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SUPREME COURT OF THE REPUBLIC OF PALAU

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

MIHAINA MEREB SHIRO and CHILDREN OF MEREB Appellants, v. ESTATE OF MANUEL DELOS REYES and CHILDREN OF BLAILES Appellee.	CIVIL APPEAL NO. 13-014 LC/E 08-673 - 08-677; 08-0680; 08-690; 08-691; 08-0711 **OPINION**

Decided: September 18, 2014

Counsel for Appellants: Moses Uludong
Counsel for Appellee Estate of Reyes: Pro se, represented by Anthony Reyes Borja
Counsel for Appellee Children of Blailes: Oldiais Ngiraikelau

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; and R. ASHBY PATE, Associate Justice.

Appeal from the Land Court, the Honorable SALVADOR INGEREKLII, Associate Judge, presiding.

PER CURIAM:

This appeal arises from the Land Court's determination of ownership awarding several lots to the Estate of Manuel Delos Reyes and a single lot to the Children of Blailes. For the following reasons, the decision of the Land Court is affirmed.[1]

[1] Appellant has not requested oral argument, and we determine that oral argument is unnecessary to resolve this matter. *See* ROP R. App. P. 34(a).

BACKGROUND

This case involves competing claims of ownership to several Tochi Daicho lots in Ngaraard State. The case before the Land Court included a large number of claimants, both Palauan and Chamorro, as well as numerous lots. This appeal, however, involves only three of those claimants and a handful of lots.

Mihaina Mereb Shiro and the Children of Mereb (hereinafter Mereb Children) claimed Tochi Daicho lots 2101, 2102, 2103, 2104, 2106, 2107, and 2108. The Mereb Children asserted that those Tochi Daicho lots corresponded to Worksheet lots 06E003-019, 06E003-019A, 06E003-019B, 06E003-020, 06E003-022, 06E003-25, 06E003-026, 06E003-027, and 06E003-028 on BLS Worksheet 2006 E 003. They argued that they obtained all of these lots from the listed Tochi Daicho owner, Manuel Aquon Delos Reyes, either by oral conveyance or by adverse possession. They also argued that Manuel's descendants could not claim the lots because only Palauan citizens may own land, and Manuel's heirs are Chamorro.

The Estate of Reyes claimed all of the above-mentioned Tochi Daicho lots under the theory that, although Manuel Aquon Delos Reyes (hereinafter Manuel) permitted the Mereb family to use the land, he never transferred ownership to them. Instead, they argued, Manuel acquired the land in 1923 and never conveyed the land to anyone during his lifetime. The Estate asserted that the land therefore passed to Manuel's estate upon his death in Saipan in 1957.

The Children of Blailes claimed Worksheet Lot 06E003-022 (hereinafter WS Lot 22), which they argued is part of Tochi Daicho Lot 2097 and was therefore not part of Manuel's lands. The Estate of Reyes conceded that WS Lot 22 was not part of their land. The Mereb Children, however, argued that WS Lot 22 was part of the land owned by Manuel and that it therefore passed to them by oral conveyance or adverse possession.

The Land Court held hearings from June 3, 2013, until June 7, 2013. At the hearings, the Court heard testimony from the Mereb Children, the Children of Blailes, and the representative of the Estate of Reyes, Anthony Reyes Borja. After hearing all of the testimony, the Court awarded ownership of Tochi Daicho Lots 2101, 2102, 2103, 2104, 2106, 2107, and 2108 to the Estate of Reyes. In doing so, the Court found unreliable the testimony concerning an alleged oral conveyance to the Mereb Children. Moreover, the Court found that Manuel permitted the Mereb Children to use the land, so there could be no adverse possession because there was no hostility. Finally, the Court held that the constitutional provision barring land acquisition by non-Palauans did not foreclose the Estate of Reyes' claim because Manuel acquired the land before December 8, 1941 and was therefore entitled to own land. When Manuel passed away, the land became an asset of his estate. The Court also concluded that WS Lot 22 was part of Tochi Daicho Lot 2097 and owned by the Children of Blailes.

