

Ngerungor Clan v. Mochouang Clan, 8 ROP Intrm. 94 (1999)
NGERUNGOR CLAN, Rep. by JAMES NGIRARAMOS,
Appellants,

and

CHILDREN OF IBUTIRANG, Rep. by S. IBUTIRANG,
Appellants,

v.

MOCHOUANG CLAN, Rep. by W. ELBELAU
and NGIRAKELAU BEOUCH,
Appellees.

CIVIL APPEAL NO. 98-41

Supreme Court, Appellate Division
Republic of Palau

Counsel for Appellants Children of Ibutirang: David J. Kirschenheiter

Counsel for Appellants Ngerungor Clan: Raynold B. Oilouch

Counsel for Appellees: J. Roman Bedor

Argued: November 15, 1999

Decided: December 22, 1999

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

BEATTIE, Justice:

This is an appeal from the Land Court's determination of ownership regarding a parcel of land in Ngermetengel Hamlet, Ngeremlengui, described as Tochi Daicho Lot 504, also known as cadastral lot 03 K 04-4. Mochouang Clan, with Ibutirang as trustee, is registered in the Tochi Daicho as the owner of the property. In the Land Court, appellant Ngerungor Clan claimed that Mochouang Clan had transferred the property to it, and the Children of Ibutirang claimed that Mochouang Clan had transferred it to them. The Land Court rejected both claims and determined that the Mochouang Clan was the owner of the property. Ngerungor Clan and the Children of Ibutirang have appealed that determination. We affirm.

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NGERUNGOR CLAN

The Land Court hearing was held in two sessions which were about two months apart. At the first session, the witness for Ngerungor Clan claimed that the property was owned by Ngerungor Clan and that Ibutirang, who was not a member of the clan, had been given permission to register the land as trustee for the clan. The witness said that Ibutirang deceived the clan and registered the land as trustee for Mochouang Clan. However, the same witness, who is 72 years old, testified that Remasech, the Ngerungor Clan male title bearer and the person who allegedly authorized Ibutirang to register the land, was present at the Japanese land survey hearing in which Ibutirang claimed the land for Mochouang Clan. The witness testified that the hearings were well regulated, orderly, and that when the Japanese language was used, the proceedings were translated for Remasech but Remasech did not object to Ibutirang's claim on behalf of Mochouang Clan.

By the time of the second session, Ngerungor Clan had hired an attorney, did not dispute the Tochi Daicho listing, and claimed that Mochouang Clan had transferred the property to Ngerungor Clan in 1973. The 195 transfer, they contended, is evidenced by a document which Ngerungor Clan discovered between the first and second Land Court sessions. The document is entitled "Certification of Records" and states as follows:

I, Idesiar Techur, Acting Land Management Officer for the Palau District do hereby certify that Ibutirang is listed in the Tochi Daicho (Japanese Land Records) as the owner in fee simple of Lot No. 504-SERS 2,620 tsubo.

Also, on this day, I, Idesiar Techur, do hereby witness the transfer of said Lot above to Remasech.

The said land is located in Ngermetengel, Ngeremlengui Municipality.

The document bears what purports to be the signatures of Ibutirang and Idesiar Techur.

The Land Court found that there were "serious doubts" that the signature of Ibutirang was authentic, based upon testimony that he had died eight years before the date of the document and that he could not write. The Land Court further concluded that, even if the signature were authentic, the document was not effective as a transfer of the property by Mochouang Clan.

On appeal, Ngerungor Clan does not contend that the Tochi Daicho listing for the property is inaccurate, but instead claims only that the Land Court erred as a matter of law in concluding that the document entitled "Certification of Records" was ineffective to transfer the property. The Clan concedes that the document does not contain the formal language normally found in a deed, but argues that the absence of such language does not render the document ineffective as a conveyance.

Although formality and exactness are not required in order for a document to effectively transfer property, the grantor must sufficiently declare his intention to pass title. *Rengulbai v.*

Ngerungor Clan v. Mochouang Clan, 8 ROP Intrm. 94 (1999) *Solang*, 4 ROP Intrm. 68, 72 (1993). Here, not only does the document lack any language declaring the grantor's intent to transfer title to the property, but it does not even identify the grantor. It merely states that Ibutirang is listed in the Tochi Daicho as the owner of the property, which, of course, is not true. ¹ Therefore, the Land Court did not err in concluding that the "Certification of Records" was ineffective to transfer the property.

