Otobed v. Ongrung, 8 ROP Intrm. 26 (1999)

DEMEI OTOBED,
Appellant,

v.

EDWEL ONGRUNG,
Appellee.

CIVIL APPEAL NO. 98-10

Supreme Court, Appellate Division
Republic of Palau

Argued: May 24, 1999
Decided: August 26, 1999

Counsel for Appellant: John K. Rechucher

Counsel for Appellee: David J. Kirschenheiter, Lourdes Materne

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice.

BEATTIE, Justice:

This Land Court appeal involves Tochi Daicho Lot No. 685, traditionally known as "Ngermeketbang," located in Ngebuked Hamlet, Ngaraard State. It is undisputed that the Tochi Daicho lists Ngirturong as the individual owner of the lot, and that Ngirturong died in July 1977. Both parties claimed the property based on transfers from Ngirturong. The Land Court upheld the claim of Appellee. Because the Land Court misapplied 39 PNC § 102(a), we reverse and remand.

Appellant Demei Otobed claimed the land through his father, Taurengel, who was Ngirturong's younger brother. According to him, in 1962, Ngirturong gave Taurengel the land in a conversation in which he allegedly told Taurengel that he could build a house on Ngermeketbang and live there. There is no deed or other documentation confirming this alleged transfer. However, according to Appellant, at the end of 1962, Taurengel built his house on the lot, and his family, including Appellant, lived there until some time prior to 1983.

Appellee Edwel Ongrung claimed the land through his father, Salvador Ongrung. Salvador testified that he purchased the lot from Ngirturong for $300 for his brother Johanes. There is a quitclaim deed dated July 8, 1967 evidencing a transfer of property from Ngirturong to Johanes, which was witnessed by Taurengel. The deed originally stated that the lot being transferred was lot 724, traditionally known as "Kedelblai," and containing 17,090 tsubos of land. However, the deed was modified on November 15, 1994, changing the reference from lot

724 to lot 685, and the size from 17,090 tsubos to 598 tsubos. The price remained the same. There is also a deed dated January 31, 1994 transferring the property to Appellee after Johanes died that was modified in the same fashion.

The Land Court determined that Appellee was the owner of the lot. Appellant then filed this appeal, asserting that the Land Court decision was in error because: (1) Appellee had no standing to have his claim heard; (2) the deeds under which Appellee claimed had been modified; (3) the Land Court should have awarded Appellant the land under the doctrine of adverse possession even if it found there was no valid transfer to Taurangel; (4) the Land Court failed to recognize that oral transfers of land were valid at the time of the alleged transfer to ⊥27 Taurengel; and (5) the Land Court misinterpreted 39 PNC §102(a).

I. Standing

Appellant argues, for the first time on appeal, that Salvador did not have standing to claim the lot because he had conveyed his interest to Appellee. It bears noting, however, that Salvador claimed to be representing Appellee in the Land Court. In any event, Appellant failed to make this argument below, and because the argument does not go to the jurisdiction of the Land Court, Appellant is precluded from raising it for the first time on appeal.

II. The Modified Deeds

For the first time on appeal, Appellant argues that the modified deeds should not have been considered. Both the quitclaim deed and deed of transfer were submitted by Salvador and admitted into evidence. The Land Court judge noted that the lot number had been changed, and asked for an explanation. Salvador testified that the specific neighboring boundaries in the quitclaim deed actually corresponded to lot 685, not 724, and that he (on behalf of Johanes), Taurengel and Ngirturong consented to the modifications to correct the earlier error.

Although given the opportunity, Appellant failed to challenge the propriety or validity of the modifications below. Yet now, on appeal, Appellant argues that the modified deeds should not have been admitted into evidence because they were improperly modified without the consent of Taurengel and Ngirturong. Appellant now claims that a Senior Land Registration Officer for Ngaraard State modified the official copy of the quitclaim deed to change the description of the land to assist Appellee's claim. In support of his argument, Appellant relies on evidence which he did not submit to the Land Court--documents purporting to be the death certificates of Ngirturong and Johanes Ongrung, which allegedly indicate that Ngirturong died on July 14, 1977, and that Johanes died on December 10, 1991, both several years before the modifications were made to the deeds on November 15, 1994.

Appellant's arguments might well have been persuasive to the Land Court had they been made, and had the death certificates been offered into evidence below. However, the Land Court had no evidence before it that Ngirturong and Johanes were not alive in November 1994, and did not consent to the modification. Nor did the Land Court have any evidence before it that Taurengel did not know of, and, as a witness to the deed to Johanes, consent to the modifications.

As the Court recently stated in *Estate of Etpison v. Sukrad*, 7 ROP Intrm. 173, 175 (1999):

> [W]e 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.

In the absence of any conflicting evidence or testimony from Appellant, the Land Court relied on Salvador's testimony that the deeds were modified with the consent ⊥28 of Ngirturong, Salvador, and Taurengel. We cannot conclude that the Land Court was clearly erroneous in failing to take Appellant's unraised evidence into account.

