Osarch v. Kual, 2 ROP Intrm. 90 (1990)

BESEBES OSARCH,
Plaintiff/Appellee,
v.

ELIA KUAL,
Defendant/Appellant.

CIVIL APPEAL NO. 21-88
Civil Action No. 76-87

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: June 28, 1990

Counsel for Appellee: Yukiwo P. Dengokl

Counsel for Appellant: Carlos H. Salii

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice; FREDERICK J. O'BRIEN, Associate Justice Pro Tem.

O'BRIEN, Associate Justice Pro Tem:

Elia Kual appeals from the judgment below that Besebes Osarch is the owner of a certain parcel of land in Ngarchelong State known as *Tochi Daicho* Lot No. 1097. He contended in the Trial Court that he inherited the land from his father, Kual Ngiraumad, and in the alternative, that he acquired the land through adverse possession. He challenges the findings of the Trial Court that:

1. The doctrine of adverse possession is inapplicable since Plaintiff and Defendant are related.

⊥91 2. Kual Ngiraumad "may have unknowingly encroached on Lot No. 1097."

3. Kual Ngiraumad did not claim Lot No. 1097 as his property.

4. Elia Kual's explanation as to why Lot No. 1097 is not included in Plaintiff's Exhibit 17 (Deed of Transfer) was not worthy of belief.

It must be borne in mind that the findings of a trial court are not to be set aside unless clearly erroneous. *Republic of Palau v. Sakuma. et al.*, Criminal Appeal No. 3-88, Slip Opinion at 9 (App. Div. Jan. 1990). The rule is sometimes given differently, i.e. that a trial court's findings of fact are not to be set aside if there is any reasonable evidence to support them. *Estate of Obak*

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Kloulubak, 1 ROP Intrm. 701, 704 (App. Div. Sept. 1989).

Adverse Possession

The doctrine of adverse possession had no applicability to Palau until May 28, 1951, when "Section 316" (later codified at 6 TTC 302) went into effect. See *Kanser v. Pitor*, 2 TTR 481, 488 (Tr. Div. 1963); *Penno v. Katrina*, 3 TTR 416 (Tr. Div. 1968); *Armaluuk v. Orrukem*, 4 TTR 474, 478 (Tr. Div. 1979). Defendant claims that Kual Ngiraumad began living on Lot No. 1097 in 1951.

One can obtain title to land by adverse possession only if possession is actual, open, visible, notorious, continuous, hostile or adverse, and under claim of right or title. 3 Am. Jur. 2d ⊥92 Adverse Possession, Sec. 8. If one of these requirements is lacking, there is no adverse possession. The existence of a family relationship defeats the requirement that possession be hostile or adverse. *Eldridge v. Eldridge*, 8 TTR 432, 438 (App. Div. Jan. 1984).

The Trial Court found that Irrung, about whose prior ownership of the land there is no dispute, and Defendant's father, Kual Ngiraumad, were both "reared by the same mother" and, therefore, "Kual Ngiraumad and Irrung were regarded as brothers." This finding is mirrored by Appellant's own assertion that "Kual Ngiraumad and Irrung were, under Palauan custom, regarded as brothers." (Appellant's brief at 2). Obviously, the finding is not clearly erroneous. Our review of the record convinces us that there is reasonable evidence to sustain this finding.

Encroachment

Appellant takes issue with the Trial Court's finding that his father, Kual Ngiraumad, unknowingly encroached upon Lot No. 1097, arguing that it has no support in the record. The Trial Court's finding was:

> Olteknge i Kual (defendant's mother) and Wally Madrangchar testified that Irrung told them he had given Lot No. 1097 to Kual Ngiraumad. Contrary evidence was introduced that at most, Kual Ngiraumad was only allowed to lease or use Lot No. 1097 and it was not given to him. ⊥93 Inference is made that while Kual Ngiraumad was using Lot No. 1098 he may have unknowingly encroached on Lot No. 1097, which later gave an opportunity for a claim to Lot No. 1097. (Decision at 6).

The Court's explanation why it found Plaintiff Besebes Osarch a "credible and honest man" (Decision at 4) shows the careful evaluation of the credibility of witnesses which a trial judge is supposed to make. Considering the above finding in this light, it is obvious that the Trial Court exercised its function of deciding between conflicting witnesses, so it cannot be said that the finding is clearly erroneous or that it is without reasonable evidence to support it.

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Appellant's Failure to Claim Lot No. 1097

The Trial Court found as follows:

> In 1975, Besebes Osarch filed a claim for Lot No. 1097 with the then Palau Public Land Commission (Plaintiff's Exhibit 3). He was the only person who filed a claim for the lot in dispute. Kual Ngiraumad, defendant's father from whom Elia Kual claimed his title to Lot No. 1097, did not claim the lot. Ngiraumad did at the same time claim the adjacent Lot No. 1098, and Lot Nos. 1089 and 1096. (Decision at 4-5).

Appellant argues that this finding is in error because Kual Ngiraumad did in fact file a claim for Lot No. 1097, although the ⊥94 reference to Lot No. 1097 was "snow-pecked" [1] after the claim was filed. Appellant's point was supported by the testimony of Albert Maldangesang but contradicted by the testimony of Shiro Bedul, both of whom worked for the Ngarchelong Land Registration Team and would have been in a position to know. The mystery is cleared up by the testimony of Plaintiff Besebes Osarch, whom the Trial Court found to be credible and honest. He testified that Kual Ngiraumad had filed a claim but then withdrew it. A withdrawal of a claim is as good as a failure to file one. Suffice it to say that the Trial Court's finding on this point is neither clearly erroneous nor without reasonable evidence in the record to support it.

The Refusal to Accept Appellant's Explanation

Appellant argues that the Trial Court erred in rejecting his explanation why Lot No. 1097 did not appear in a Deed of Transfer which listed lands he owned, i.e. that the Deed listed only lands owned solely by him. Appellant testified that Lot No. 1097 was not listed because it and two other parcels of land are owned by Appellant and his siblings. The Court instead viewed the Deed as a statement against interest. In light of the other evidence in the case, the Court was well within its discretion to reject this explanation.

⊥95 Even assuming arguendo that the Deed was not a statement against interest, there was other evidence sufficient to justify the Trial Court's findings, as indicated above. The standard of proof was a preponderance of the evidence, and our review of the record assures us that Plaintiff met that standard.

Accordingly, the judgment appealed from is hereby AFFIRMED.

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[1] i.e. obliterated by using typing correction fluid, which is sold under such brand names as "White-out" and "Sno-paque."