥164 parcels were registered to Borja in the Tochi Daicho. Appellants vigorously contest the court's reliance on this Summary and Adjudication, contending that the notation of the Tochi Daicho owner of the parcels is in error, and that the Tochi Daicho in fact reflects that ownership of the parcels at the time of the Japanese survey was the subject of a dispute between the settlers and representatives of the clans of Ngerkebesang. Borja, they contend, never owned -- or claimed to own -- the lands.

DISCUSSION

We begin with the commonly understood proposition that this Court reviews the Trial Division's factual findings under a "clearly erroneous" standard, and will reverse such findings only if they are unsupported by relevant evidence or where this Court is left with a "definite and

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[2] The Appellants all claim title to the parcels at issue through a common ancestor, Drairoro. However, schisms have developed within the family line, with some members asserting ownership interests in this case exclusive to their kin.

[3] Borja was the undisputed owner of land adjacent to the parcels in question here.

firm conviction that a mistake has been made." *Kulas v. Becheserrak* , 7 ROP Intrm. 76, 77 (1998). With that standard in mind, we now turn to the Trial Division's findings on the various parcels of land.

(1) Lot 1587

Lot 1587 is a small, T-shaped lot forming a jetty out into the water. The parties do not dispute that Dalton, through Borja is the proper owner of most of Lot 1587. [4] However, Appellants contend that the westernmost portion of the lot - the left portion of the crossbar of the "T" - is within the boundary of the village of Echang. Appellants suggest that Lot 1587 should be divided up, and that they should be awarded title to the portion that lies within Echang.

Appellants' arguments for dividing Lot 1587 are not supported by the record. Neither the Cadastral survey map nor the earlier Tochi Daicho map suggest that Lot 1587 was ever intended to be divided in the manner that Appellants suggest. More importantly, a Certificate of Title issued to Emilio Borja and his heirs in 1988 indicates that Lot 1587 has an area of 1,884 square meters, precisely the size of the undivided lot shown on the Cadastral survey map. Such a Certificate of Title is considered by this Court as "conclusive on all those who have had notice of the proceedings, ⊥165 and all those claiming under them." *Ucherremasech v. Wong* , 5 ROP Intrm. 142, 145 (1995). Appellants do not contend that they lacked notice that Lot 1587 was adjudicated in 1980, [5] but rather, contend that Lot 1587 was not correctly surveyed, and should not include the portion that lies within Echang.

Appellants' arguments that they were deprived of due process when maps were drafted that did not include the boundary line they claim divides Lot 1587 is without merit. The maps in question have been in existence and publicly available for review since the 1980's, and yet no action has been taken by any of the Appellants to complain about the assertedly missing

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[4] Subsequent to oral argument in this case, Appellants Heirs of Drairoro filed a "Motion to Delay Decision" in this case, pending the outcome of an estate proceeding involving the late Emilio Borja, who had bow previously determined to have succeeded to all of Jesus Borja's property. Appellants' argument appears to be that the lands of Emilio Borja including Lot 1587, will likely be awarded in their entirety to Juan Borja and not to Appellee Dalton. In proceedings before the Trial Division, Juan Borja by stipulation with Appellants, agreed that Lot 1587 should be divided up as Appellants request.

Appellants' argument is merely hypothetical at this time, as there is a possibility that Dalton may be adjudged an heir of Emilio Borja. In addition, Appellants did not contest Dalton's status as an heir of Borja on appeal (Appellant Yangilmau did argue before this Court that Dalton lacks standing as an heir of Borja to pursue a cross-appeal, but did not assert such an argument in his own direct appeal), and it is unclear whether this issue was raised before the Trial Division. We accordingly deny Appellants' motion to delay decision pending the completion of the estate hearing. Such denial is without prejudice, however, to a future motion in the Trial Division to set aside the judgment should circumstances warrant it.

[5] Indeed, the Appellants introduced numerous documents relating to that hearing, including a schedule noticing Lot 1587 for a hearing on December 17, 1980.

boundary. In addition, some of the Appellants testified that they participated in a survey in the 1970's which was to establish the boundaries of Echang, including the boundary line in question. They cannot now be heard to claim ignorance that boundaries were being set, and their failure to examine the resulting maps for accuracy prior to the instant action renders their arguments here unavailing. Thus, Appellants' argument that the boundaries of Lot 1587 were improperly established is without merit, and the Land Commission award of the entire lot to Dalton will be given conclusive effect by this Court.

However, there is also clear evidence that the westernmost portion of Lot 1587 is within the boundaries of the village of Echang as shown on the map incorporated in the 1962 Land Settlement Agreement and Indenture (hereinafter "the 1962 Settlement") between the Trust Territory Government and the clans of Ngerkebesang. The Trial Division interpreted the 1962 Settlement to create an indefinite use right to the lands within the area of Echang for the residents of that village. [6] If affirmed, this use right would extend to the westernmost portion of Lot 1587 as well.

