Rengulbai v. Solang, 4 ROP Intrm. 68 (1993)
MERUK RENGULBAI, et al.,
Appellants,

v.

RIDEP SOLANG, et al.,
Appellees.

CIVIL APPEAL NO. 40-91
Civil Action No. 9-85

Supreme Court, Appellate Division
Republic of Palau

Opinion
December 17, 1993

Counsel for Rengulbai: Johnson Toribiong

Counsel for Solang: J. Roman Bedor, T.C.

Counsel for children of Ngeskesuk: Mariano W. Carlos

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

NGIRAKLSONG, Chief Justice:

The parties to this appeal dispute the ownership of 14 lots in Meyuns. In 1968 the Trust Territory High Court determined that the lots were owned by the heirs of Dirrablong. *Torul v. Arbedul*, 3 TTR 486, 494 (Tr. Div. 1968). In 1974 the Palau District Land Commission determined that Dirrablong's heirs were her two sisters, Dirralalo Bilung and Ebil Rengulbai, her two brothers, Ngiramechelbang Ngeskesuk and Marbou Renguruchel, and her adopted son Ridep Solang. In affirming this determination, the Trust Territory High Court noted, without explanation or analysis, that the heirs owned the lots as joint tenants. *Ngeskesuk v. Solang* , 6 TTR 505, 513 (Tr. Div. 1974).

⊥69 In July 1974 the Land Commission issued certificates of title for the 14 lots to the five heirs of Dirrablong. The certificates stated that the five heirs owned the lots in fee simple. In an accompanying letter, the senior land commissioner notified the five heirs that they owned the land as joint tenants. The commissioner explained that this result was dictated by the High Court's judgment even though joint tenancy was "outside of Palau custom."

In 1977 the five heirs deeded two of the lots to Ngiramechelbnag Ngeskesuk's six children ("children of Ngeskesuk").

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Marbou Renguruchel died in 1979 and Dirralalo Bilung died in 1980. In August 1982 the remaining heirs, Rengulbai, Ngeskesuk, and Solang signed an "Agreement" by which Ngeskesuk's oldest son, Ichiro Dingilius, was permitted to build a small home for himself on two of the heirs' remaining 12 lots so that he could look after Ngeskesuk. The Agreement states that the heirs "have given Ichiro Dingilius [the two lots] before as his individual property for his service."

Ngiramechelbang Ngeskesuk died in 1983, and Ebil Rengulbai died in 1984, leaving Solang as the sole surviving heir. The present action began in January 1985 when the children of the deceased female heirs filed a quiet title action against Solang and the children of Ngeskesuk. The plaintiffs (hereinafter referred to collectively as "Rengulbai") claimed that as descendants of Dirrablong's sisters they alone succeeded to her estate. Solang, in turn, claimed that he owned the lots because he was the sole ⊥70 surviving joint tenant of the original heirs. The children of Ngeskesuk claimed title to the two lots deeded to them in 1977 and to their father's share of the remaining lots. Finally, Ichiro Dingilius claimed title to the two lots given to him in the 1982 Agreement.

The trial court stayed proceedings pending resolution of another quiet title action, this one filed by the children of Ngeskesuk against Esebei Espangel, who claimed that in 1968 he had paid Ngeskesuk $8,100 for the same two lots which the heirs of Dirrablong deeded to the children of Ngeskesuk in 1977. In *Children of Ngeskesuk v. Espangel*, 1 ROP Intrm. 682, 693-94 (1989) we held that Espangel was bound by the Land Commission's ownership determination (that the heirs of Dirrablong owned the two parcels) because he had notice of it and failed to appeal. This Court further held that because the concept of joint tenancy "is foreign to Palau" the heirs of Dirrablong did not hold their land as joint tenants, but "in fee simple according to Palauan custom." *Id.* at 691-92.

Following *Children of Ngeskesuk*, the trial court in the present action determined that the children of Ngeskesuk owned the two lots deeded to them in 1977, that Ichiro Dingilius owned the two lots given to him in the 1982 Agreement, and that Solang and the descendants of the four other heirs of Dirrablong owned the remaining 10 lots. Solang appeals, claiming sole title to every lot except the two lots deeded to the children of Ngeskesuk in 1977. Rengulbai also appeals, claiming title to all 14 lots. ⊥71 Finally, the children of Ngeskesuk appeal the trial court's order requiring them to reimburse Espangel for the $8,100 he paid to Ngeskesuk.

DISCUSSION

1. The 1977 Deed.

In *Children of Ngeskesuk*, we held that the 1977 deed effectively conveyed two of the 14 lots to the children of Ngeskesuk. *Children of Ngeskesuk*, 1 ROP Intrm. at 693. Rengulbai now argues that the deed is void. The trial court's finding that the two lots belong to the children of Ngeskesuk was not clearly erroneous.

2. The 1982 Agreement.

Rengulbai appeals the trial court's determination that Ichiro Dingilius owns the two lots referenced in the 1982 Agreement. Rengulbai first argues that the trial court erred in admitting the duplicate of the Agreement. As there was no evidence that the original instrument was destroyed in bad faith, the trial court did not err in admitting a copy. *See* ROP Evidence R. 1004(1). Rengulbai further argues that one of the grantors, Ebil Rengulbai, signed a power of attorney in favor of her sons one day after she signed the Agreement. There is nothing in the record, however, to suggest that Ebil Rengulbai was incompetent when she signed the Agreement, that she was deceived as to its contents, or that she was coerced into signing it. Because the power of attorney was signed the day after Ebil Rengulbai signed the ⊥72 Agreement, her signature on the Agreement effectively transferred her share of the two lots.