The Mereb Children timely appeal.

STANDARD OF REVIEW

We review de novo the lower court's conclusions of law. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Factual findings are reviewed for clear error. *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.,* 9 ROP 162, 164 (2002).

ANALYSIS

The Mereb Children raise several objections to the Land Court's determination of ownership. As to the Estate of Reyes, they argue that the Mereb Children acquired the land through adverse possession and that Manuel and his heirs cannot acquire or own land because they are not Palauan.[2] As to the Children of Blailes, the Mereb Children argue that insufficient evidence supported the Land Court's determination that they owned Lot 06E003-022.

I. Estate of Reyes

A. Adverse Possession

The Mereb Children argue that the Land Court erred in holding that they did not acquire Manuel's land by adverse possession. The Land Court concluded that the Mereb Children could not demonstrate that their use of the land was hostile to Manuel or his estate, so their adverse possession claim failed. Sufficient evidence supports that conclusion.

[2] On appeal, the Mereb Children appear to have abandoned their argument that they acquired the land through an oral conveyance from Manuel.

"To acquire title by adverse possession, the claimant must show that the possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for twenty years." *Petrus v. Suzuky,* 19 ROP 37, 39 (2011). Moreover, "[a] party claiming title by adverse possession bears the burden to prove affirmatively each element of adverse possession." *Id.* at 39-40. As, to hostility, "mere possession" is not sufficient; instead, there must be "some additional act or circumstance indicating that the use is hostile to the owner's rights." *Id.* Accordingly, if the true owners grant another party permission to use the property, such use cannot form the basis of a claim of adverse possession. *See Idid Clan v. Demei*, 17 ROP 221, 231 (2010)

Here, it is undisputed that, shortly before Manuel left Palau in 1956, he asked Mereb and his wife to move to the land and help farm it. The Mereb Children further admit in their opening brief that, "from 1956 up until the present, the Merep family, with the consent of Manuel, occupied and cultivated the land owned by Manuel." Moreover, after the Mereb Children's house was destroyed by Typhoon Bopha in 2012, they sought and obtained authorization from Manuel's representative to reconstruct their house. Thus, ample evidence supported the Land Court's determination that the Mereb Children's use of the land was not hostile, and the Land Court did not clearly err in finding that the Mereb Children failed to demonstrate that they acquired the land by adverse possession.

B. Citizenship

The Constitution provides that "[o]nly citizens of Palau . . . may acquire title to land or waters in Palau." ROP Const. art. XIII § 8. The Mereb Children argue that the Land Court erred in awarding the land to Manuel's estate because Manuel and his heirs are not Palauan. They further argue that, even if Manuel owned the land at his death, Manuel's heirs are not eligible to inherit the land under 39 PNC § 309[3] because that provision conflicts with the Constitution.

The Land Court held that Manuel acquired the land in 1923 and owned it continuously until the time of his death. In doing so, the Court rejected the Mereb Children's arguments that they obtained the land from Manuel either by adverse possession or through an oral conveyance. The Land Court therefore awarded the land to Manuel's estate.

At the time when Manuel acquired the land, the Constitution did not yet exist, so Manuel's 1923 acquisition could not have been unconstitutional. During the Trust Territory period, moreover, non-Trust Territory citizens were allowed to own land that they had acquired before December 8, 1941. *See* 57 TTC § 201; Code 1970, title 57, § 11101; Code 1966, § 900. Accordingly, when Manuel died, he validly owned the land. It therefore became part of his estate upon his death.

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[3] 39 PNC § 301 provides: "Only citizens of the Republic of Palau . . . may hold title to land in the Republic of Palau; provided, that nothing herein shall be construed to divest or impair the right, title, or interest of noncitizens or their heirs or devisees, in lands in the Republic of Palau held by such persons prior to December 8, 1941. . ."