⊥166 This Court has previously observed in dicta that the language of the 1962 Settlement seems to confirm Echang, "seemingly in perpetuity, to the settlers and their descendants." *Espangel v. Tirso*, 2 ROP Intrm. 315, 321 (1991). While it is not necessary for the Court in the instant case to rule on the indefinite time frame articulated in *Espangel* nor any other parameters of the use right, it is sufficient to note here that the Court reads the 1962 Settlement as creating a use right in the lands of Echang on behalf of the persons residing there in 1962 and their descendants, and that that use right extends to the portion of Lot 1587 that lies within Echang.

Dalton cross-appeals from the Trial Division's decision, arguing that the burdening of any of the parcels at issue with the use right is improper for various reasons. Her arguments are without merit. At the time of the 1962 Settlement, the land in question was owned by the Trust Territory government, which could convey it with clear title, subordinate to no prior owner, including Borja. Since the parties to the 1962 Settlement clearly intended the "Echang Covenant" to run with the land, the encumbrance of the covenant runs to all future owners. 20

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[6] The relevant language of the 1962 Settlement provides that

> . . . no provision of this Deed shall be construed to effect, retroactively or otherwise, or to rescind, revoke, cancel, alter, or change in anywise whatsoever the rights and interests of any person, family, lineage or clan residing on or using or having members residing on or using that part of the premises herein granted known as "E-ang" . . . in and to the continued peaceful possession, occupancy and use of the said lands for an indefinite period in the future, and the Grantees do hereby expressly covenant and agree further with the Government that the said residents shall and may continue for an indefinite period in the future to peaceably possess, occupy and use said lands within the area known as "E-ang" without any suit, trouble, molestation, eviction or disturbance by the by the Grantees, their heirs, successors and assigns, or any other person claiming through, from or under the same, this covenant and agreement to be construed as running with the land.

Am. Jur. 2d *Covenants* § 39 ("covenants that run with the land bind not only the immediate grantee but any subsequent grantees in the chain of title."). Moreover, the Trial Division found that Dalton never argued that she should not be bound by the covenant, and at oral argument, her counsel acknowledged that she did not disagree with the Trial Division's finding on this point. Thus, the Trial Division's findings that the parcels in question here are subject to the use right contained in the 1962 Settlement are affirmed, and Dalton's cross-appeal is denied,

Therefore, the Trial Division's finding that title to the entire Lot 1587 properly resides in the heirs of Jesus Borja is affirmed, and the Trial Division's findings that the 1962 Settlement creates a use right in the lands to Echang is also affirmed. We need make no finding in this case as to who among Appellants or others, is entitled to exercise that right.

(2) Lot 1590

Lot 1590 is, by far, the largest of the lots at issue here. In awarding title to Lot 1590 to Dalton, the Trial Division relied on a finding that, at the time of the 1981 Summary and Adjudication, the Tochi Daicho listed Borja as owner of the lot, but that that portion of the Tochi Daicho has since been lost. Appellants vigorously contest the finding that the Tochi Daicho ever bore such a notation.

Appellants' arguments on this point are well founded. Exhibits received into evidence show that Lot 1590 is definitely listed in Volume I of the Koror Tochi Daicho, as a parcel whose ownership was disputed at the time of the Japanese survey.[7] The presence of Lot 1590 in Volume I of the Tochi Daicho renders it highly unlikely that the parcel was also listed, as the Trial Division found, in Volume III of the Tochi Daicho. This Court is aware of no instance in which the same parcel is listed in multiple places in the Tochi Daicho, ⊥167 and the actual presence of Lot 1590 in the volume dedicated to disputed parcels is incongruous with a suggestion that Lot 1590 might also be listed in the volume of undisputed parcels. Indeed, the fact that Borja is not one of the parties listed as claiming this lot in Volume I makes it wholly untenable that he was nevertheless determined to be the owner by the Japanese authorities and listed as such in Volume III. In addition, the Trial Division's finding that a page is missing from Volume III - purportedly the page that Lot 1590 should have been listed on - has no support in the record. Only one witness, Sterlina Gabriel, testified regarding the actual contents of the Tochi Daicho, and she explicitly denied any knowledge of whether a page was missing from Volume III.

The Trial Division's reliance on the 1981 Summary and Adjudication as the sole proof that such a listing once existed is beset by other problems as well. As Appellants amply demonstrated, the lots referenced in the Summary and Adjudication bear little relationship to the claim filed by Borja's heirs, to the listing of the lots in the Notice of Hearing on the Borjas' claims, or to the listing of parcels on the schedule of hearings. Dalton failed to introduce any evidence showing how or why her relatives were tentatively awarded nearly a dozen more lots

[7] Evidence at trial indicated that the Koror Tochi Daicho is divided up into three volumes. Volume I lists parcels whose ownership was in dispute at the time of the Japanese survey. Volume II contains those properties that were owned by the government, and Volume III contains individually owned properties whose ownership was not disputed.

than they had originally claimed.

