YANGILEMAU, Plaintiff

v.

MAHOBURIMALEI, Defendant

Civil Action No. 37

Trial Division of the High Court

Palau District

June 27, 1958

Action to determine ownership of certain trees on Pulo Anna Island, in which plaintiff claims as donee of gift from adoptive father and defendant attempts to nullify effect of gift on ground of alleged acts of plaintiff. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that property passed from former owner's control upon making of gift, and that plaintiff has not deserted his adoptive family nor acted improperly toward his sister in instigating court action against her and her husband.

1. **Real Property—Gifts**
   Where gift of trees was effected during donor's lifetime, trees do not represent property owned by donor at time of his death.

2. **Real Property—Gifts**
   Where party is given general power to take charge of owner's property, power does not operate to give control over property which is no longer owner's to give because it was subject matter of prior gift.

3. **Real Property—Gifts**
   Any power granted party to control property left by former owner is ineffective and inoperative with respect to trees which were subject matter of prior gift.

4. **Palau Custom—Adoption**
   Where there is no credible evidence that party has deserted his adoptive family, Palau custom has no force in action concerning party's rights in property of adoptive family.

5. **Criminal Law—Principal and Accessory—Accessory After the Fact**
   Where family members are in position of aiding couple in continuance of incestuous relationship, they are exposed to possibility of prosecution for crime of accessory after the fact. (T.T.C., Sec. 430)

6. **Criminal Law—Principal and Accessory—Accessory After the Fact**
   Whoever, knowing crime to have been committed, unlawfully receives, comforts, harbors, aids or advises or assists person he knows committed crime is accessory after the fact. (T.T.C., Sec. 430)

7. **Criminal Law—Principal and Accessory—Accessory After the Fact**
   One does not become accessory after the fact who, knowing crime has been committed, merely fails to give information thereof. (T.T.C., Sec. 430)

8. **Criminal Law—Principal and Accessory—Accessory After the Fact**
Under Trust Territory law defining accessory after the fact, words "comfort", "harbor", "aid", and "assist" might apply to otherwise innocent person living in same household and communing daily with couple allegedly guilty of incestuous relationship. (T.T.C., Sec. 430)

9. **Custom—Applicability**
Public policy forbids enforcement of custom which closes mouth of family member knowing of commission of felony by another family member under pain of forfeiture of property in event of violation.

10. **Palau Custom—Family Obligations**
Party's rightful inheritance cannot be forfeited because of his disclosure of sister's wrongdoing.

TOOMIN, *Associate Justice*

I. FINDINGS OF FACT

1. Plaintiff Yangilemau is the adopted son of Utomalet (also known as Ubotomalei), a resident of Pulo Anna Island, Palau District, who died in 1947. Defendant Maho-burimalei and Utomalei were brothers.

2. Sometime prior to his death, Utomalei planted certain trees on his lands at Pulo Anna, namely, 100 coconut palms, 10 breadfruit, and 20 nipa palms, and made a gift of them to plaintiff, his adopted son. On two occasions Utomalei confirmed to other persons that he had made this gift. The trees so given to plaintiff were all marked by him in 1948 with a "Y", in the presence of defendant.

3. The sister of plaintiff, one Sangirigapar, entered into an incestuous marriage in 1935 with her father's brother. To show his disapproval, plaintiff moved their belongings out of the house of Yacob, another brother of Utomalei, with whom all of them were then living. Plaintiff also encouraged his natural father, Albis, to institute proceedings against the incestuous couple. These actions of plaintiff were approved by Yacob, who was the then head of the family of plaintiff's adoptive father.

4. Plaintiff has not deserted his adoptive family (the family of Utomalei), but has been living by himself in Koror in connection with his employment by the District Administration.

II. CONCLUSIONS OF LAW

1. It is conceded in the pleadings, and established by the evidence, that a large number of trees were planted by plaintiff's adoptive father at Pulo Anna, on land belonging either to him or to his clan. It is expressly admitted by defendant that Utomalei had the right to determine who was to have the ownership and control of these trees both during his life and after he was gone. Under the second finding of fact, it has been found that Utomalei made a gift of these trees to plaintiff. Defendant admits that he has taken away plaintiff's inheritance, and attempts to justify his action on three grounds: (a) That he was appointed by Utomalei as master of all his property; (b) that plaintiff has deserted his adoptive family and, under Pulo Anna custom, he cannot take any property with him; and (c) that he acted improperly towards his sister in placing her belongings outside the ancestral doors and instigating court action against her and her husband.