CHILDREN OF IBUTIRANG

The claim of the Children of Ibutirang is based upon two alternative theories. First, they claim that the Mochouang Clan gave the property to Ibutirang as his individual property after World War II. Alternatively, they claim ownership by adverse possession. The Land Court determined that the property remained with Mochouang Clan and rejected the adverse possession claim, finding that the **196** use of clan property by its members is consistent with Palauan custom.

On appeal, the Children of Ibutirang contend that the Land Court erred in failing to go to the home of a witness, Dirratengadik, in order to take her testimony to ascertain the date on which Ibutirang's father, Etmengeed, died. They assert that the case should be remanded in order to take her testimony.

The record shows that at the first session in the Land Court, Blau, who was a witness for the Children of Ibutirang representing Ibutirang's daughter, Dirratengadik, testified that Mochouang Clan gave the property to Ibutirang when Etmengeed died. The Land Court judge asked him if Etmengeed died before or after the Japanese land survey, and Blau answered that he was not sure but that Dirratengadik would know. Blau said that the judge could go to Dirratengadik's house and ask her, since she could not walk. The judge then said:

Yes, the court is interested to know the date of Etmengeed's death and therefore would pay Dirratengadik a visit and obtain testimony on Etmengeed's death.

There is nothing in the record that indicates Dirratengadik's testimony was obtained.

Blau testified again at the second session. At that session he testified that, after World War II ended, Ibutirang asked Mochouang Clan if he could have the subject property so that his children could settle on it. According to Blau, the Clan agreed to transfer the land to Ibutirang at that time. The judge asked him, "That is your statement?," and he replied "Yes."

In view of the foregoing, we fail to see how the date of Etmengeed's death could have any impact on the claim of the Children of Ibutirang. The Land Court judge would normally be interested in knowing the date on which they claimed the Clan gave the property to Ibutirang because, if it was before the Japanese land survey, their claim of ownership would conflict with

¹ At best, the document serves as some evidence of a purported oral conveyance of the property by Ibutirang, witnessed by Idesiar Techur. Ngerungor Clan does not rely on the document as evidence of an oral transfer of the property, however. Even if it did, the document would not support their claim because it refers to a transfer to Remasech, not to Ngerungor Clan.

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the Tochi Daicho listing and their burden of proof would be greater. If, as it seemed from Blau's initial testimony, they claimed Ibutirang was given the property at the time Etmengeed died, the Land Court judge would want to know the date of his death. Blau's later testimony, however, was that the property was given to Ibutirang when he asked for it after World War II. With that testimony, we do not see, nor have appellants suggested, how the date of Etmengeed's death could be material to their claim. Accordingly, there would be no purpose in remanding this case in order to obtain Dirratengadik's testimony concerning the date of Etmengeed's death.²

The Children of Ibutirang further argue that the Land Court erred in not accepting the uncontradicted testimony of Blau that Mochouang Clan gave the property to Ibutirang after World War II. We disagree. In making its findings, a trial court is not required to accept uncontradicted testimony as true. *Elewel v. Oiterong*, 6 ROP Intrm. 229, 232 (1997). We review the Land Court's findings under the clearly erroneous standard. *Masters v. Paulis*, 7 ROP Intrm. 148, 149 **197** (1999). We cannot say that the Land Court's finding that the property was not transferred to Ibutirang was clearly erroneous.

Finally, the Children of Ibutirang argue that they acquired the property through adverse possession. The evidence shows that Ibutirang's children have been living on the property for 50 years. The Land Court rejected this claim, finding that Ibutirang's children are members of the Mochouang Clan and that their use and occupation of the property is therefore consistent with Palauan custom.

One can acquire land through adverse possession if the possession was actual, open, visible, notorious, continuous for 20 years, hostile or adverse, and under a claim of right or title. *Rebluud v. Fumio*, 5 ROP Intrm. 55, 56 (1995). The Land Court found that under Palauan custom Ibutirang's children, as clan members, had a right to use clan property. Assuming that is the custom, it would negate any contention that their living on the property was adverse or hostile to the clan's ownership. The Children of Ibutirang do not contest the finding concerning Palauan custom. Accordingly, the Land Court did not err in rejecting the claim of adverse possession.

CONCLUSION

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

² At oral argument, the Children of Ibutirang and appellee stipulated that this case be remanded in order to take the testimony of Dirratengadik. However, we are not bound by the stipulations of the parties.