Sugiyama v. Ngirausui, 4 ROP Intrm. 177 (1994)

MARY SUGIYAMA,
Appellant,

v.

GREGORIO NGIRAUSUI, ET AL.,
Appellees.

CIVIL APPEAL NO. 11-92
Civil Action No. 68-91

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: April 7, 1994

Counsel for Sugiyama: Roy Chikamoto
William Ridpath

Counsel for Ngirausui: Mariano Carlos

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; PETER T. HOFFMAN, Associate Justice

HOFFMAN, Justice:

This is an appeal from a judgment for the defendant and for the intervenor in an ejectment action. The parties dispute the ownership of a mesei or taro paddy in Ngerbeched Hamlet, Koror State.

Plaintiff-appellant Mary Sugiyama claims she became the owner of the property by purchasing it in 1988 for $500 from Mariaseling Ngirausui and that Mariaseling, in turn, was awarded the property at the eldecheduch of her father, Ngirausui. Defendant-appellee Grace Towai traces her right to possession to a use right given her by intervenor-appellee Gregorio Ngirausui. Gregorio, who is Mariaseling's brother, admits having given a use right to Grace Towai. He also asserts, contrary to Sugiyama's claim, that he and his siblings, including Mariaseling, were jointly given ownership of the property at his father Ngirausui's ⊥178 eldecheduch and that he was placed in charge of the property. He further claims that, because the land is owned by all the siblings in fee simple under Palauan custom, Mariaseling had no title to give to Sugiyama.

The trial court, finding Gregorio's witnesses more credible on the issue of who was awarded the paddy at Ngirausui's eldecheduch, adjudged Gregorio and his siblings the owners of the property. Sugiyama appeals. We affirm.

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I.

Sugiyama's principal argument is that the trial court's judgment violates Palauan custom by recognizing Gregorio as a fee simple co-owner, with his siblings, of the paddy. Sugiyama asserts that it is contrary to Palauan custom for a man to own mesei. Sugiyama extrapolates from this premise that Gregorio cannot be the owner of the paddy and, therefore, Mariaseling must be. Sugiyama also seems to argue that the alleged custom provides circumstantial evidence in support of her contention that the participants at Ngirausui's eldecheduch, presumably aware of the alleged custom, must have given the paddy to Mariaseling.

Yet Sugiyama failed to offer any proof at trial regarding the existence or scope of this alleged custom. Without this proof, her argument that the trial court's judgment violates Palauan custom must fail. See Udui v. Dirrecheteet, 1 ROP Intrm. 114, 117 ⊥179 (1984) (party relying on custom must prove its existence by clear and convincing evidence).[1]

Sugiyama also argues that there was insufficient evidence to support the trial court's findings because the chain of title from Ngirausui's mother, Aot, to Ngirausui was never established. But Sugiyama did not contest this point at trial. Because Sugiyama did not raise the issue at trial, she cannot raise it now. *Eriich v. Reapportionment Commission*, 1 ROP Intrm. 150, 151 (1984).[2]

The unrebutted testimony at trial was that the paddy was distributed at Ngirausui's eldecheduch. The only contested issue was to whom it was distributed. On this issue the trial court, as fact finder, weighed the credibility of the witnesses and found the paddy was awarded to Ngirausui's children, with Gregorio as trustee. This finding is not clearly erroneous and therefore must be affirmed. See 14 PNC § 604(b).

II.

Next, Sugiyama argues that the trial court erred in denying her motions for a new trial and for relief from judgment. Sugiyama first argues that the trial court erroneously assumed that these motions were based solely on the discovery of new evidence. ⊥180 Sugiyama contends that the motions were also based on mistake, inadvertence, surprise, or excusable neglect.[3] Yet in

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[1] Because Sugiyama produced no evidence regarding the custom at trial, we need not express an opinion on whether Palauan custom mandates that only women can own mesei.

[2] Even if the issue had been raised below, Sugiyama's argument would still fail because it was her burden, as plaintiff in an ejectment action, to recover on the strength of her own title and not on the weakness of the defendants' title. See 25 Am. Jur. 2d Ejectment § 103 (1966) ("[I]f the plaintiff fails in his proof of title, he cannot recover, however weak or defective the defendant's title may be.").

[3] ROP R. Civ. Pro. 60(b) reads, in part,

> [T]he court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable

the motions and on appeal Sugiyama does no more than make this claim without actually detailing the alleged mistake, inadvertence, surprise, or excusable neglect.

The central focus of Sugiyama's motions was clearly on her claimed newly discovered evidence. Sugiyama sought a new trial to introduce two affidavits and a family tree created by her chief witness at trial. One of the affidavits was from a Ngerbeched resident who had heard that Mariaseling was awarded the paddy at Ngirausui's eldecheduch; the other was from an eldecheduch participant who also claimed that Mariaseling was awarded the paddy.

Sugiyama's plea for a new trial or an amended judgment based on this evidence was properly denied for two reasons. First, the evidence is merely cumulative, adding nothing more than was already known at trial (i.e. that some eldecheduch participants thought the paddy was given to all of Ngirausui's children while others thought it was given just to Mariaseling). See 7 J. Moore, Moore's Federal Practice ¶ 60.23[4] (1991) (To justify relief, the newly discovered evidence "must be of such a material and ⊥181 controlling nature as will probably change the outcome . . . [and] not merely cumulative or tending to impeach or contradict a witness.").

Second, for relief to be granted under Rule 59 or Rule 60(b)(2), the failure to produce the evidence at trial must not have been caused by the moving party's lack of due diligence. In other words, the "evidence must be such as was not and could not by the exercise of diligence have been discovered in time to present in the original proceeding." Id. The trial court found that this evidence could have been discovered with due diligence, noting that Sugiyama had mentioned one of the affiants during her testimony, and that the immediate discovery of the evidence after trial suggested it could have easily been discovered before trial. The trial court was within its discretion in making this determination. See 46 Am. Jur. 2d Judgments § 676 (1960) (granting or denial of a motion for relief from judgment lies within the sound discretion of the trial court).

The trial court's judgment is AFFIRMED.

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neglect; (2) newly discovered evidence . . . ; . . . (6) any other reason justifying relief from the operation of the judgment.