The Land Court's decision does nothing more than confirm that Manuel owned the land during his lifetime and that, on his passing, it became an asset of his estate. The Land Court's determination stops there—it does not identify Manuel's heirs or determine which, if any, of them are eligible to inherit the land.[4] That is a matter for an estate proceeding. *C.f. Tengadik v. King*, 17 ROP 35 (2009). Indeed, as it stands, we do not know which of Manuel's heirs wish to claim the land or whether any of them will be eligible to inherit it under 39 PNC § 301 (if, indeed, that provision is valid). If no eligible claimants emerge, the land may escheat to the state.[5] *See* 3B Am. Jur. *Aliens and Citizens* § 2093 (2005) (noting the possibility of escheat under such circumstances).

Accordingly, as it stands now, no non-Palauan has *acquired* the land since Manuel did so in 1923, long before the Constitution existed. The land belonged to Manuel and, upon his death, became an asset of his estate. Because there has been no recent acquisition, there is no Constitutional violation. If, in the process of determining who

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[4] On appeal, the Mereb Children assert that the identities of Manuel's heirs were not clearly established before the Land Court. To the extent that this is so, it is immaterial, because the Land Court did not (and did not need to) determine the identity of Manuel's heirs.

[5] The Mereb Children appear to believe that, if Manuel's heirs are ineligible to inherit the land because of their non-citizenship, then the land should automatically go to the Mereb Children. They cite no authority for this assertion, and we see no reason why the Mereb Children, who have not established that they acquired the land by adverse possession or otherwise, should nonetheless reap the benefit of Manuel's heirs' potential disqualification. *See Caipot v. Narruhn*, 3 TTR 18, 19 (1965) ("[D]isqualification from holding title to land [because of non-citizenship] is a matter of which only the government can take advantage and that, as against all others than the government, a person subject to this disqualification can continue to exercise all the rights of ownership unless and until the government acts on the matter."); 3B Am. Jur. *Aliens and Citizens* § 2093 (2005) ("[T]he state alone can question the right of the alien to hold the property.").

should receive Manuel's land, the question arises whether a non-Palauan heir is eligible to acquire title to the land by inheritance, the Court will address the question at that point.

II. Children of Blailes

Finally, the Mereb Children argue that the Land Court committed clear error when it determined that WS Lot 22 belongs to the Children of Blailes. Their argument is undeveloped at best, but they appear to assert that WS Lot 22 is part of Tochi Daicho lot 2104 and that they acquired that lot through adverse possession at the same time they acquired the rest of Manuel's land.

The Land Court concluded that, contrary to the Mereb Children's assertions, WS Lot 22 was not part of the land owned by Manuel. In support of that conclusion, the Land Court pointed to an earlier adjudication finding that WS Lot 22 was part of Tochi Daicho Lot 2097. The Land Court also noted that Manuel's estate did not claim ownership of WS Lot 22 and conceded that the lot was not part of their lands. Moreover, the Land Court pointed out that the Mereb Children failed to monument their claim for WS Lot 22 within the time period set for such monumentation and that they therefore cannot contest that it falls within the boundaries of Tochi Daicho lot 2097, which were set by the Children of Blailes during the monumentation period. Finally, the Land Court observed that there was evidence showing that Blailes allowed the Mereb family to occupy WS Lot 22 because Blailes was related to Mereb's wife, thereby foreclosing any adverse possession claim.

Given the evidence supporting the Children of Blailes' claim, we conclude that the Land Court did not clearly err in determining that the Children of Blailes own WS Lot 22. *See Edaruchei Clan v. Sechedui Lineage*, 17 ROP 127, 128 (2010) (noting that we do not revisit the Land Court's credibility determinations or reweigh the evidence); *Palau Pub. Lands Auth., et al. v. Tab Lineage*, 11 ROP 161, 165 (2004) ("[R]eversal under the clearly erroneous standard is warranted 'only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.'") (citation omitted). Here, the Land Court provided reasons for its determination and drew reasonable inferences from the evidence presented.

CONCLUSION

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

SO ORDERED, this 18th day of September, 2014.

KATHLEEN M. SALII
Associate Justice

LOURDES F. MATERNE
Associate Justice

R. ASHBY PATE
Associate Justice