

Andres v. Desbedang Lineage, 8 ROP Intrm. 134 (2000)
MYOTEL ANDRES,
Appellant,

v.

DESBEDANG LINEAGE,
Appellee.

CIVIL APPEAL NO. 98-21
D. O. No. 03-119

Supreme Court, Appellate Division
Republic of Palau

Argued: November 23, 1999
Decided: March 7, 2000

Counsel for Appellant: John K. Rechucher

Counsel for Appellee: David J. Kirschenheiter

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

BEATTIE, Justice:

This is an appeal from a Determination of Ownership issued by the Land Court in which the Land Court determined that appellee Desbedang Lineage owned property in Ngkekklau Hamlet, Ngaraard, known as Ngerdelilch.¹ We affirm.

I.

The property is registered in the Tochi Daicho as the individual property of Iderrech. Appellant claims the property as the heir of Iderrech. Desbedang Lineage claims that the property never belonged to Iderrech and that the Tochi Daicho listing for the property is inaccurate. Thus, the dispute centers on the accuracy of the Tochi Daicho listing for the property. The Land Court found that the Tochi Daicho listing was inaccurate in listing the property as Iderrech's individual property instead of lineage property. Appellant claims that the Land Court erred in that there was not clear and convincing evidence sufficient to overcome the presumption that the Tochi Daicho information concerning ownership is accurate.

II.

¹ The property is also known as Tochi Daicho lots 1937 and 1678 and Temporary Lot No. NGK-40 on cadastral worksheet 98 E - 002.

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The Tochi Daicho listing of property owners is presumed to be accurate,² and the party who disputes the listing must rebut the presumption by clear and convincing evidence in order to prevail. *Silmai v. Sadang*, 5 ROP Intrm. 222, 223 (1996). We review findings of the Land Court under the “clearly erroneous” standard. *Masters v. Paulis*, 7 ROP Intrm. 148, 149 (1999). Thus, where the Land Court finds that the Tochi Daicho listing is inaccurate, “the test for upholding the finding is whether a reasonable trier of fact could have found, by clear and convincing evidence, that the Tochi Daicho presumption had been rebutted.” *Arbedul v. Romei Lineage*, 8 ROP Intrm. 30 (1999).

Here, there was testimony from several witnesses that Desbedang Lineage had used Ngerdelilch as a house site at one time. Later, they moved away and left Iderrech in **L135** charge of the property as their caretaker. According to these witnesses, Iderrech was instructed by the lineage to register the land in the name of Desbedang, but instead, he registered the property as his own property. This caused a rift between lineage members and Iderrech that lasted until his death. Further, witnesses testified that there is a house platform on the property and that some members of Desbedang Lineage were buried on the property.

Considering all of this evidence, we cannot say that the Land Court was clearly erroneous in finding that the Tochi Daicho listing was inaccurate and that the lineage and not Iderrech was the owner at the time of the Japanese land survey.

III.

Appellants also claim that Desbedang Lineage’s claim is barred by the statute of limitations. Although the statute of limitations is, strictly speaking, a defense to a claim and not itself a basis for a claim, we have noted that, in land ownership disputes, “[a]dverse possession and the statute of limitations must be considered together. A claimant obtains much the same result whether claiming under a twenty year adverse possession claim, or invoking a twenty year statute of limitations defense.” *PPLA v. Salvador*, 8 ROP Intrm. 73, 77 (1999). One can obtain title to land by adverse possession only if possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for 20 years. *See Rebluud v. Fumio*, 5 ROP Intrm. 55, 56 (1995). Here, the record does not contain sufficient evidence to establish the elements of any of the elements of adverse possession, most likely because appellant did not claim adverse possession in the Land Court.

Appellant argues that the mere fact that the Tochi Daicho lists Iderrech as the owner is enough to commence the running of the twenty year statute of limitations for filing claims to the property, so that any claim adverse to Iderrech’s had to have been filed by May 28, 1971.³ In support of this argument, appellant cites *dicta* in *NSPLA v. Aguon*, 3 ROP Intrm. 110, 114 (1992). To the extent that the *dicta* in *Aguon* can be read to stand for the proposition that a mere listing

² For exceptions to the presumption, *see Silmai v. Sadang*, 5 ROP Intrm. 222, 223 n. 2 (1996).

³ “For the purposes of computing the limitations of time provided [for recovery of land], any cause of action existing on May 28, 1951 shall be considered to have accrued on that date.” 14 PNC § 410.

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in the Tochi Daicho is enough to establish any element of adverse possession or to commence the running of the statute of limitations for filing a claim for recovery of land, we reject it as unsound and in conflict with our statements concerning the elements an adverse possession claim. *See Rebluud v. Fumio*, 5 ROP Intrm. 55, 56 (1995).

CONCLUSION

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