NSPLA v. Aguon, 3 ROP Intrm. 110 (1992)

NGARCHELONG STATE PUBLIC LAND AUTHORITY,
Appellant

v.

FRANCISCO T. AGUON,
Appellee.

CIVIL APPEAL NO. 6-91
Civil Action No. 419-90

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: February 20, 1992

Counsel for Appellant: J. Roman Bedor

Counsel for Appellee: John h. Rechucher

Before: Arthur Ngiraklsong, Associate Justice; Robert A. Hefner, Associate Justice; Alex R. Munson, Associate Justice

PER CURIAM:

BACKGROUND

This is a dispute over the island of Ngerchur which is off the coast of Ngerchelong. Ngerchur is divided into nine lots and listed in the Tochi Daicho as owned by three brothers; Vincente, Karlos and Ramon Aguon. On August 29, 1990, Francisco Aguon, appellee herein, the son of Karlos and the sole surviving heir of the three brothers, filed an action in the trial division to quiet title to the nine lots on Ngerchur. Ngerchelong State Public Land Authority (NSPLA), appellant, filed an Answer and Counterclaim asserting that Ngerchur belongs to the Ngerchelong community.

Francisco claims that Ngerchur became the property of his ancestors in the late nineteenth century. His grandfather, Ramon ⊥111 Aguon Sr. had allegedly accompanied the Englishman Captain O'Keefe on a trip to Guam and then back to Palau in the late 1800's. Captain O'Keefe allegedly compensated Ramon Aguon Sr. for his service by purchasing Ngerchur for him from the people of Ngebei. Ramon Sr. and his three sons thereafter peacefully occupied Ngerchur and the nine lots thereon were eventually listed in the Tochi Daicho as the individual property of the Vincente, Karlos and Ramon Jr.. Francisco claims to have openly and notoriously occupied Ngerchur since 1950 without any objection or action by defendants or any other party, until shortly before the Complaint herein was filed when defendant claimed

ownership in derogation of Francisco's title. (Appellee's Response Brief, pp. 1-3)

NSPLA asserts that Ramon Aguon Sr. migrated to Palau during the German administration and that the German government ordered that Ngerchur be given Aguon Sr. to live on. This, according to NSPLA, gave Aguon Sr. nothing more than a use right. Years later, during the Japanese administration, the island was divided into nine lots and for reasons NSPLA claims are not clear, the lots were listed in the names of the Aguon brothers in fee simple. (Appellant's Opening Brief, pp. 4-5)

Trial was held in November, 1990 with the parties stipulating to the Tochi Daicho listings. NSPLA attempted to rebut the presumption that the Tochi Daicho is correct, but the trial court held that it failed to do so by clear and convincing evidence. (Trial Court Decision, p. 2) The trial court also held that any claim NSPLA and its predecessors may have had was barred by the ⊥112 statute of limitations and in equity by virtue of their inaction for 118 years.

By Judgment dated January 18, 1991, the trial court also assessed costs against NSPLA.

NSPLA asserts that the trial court erred by: 1) relying upon plaintiff's testimony; 2) holding that plaintiff's long uncontested use established ownership; 3) holding that NSPLA failed to rebut the Tochi Daicho; and 4) awarding costs to Aguon.

ANALYSIS

As stated, the parties stipulated that the Tochi Daicho lists the Aguon brothers as owners of the various lots on Ngerchur, but appellant contested its accuracy. The Tochi Daicho is presumed to be correct, except for Peleliu and Angaur, and the burden is on the party contesting it to prove by clear and convincing evidence that it is incorrect. *Esebei Espangel and Ucheliou Clan v. Valentine Tirso, et al.* , 2 ROP Intrm. 315, 318-19 (1991), *citations ommitted*. It is clear from the trial court's opinion that it considered the evidence proffered by appellant to rebut the presumption in favor of the accuracy of the Tochi Daicho, but concluded that appellant failed to meet its burden by clear and convincing evidence. (Trial Court Decision, p. 2)

Appellant requests that this Court reconsider the same evidence considered by the trial court and to conclude that appellant rebutted the accuracy of the Tochi Daicho. Our standard ⊥113 of review of the trial court's decision is "controlled by the 'clearly erroneous' test which does not include review of facts *de novo*. *Udui v. Temol*, ___ ROP Intrm. ___ (Civ. App. No. 12-89, May 7, 1991). Under this test, findings of the trial court are clearly erroneous when after reviewing the entirety of the evidence the reviewing court is left with the firm conviction that a mistake has been committed." *Sengebau v. Balang*, 1 ROP 695, 697 (1989), *citations ommitted*.

We have thoroughly examined the record, including the German Directive which appellant alleges rebuts the presumption of the Tochi Daicho's accuracy, and are not left with the conviction that a mistake has been committed. The trial court's findings upon which it based its conclusion that appellant failed to rebut the Tochi Daicho are not clearly erroneous.

The trial court also found that appellant's claim was barred by the statute of limitations and equity. Pursuant to 14 PNC sec. 402, causes of action for the recovery of land must be commenced within twenty years after the cause of action first accrued. Section 402(b) provides that the twenty year time period for any cause of action accruing to an ancestor or predecessor of the person who presents the action is computed from the time the cause of action first accrued. Section 402(b) is qualified, however by section 410 which provides that any cause of action existing as of May 28, 1951 shall be deemed to have accrued on that date. In other words, if a person's predecessor in interest had a claim for recovery of land that accrued in 1950, the twenty year time period ⊥114 does not begin to run until May 28, 1951.

The rationale for computing time in this matter stems from 6 TTC sections 302 and 310 which are virtually identical to, and are the source of, 14 PNC sections 402 and 410. Because no statute of limitations for the recovery of land existed prior to the adoption of 6 TTC sections 302 and 310, courts have held that the twenty year time period does run until May 28, 1971. *Kanser v. Pitor*, 2 TTR 481 (1963); *Oneitam v. Suain* , 4 TTR 62 (1968); *Armaluuk v. Orrukem* , 4 TTR 474 (1969); *Osaki v. Pekea*, 5 TTR 255 (1970).

The Tochi Daicho lists Francisco's predecessors in interest as the owners of the Ngerchur. Even if NSPLA could establish that it had no notice that Francisco or his predecessors asserted ownership of the land as opposed to a use right prior to the listing in the Tochi Daicho, the listing provided actual or constructive notice that NSPLA or its predecessors had a claim for recovery of land. This notice occurred long before May 28, 1951, but pursuant to 14 PNC section 410, the twenty year statute of limitations did not begin to run until May 28, 1951. NSPLA therefore had until May 28, 1971 at the latest to commence its claim of ownership. It failed to assert its claim until September 4, 1990 when it filed its Counterclaim in response to Francisco's Complaint herein. NSPLA's claim was at minimum over nineteen years too late and it was consequently barred by 14 PNC sec. 402.

In addition to the bar of the twenty year statute of limitations, NSPLA's claim is barred by equity. *Martin v. Trust Territory*, 1 TTR 481 (1958) (claim for possession of property is ⊥115 not cognizable in equity when plaintiff's waited 30 years to make effort to regain possession.)

The trial court's conclusion that NSPLA's claims to ownership are barred by the statute of limitations and equity is correct as a matter of law. In addition, given the uncontroverted evidence establishing that NSPLA failed to assert any claim to ownership for a minimum of approximately fifty years, it was not an abuse of discretion for the trial court to order costs against NSPLA.

The judgment of the trial court is AFFIRMED.