Based on the record before us, then, we find that the Trial Division's finding that Lot 1590 was once listed in Volume III of the Tochi Daicho under the name of Jesus Borja is clearly erroneous and must be reversed. Instead, we are persuaded by the evidence offered by the Appellants showing that the lot was actually listed in Volume I of the Tochi Daicho. That volume shows that, immediately prior to the war, Lot 1590 was either owned by a man named Mutsuo Nakamura, or individuals named Ngiraikesiil, Isims, and Aiteyaroru. The former is allegedly the Japanese national that Appellants' ancestor sold his land to, while the latter are apparently members of the clans of Ngerkebesang. This Court has previously held that the dispute between the settlers and the clans of Ngerkebesang was resolved in the settlers' favor, and that the lands were given to the settlers by the clans in fee. *See Espangel v. Tirso* , 2 ROP Intrm. 315 (1991); *Lulk Clan v. Estate of Tubeito* , 7 ROP Intrm. 17, *rehearing denied* , 7 ROP Intrm. 63 (1998). Thus, consistent with the prior rulings of this Court that the settlers and their devisees prevail as against the clans, the Court concludes that Lot 1590 was owned by Mutsuo Nakamura. Dalton does not contest Appellants' testimonies that Nakamura purchased the land from their ancestors, [8] and in conjunction with the oft-expressed principle that the 1962 Settlement was intended to return land to those who held it prior to its transfer to Japanese interests, *see e.g. Torul v. Arbedul* 3 TTR 486 (Tr. Div. 1968), this Court finds ⊥168 that title to Lot 1590 is properly vested in the Appellants.[9]

The Appellants, although all descendants of the settlers, are not unified in their interests, however, and several of them claim title to the lands in question, including Lot 1590, to the exclusion of their other relatives. The Trial Division did not attempt to reconcile the various competing claims among the Appellants as to whether who, if anyone, had superior title to the lands in question. To the extent that the Appellants continue to dispute among themselves over ownership of all or part of Lot 1590, this matter is remanded back to the Trial Division for further findings on which Appellant has the strongest title to the disputed land, a new trial on that limited question, or whatever further proceedings are necessary to effectuate this Court's decision.

Therefore, the Trial Division's decision awarding title to Lot 1590 to Dalton is reversed and remanded for further proceedings as necessary.

(3) Lots 1589 and 1589

[8] None of the parties to this appeal, including Dalton, has claimed the land in question through the clan members listed in Volume I of the Tochi Daicho. At trial, the heirs of Rdialul Torual appeared to assert a claim of ownership to the land on the argument that Torual's name appears as one of the disputants to lot 1590 in Volume I of the Tochi Daicho and that the Japanese actually awarded the land to him. They did not file an appeal of the Trial Division's decision, however, and are no longer parties to this case.

[9] As with the portion of Lot 1587 within Echang, all of the remaining lots discussed herein are considered by the Court to be burdened with the use right created by the 1962 Settlement.

The remaining two lots, Lots 1588 and 1589, are entirely surrounded by Lot 1590.

The Trial Division awarded Lots 1588 and 1589 to Dalton in conjunction with its award of Lot 1590, on the grounds that a transfer of a lot as large as Lot 1590 must necessarily have included the much smaller Lots 1588 and 1589 that it surrounds. In light of the Court's reversal of the Trial Division's award of Lot 1590, the award of Lots 1588 and 1589 to Dalton is also reversed.

As with Lot 1590, Lot 1589 is listed in Volume I of the Tochi Daicho, with Mutsuo Nakamura as one of the claimants, Lot 1588, on the other hand, is not listed in Volume I of the Tochi Daicho, and testimony at trial suggests that it was actually listed in Volume II, as property of the Japanese government. In accordance with the discussion above, the Trial Division should determine which Appellant, if any, has a title superior to the others to Lots 1588 and 1589.

Thus, the Trial Division's decision awarding title to Lot 1588 and 1589 to Dalton is reversed and the matter is remanded to the Trial Division for further findings.

CONCLUSION

For the foregoing reasons, the decision of the Trial Division is affirmed insofar as it awards title to Lot 1587 to the heirs of Jesus Borja; affirmed insofar as it finds that all of the land in question located within Echang is subject to a use right residing in the residents of Echang as of 1962 and their descendants; reversed to the extent that it awards Lots 1588, 1589, and 1590 to Dalton and remanded for further proceedings to determine who, if anyone, among Appellants has a superior title to those properties.