Rengulbai next argues that the two lots in question were deeded by Ngeskesuk in 1972 to Yasko Ramarui. This purported transfer is ineffective first because it was not signed by all of the heirs and second because Ramarui lost her claim to the property by failing to protect her interests before the Land Commission when it undertook to determine the property's ownership in 1974. To preserve her rights, Ramarui was required to file a claim before the Commission and/or appeal the Commission's ownership determination. Because she did not, the Commission's certificate of title, recognizing the heirs of Dirrablong as the owners of the lots, becomes conclusive proof of ownership, and bars Ramarui from claiming title under an earlier transfer agreement. *See* 35 PNC § 941(b).

Finally, Rengulbai argues that the 1982 Agreement did not transfer the two lots because it lacked "words of conveyance." Formality and exactness are not required to transfer property. It is not "essentail to the validity of an instrument as a deed . . . that it follow any exact or prescribed form of words." 23 Am. Jur. 2d *Deeds* § 17 (1983). All that is required is that the grantor sufficiently declare his intention to pass title. *Id.* This condition is met in the present case as the 1982 Agreement declares the grantors' intention to give the two lots to Dingilius in return for his taking care of his ailing father. The trial court properly awarded the two lots to Dingilius.

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3. The Remaining Ten Lots.

Solang claims sole possession of the ten lots as the surviving joint tenant. He argues that this Court should not have addressed the joint tenancy issue in *Children of Ngeskesuk* because the Trust Territory High Court had already settled it in *Solang*. However, as we noted in *Children of Ngeskesuk*, the High Court's passing reference to joint tenancy in *Solang* was *dicta*. Children of Ngeskesuk, 1 ROP Intrm. at 685. Because the High Court rendered its *dicta* on joint tenancy *sua sponte*, without giving the parties full opportunity to be heard, that *dicta* cannot form the basis of a *res judicata* claim. *See* 46 Am. Jur. 2d *Judgments* §§ 394, 478 (1969).

In *Children of Ngeskesuk*, we called joint tenancy "foreign to Palau," and held that a joint tenancy will be sustained only where it can be shown by clear and convincing evidence that this was the parties' intention. *Children of Ngeskesuk*, 1 ROP Intrm. at 691-92. Solang now claims

that this decision is *dicta* because the only dispute before the Court was who owned the two lots deeded to the children of Ngeskesuk. But Solang was a party to *Children of Ngeskesuk*,[1] and by the time the case reached the Supreme Court he was the sole surviving heir. It was therefore incumbent upon him to make the argument then that he makes now.

In any event, we reaffirm the sound reasoning of *Children of Ngeskesuk*. Because there is no indication that Dirrablong or ⊥74 her heirs intended to create a joint tenancy, none will be implied. Solang's claim that he alone is entitled to the 10 lots is without merit.

Rengulbai claims that under Palauan custom title to the lots devolves only to the descendants of the matrilineal heirs of Dirrablong. However, in this case the heirs received Dirrablong's individual property. Thus, the disposition of the deceased heirs' share of the 10 lots is governed by 39 PNC § 102(d). [2] Accordingly to that statute, if an owner of land held in fee simple has acquired the land by means other than as a bona fide purchaser for value, then, upon his or her death, "the land in question shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death." This section applies to the ten lots in the present case because the heirs inherited the land, and therefore did not purchase it in good faith for value. Pursuant to 39 PNC § 102(d), it is incumbent upon the family members of each heir to decide which lineage, maternal or paternal, was actively and primarily responsible for the deceased heir prior to his or her death. [3] That lineage may then dispose of the heir's share of the ten lots as it sees fit.

⊥75 The trial court assumed that the deceased heirs' share of the 10 lots automatically devolved to the heirs' children. Nothing in 39 PNC § 102(d) so implies. While the lineage responsible for caring for a deceased person may direct that the person's children receive his property, such a disposition is not mandated by 39 PNC § 102(d). We therefore reverse that portion of the trial court decision which names the descendants of the deceased heirs and finds that they are all entitled to share in the ownership of the 10 lots. We leave it to the respective maternal or paternal lineages of the heirs to decide who receives the heirs' shares of the 10 lots.

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[1] The original quiet title action in *Children of Ngeskesuk* was consolidated with an action by Solang against Espangel over the same two parcels of land.

[2] Our application of section 102(d) is guided by the principle that, when construing statutory language, we are bound to give ambiguous provisions a "reasonable, rational, sensible, and intelligent construction." 73 Am. Jur. 2d *Statutes* § 265 (1974).

[3] The lineages may seek judicial resolution of this issue if they cannot agree.

4. Reimbursing Espangel.

The trial court held that "elementary fairness" required the children of Ngeskesuk to repay Espangel because they "stand in the shoes" of Ngeskesuk. We agree with this assessment and affirm the trial court's order directing the children of Ngeskesuk to pay Espangel $8,100.

Solang testified at trial that at Ngeskesuk's *eldecheduch* a sum of $8,000 was collected to repay Espangel. This money was entrusted to Meruk Rengulbai, who never paid Espangel. Rengulbai, who claims that he was unaware that Ngeskesuk had an obligation to Espangel, used the money collected at the *eldecheduch* to pay for his legal services in the present case. Rengulbai's use of the money, regardless of whether he knew of Espangel's debt, was unwarranted. Once the children of Ngeskesuk have repaid Espangel, they will be entitled to reimbursement from Rengulbai.

⊥76 The trial court's judgment is AFFIRMED, except for that portion which distributes the ten lots to all the children of the deceased heirs. Pursuant to this opinion, the lineages of each deceased heir should meet to decide amongst themselves who receives the heir's share of the ten lots.[4]

[4] To clear up any possible confusion, we are not suggesting that the lineages of all four heirs meet together. There should be four separate meetings, one for each deceased heir.