Tmetuchl v. Siksei, 7 ROP Intrm. 102 (1998)

ROMAN TMETUCHL,
Appellant,

v.

MASAZIRO SIKSEI,
Appellee.

CIVIL APPEAL NO. 26-97
Civil Action No. 68-96

Supreme Court, Appellate Division
Republic of Palau

Argued: June 15, 1998
Decided: August 21, 1998

Counsel for Appellant: William L. Ridpath

Counsel for Appellee: David Kirschenheiter

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

MILLER, Justice:

In this appeal, we review the Trial Division's decision to award $65,000 in damages, plus interest, to compensate appellee for the value of trees cut down on appellee's property by appellant's workers. We affirm.

BACKGROUND

Appellee Masaziro Siksei claims ownership of a lot in Aimeliik pursuant to a "Permit of Entry and Homesteading Agreement" dated January 30, 1964 ("Homesteading Agreement"), between the Trust Territory District Administrator and Siksei Ngiruchelbad, appellee's father. ⊥103 Pursuant to 67 TTC § 207 and the Homesteading Agreement, appellee's father was required to fulfill certain requirements in order to obtain title to the land.

Appellee's father died in 1980 before he was issued a deed for the land. Prior to his death, he designated appellee as the beneficiary of the land. [1] Notwithstanding this designation, appellee's brother, Masami claimed ownership of the property as Siksei's heir during proceedings before the Aimeliik Land Registration Team in 1982. [2] In the course of those

[1] The Homesteading Agreement specifies that, in the event of the father's death, his son "Masashiro" shall be the heir to the homestead.

[2] Appellee Masaziro did not participate in the hearings and testified that he had not heard

proceedings, a representative of the Trust Territory Government testified, without rebuttal, that he had inspected Siksei's homestead and found it to be in compliance with the requirements of the Homesteading Agreement. [3] Based on that testimony, the Land Registration Team issued an adjudication declaring that the land was the property of Masami. For reasons unknown, however, that adjudication was never formally approved by the Land Commission.

In 1988, the governor of Aimeliik State and appellant Roman Tmetuchl executed an agreement allowing the latter to cut down trees on government land. At trial, the parties stipulated that the trees now at issue were subsequently cut down by appellant's workers. Appellee Masaziro claimed, however, and the trial court found, that those trees were on his property, not on Aimeliik State land.

The Trial Division concluded that, under the homesteading law, once the conditions of occupancy were met, "[t]he [Trust Territory's] duty to issue the deed was non-discretionary and enforceable by mandamus." Thus, the homesteader - appellee's father - was the owner of the property. *Id.* (citing *Cruz v. Johnston*, 6 TTR 354 (Tr. Div. 1973)). The court also concluded that because "[t]he provisions of the homestead law take precedence over the Land Registration Team findings[,]" id. at 3, appellee Masaziro - not his brother Masami - was the proper heir to the land. The trial court credited Masaziro's testimony concerning the number of trees taken and credited his expert's testimony as to their value.

ANALYSIS

Appellant raises two issues on appeal: (a) whether appellee owned the land from ⊥104 which any trees were taken; [4] and (b) whether appellee met his burden of proof concerning the

---

of his brother's claim until this litigation.

[3] As recited in the judgment prepared by the Land Registration Team: "[I]n August of 1980 . . . the Honorable Kim B. Batcheller, who was the Acting DistAd of Palau, sent Isamu Towai, the Land Classifier Technician for the Land and Survey in Palau, to conduct an inspection of their homesteads. Mr. Isamu Towai, in his testimony, said he did inspect t[h]e claimants' homesteads by order of the Acting DistAd [in 1980], but even though he did not submit a written report of his findings, he affirmed the testimony of the claimants (homesteaders). He said the homesteaders did fulfill their part of their homesteading agreement with the TT Gov't." This judgment, along with partial transcriptions of the testimony offered by Towai and by Masami Siksei, were admitted into evidence before the Trial Division by stipulation.