III. Adverse Possession

As an alternative to his oral transfer claim, Appellant claims that he and his father acquired the lot through adverse possession. Appellant testified that his family lived on the lot from 1962 until sometime prior to 1983 without any challenge from anyone.

A claimant may acquire land through adverse possession if possession is actual, open, visible, notorious, continuous (for twenty years), hostile or adverse, and under a claim of right or title. *Rebluud v. Fumio* , 5 ROP Intrm. 55, 56 (1995); *Osarch v. Kual* , 2 ROP Intrm. 90, 91-92 (1990). There can be no adverse possession where any element is lacking. *Id*. The Land Court did not make any findings regarding adverse possession; however, it is clear from the record that Appellant cannot meet the continuity requirement. Taurengel's possession of the lot from 1962 to 1967 was not hostile because it was against his brother, Ngirturong. *Rebluud v. Fumio*, 5 ROP Intrm. 55, 56 (1995) (family relationship negates the possibility that possession is hostile or adverse). His possession against Johanes from 1967 until the family abandoned the house sometime prior to 1983 is insufficient to meet the twenty-year requirement. Thus, Appellant could not have adversely possessed the lot.

IV. The Oral Transfer

Because the issues of the validity of the oral transfer of land and the application of 39 PNC § 102(a) are related, we discuss them together. In awarding the land to Appellee, the Land Court noted that the alleged transfer to Taurengel was oral and not evidenced by any writing. Then, citing 39 PNC §102(a), it said:

> [D]ocuments should be prepared to show that a property is being transferred in accordance with existing laws. Now, the claim of Taurengel Otobed is based on conversation and no documents showing quitclam deed as required by law.

We note that the alleged oral transfer to Taurengel occurred in or about 1962. At that time, 39 PNC § 102(a) had not yet been enacted. However, § 801(a) of the Palau District Code was in effect at that time, and its langauge is virtually identical to 39 PNC § 102(a). The former

statute, after declaring that land held in fee simple by individuals may be transferred however the owner alone desires, regardless of customs which control the disposition of land through clans, provided that "all transfers of such land shall be registered with the Clerk of Courts within 90 days of execution."

We do not read that portion of §801(a) as a requirement for a valid transfer of land. Notwithstanding the existence of § 801(a), the validity of oral transfers of land occurring before the enactment of the Statute of Frauds has been recognized:

> There is no statute of frauds requiring a writing for a transfer of land in the Trust Territory. An oral transfer is effective and there need be no recordation of a oral transfer.

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Llecholech v. Blau , 6 T.T.R. 525, 529 (Tr. Div. 1974). Although the *Llecholech* court was referring to recording under the recording statute and not § 801(a), we have consistently recognized the validity of oral conveyances which occurred prior to the effective date of the statute of frauds, without ever imposing a requirement that the oral conveyance be "registered" within 90 days. *See Andreas v. Masami* , 5 ROP Intrm. 205, 206 (1996); *Ngiraloi v. Faustino* , 6 ROP Intrm. 259, at n. 1 (1997). Nor does § 801(a) itself state that a transfer is invalid if not registered within 90 days.

This is in stark contrast to the recording statute, 39 PNC § 402, which states that no transfer of real estate "shall be valid" against subsequent bona fide purchasers without notice who first duly record their interest. Thus, we hold that the Land Court erred by concluding that, prior to the enactment of the statute of frauds, a deed or document was required to validly convey real property.

V. Instructions on Remand

On remand, there are at most two issues to decide. It is unclear whether the Land Court found that there, indeed, was an oral conveyance to Taurengel. The decision notes the claim that there was a conversation in which Ngirturong made such conveyance, but, in view of its holding that written documentation was required by law, it never made a finding on that issue. Accordingly, on remand, the Land Court should make a finding as to whether there was an oral convenyance to Taurengel. If the Land Court finds that there was no oral transfer, it should award the land to Appellee.

If the Land Court finds that there was an oral convenyance to Taurengel, then it must determine whether Johanes met the recording statute requirements so that his purchase, though later in time than the tranfer to Taurengel, would prevail due to the operation of the recording statute, 39 PNC § 402. [1] Unless the Land Court finds that Johanes met the requirements of the

[1] We note that this statute is a re-enactment of the recording statute which existed at the time of the transfers to Taurengel and Johanes. *See Asanuma v. Pius*, 1 T.T.R. 458, 461 (Tr. Div. 1958). Further, we note that Appellee does not claim that he gave any value for the property, so he did not take "for a valauble consideration" and therefore he is protected by the recording

recording statute, the prior conveyance to Taurengel would defeat Appellee's claim.

CONCLUSION

For the foregoing reasons, the decision of the Land Court is REVERSED and this matter is REMANDED to the Land Court for further proceedings consistent with this Opinion

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statute only to the extent that his grantor, Johanes, is. *See Ongalk ra Teblak v. Santos*, 7 ROP Intrm.1 n. 5 (1998) (indicating that a grantor who fulfills the requirements of the recording statute may convey good title to a person who does not).