[1–3] (a) With respect to (a) above, the only basis for it is defendant's own testimony. As against it, we have the testimony of plaintiff and the witness Meleitek, a long time resident of Pulo Anna, who recounted to the Master the statements made by Utomalei confirming his gift of the trees to Yangileman. It appears therefore that the Master was fully warranted in his finding concerning the making of the gift. Since the gift was effective during the donor's lifetime, the trees did not represent property owned by Utomalei at the time of his death, and any general power, even if given defendant to take charge of this property, could not operate to give control over prop-

erty which was no longer Utomalei's to give. The court holds, therefore, that any power granted defendant to control property left by Utomalei was ineffective and inoperative with respect to the trees in question.

[4] (b) As regards the contention that plaintiff has deserted his adoptive family, and therefore cannot take any of their property with him, as to do so would violate Pulo Anna custom, this is negated by the Master's finding. The Master found that plaintiff has not gone back to his natural father's relatives, but is living alone in Koror because he is employed there by the Administration. No credible evidence establishes otherwise. The court therefore holds that the impact of customary law has no force in this case, since the factual basis for its application is here lacking.

[5, 6] (c) Defendant is on far from solid ground in raising the point that plaintiff acted improperly towards his sister in encouraging her prosecution for incest. It appears that members of the lineage were all living together at the time of the sister's marriage. Necessarily all members of the immediate family of the couple were brought into the position of aiding them in the continuance of their relationship. As a result, they are all exposed to the possibility of prosecution for the crime of Accessory after the Fact. It is provided in Trust Territory Code, Section 430, that "Whosoever, knowing a crime to have been committed, shall unlawfully receive, comfort, harbor, aid, advise, or assist the person he knows committed the crime, shall be named accessory after the fact".

[7–10] True it is that it has been held that one does not become an accessory after the fact who, knowing that a crime has been committed, merely fails to give information thereof. *Levering v. Com.*, 132 Ky. 666, 117 S.W. 253; *re Overfield*, 39 Nev. 30, 152 P. 568; *State v.*

Brown, 121 Wash. 371, 209 P. 855. However, under our Code the significant words are "comfort," "harbor," "aid," and "assist", all of which might well be considered as characterizing the relationship of an otherwise innocent person living in the same household and communing daily with the allegedly guilty couple. This court can perceive no persuasive reason for upholding a custom which closes the mouth of a family member knowing of commission of a felony by another family member, under pain of forfeiture of property in the event of violation. If such a custom exists, public policy would forbid its enforcement. However, the Master has found there is no basis in Pulo Anna custom for such forfeiture. Nor is there satisfactory evidence in the record that such custom in fact exists. The court is therefore constrained to hold that the argument of defendant that he is entitled to forfeit plaintiff's inheritance because of disclosure of his sister's wrong doing, lacks legal jurisdiction.

III. JUDGMENT

It is therefore ordered, adjudged, and decreed as follows:—

1. The report of Charly Gibbons, Master of this court, and his findings of fact, are hereby approved and confirmed in all respects.

2. Those coconut palms, breadfruit trees, and nipa palms planted by plaintiff's adoptive father Utomalei on Pulo Anna Island, Palau District, and marked in 1948 by plaintiff with a "Y", are hereby declared to be the sole and separate property of plaintiff, over which he has the exclusive ownership and control.

3. The defendant Mahoburimalei, and all persons in privity with him, are hereby enjoined from interfering with plaintiff, or with his access to said trees for the purpose of caring for said trees and of removing the fruits thereof.

4. The court retains jurisdiction of this cause for the purpose of enforcing the orders hereinabove set forth.

5. No costs are assessed against any party.

WIA, Plaintiff
v.
IOSEF, Defendant

Civil Action No. 53

Trial Division of the High Court

Truk District

June 30, 1958

Action to determine ownership of land on Udot Island. The Trial Division of the High Court, Chief Justice E. P. Furber, held that it was now too late to upset decision of German authorities and that land lawfully belonged to owner designated by those authorities.

1. Former Administrations—Official Acts

It is now too late for courts of present administration to upset decisions of German authorities with respect to ownership of land in Truk.

2. Real Property—Quiet Title—Laches

Where party lets matter rest for long time, there is strong presumption that she agreed to division of land which she did not dispute at the time.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. During the period of the German Administration, the German authorities, after hearing, decided the lands in question were owned by the defendant's father Enikios.

2. Enikios and after him, the defendant Iosef, have used these lands continuously since that decision, under claim of individual ownership.

3. No objection to Enikios' and Iosef's claim of ownership or use of the land was raised by or on behalf of Minata from early Japanese times until shortly before bringing of this action.