[4] Appellant also argues that appellee had not occupied or even visited the property since 1980 and, therefore, was not in possession of the property at the time of the alleged conversion. Appellant's argument here is based on the assumption - which we reject below - that "title to the property nonetheless remained in the Palau government and not in the homesteaders." Appellant's Brief at 8. Appellant acknowledges that "[t]he possession requisite to maintaining an action for conversion may be actual or constructive." *Id.* Since ownership is sufficient to establish constructive possession, there was no need for appellant to also prove actual possession of the land. *See* 18 Am. Jur. 2d *Conversion* § 62 (1985), at 187-88 ("Actual possession of land is not required to maintain an action for the conversion of property severed from the freehold, but the legal title, which draws to it constructive possession, is, in the absence of adverse possession

number of trees taken.

> The elements necessary to establish a cause of action for conversion are
>
> (1) plaintiffs' ownership or right to possession of the property at the time of the conversion; (2) defendants' conversion by a wrongful act or disposition of plaintiffs' property rights; and (3) damages . . .

18 Am. Jur. 2d *Conversion* § 2 (1985), at 146-47.

According to appellant, because appellee's father's claim to the homestead was never perfected, appellee failed to prove that he is the owner of the land from which the trees were taken. Appellant argues that the trial court erred when it relied on *Cruz v. Johnston*, 6 TTR 354 (Tr. Div. 1973). Appellant does not dispute that, if appellee's father satisfied the occupancy requirements and had a vested right to the property, appellee is the properly designated heir to the property.[5]

We believe that the Trial Division correctly relied on *Cruz* in concluding that appellee's father had a vested right in the property before he died. *Cruz* was a class action in which homesteaders who had complied with homesteading requirements sought and obtained a writ of mandamus directing the High Commissioner of the Trust Territory to issue them deeds of conveyance. As stated by its author in a subsequent case, *Cruz* "held the plaintiffs entitled to their deeds which, in effect, were nothing more than evidence of the already acquired title." *Sablan v. Norita*, 7 TTR 90, 92 (Tr. Div. 1974).[6]

⊥105 Siksei, unlike the plaintiffs in *Cruz*, was never issued a certificate of compliance by the Trust Territory Government. We believe, however, that while "receipt of a certificate of compliance constitutes evidence of a vested right," *Sablan*, 7 TTR at 92, it is not a *sine qua non* of a finding of ownership. Here, on the basis of unrebutted testimony adduced before the Land Registration Team, *see* n.3 *supra,* which remained unrebutted on the record below, the trial court was entitled to conclude that Siksei had complied with homestead requirements and had therefore become the owner of the property before his death.

Appellant also contends that appellee did not provide evidence of the number of trees

---

by another, sufficient.").

[5] The homesteading law provided that "in the event of the death of a homesteader prior to the issuance of a deed of conveyance, all rights under the permit shall inure to the benefit of such person or persons, if any, as the homesteader shall last designate in writing filed in the District Land Office. [sic] 67 TTC § 209. Appellant does not contest that appellee's father designated appellee as the beneficiary under the Homestead Agreement, nor does be question the trial court's conclusion that the contrary finding of the Land Registration Team in favor of appellee's brother, which was never adopted by the Land Commission, is not preclusive here.

[6] Indeed, as stated in *Sablan*, the High Commissioner had conceded in the Cruz case that "[t]he homesteader has, at least no later than when he achieves eligibility, an equitable interest in his homestead lands."

actually cut from his property. The court's finding regarding the number of trees taken is reviewed under the clearly erroneous standard, *see* 14 PNC § 604(b), and will not be reversed as long as it is supported "by such relevant evidence that a reasonable trier of fact could have reached the same conclusion . . . ." *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994).

The trial court concluded that

> [p]laintiff supplied a specific count, based upon his observations at the time of harvesting. This count was not much different from the estimates of other witnesses. Plaintiffs count is credible in light of all the evidence and I accept his number by a preponderance of the evidence.

Trial Decision at 4.

The trial court was presented with appellee's unrefuted testimony that he knew the land and that he went through the land and counted the number of trees lying on his property. Appellee also had one of appellant's workers testify as to how many trees they cut down and the size of those trees. The trial court's determination to credit this testimony was not clearly erroneous.

The judgment of the Trial Division is accordingly AFFIRMED.