

KISAOL, Appellant

v.

CHARLY GIBBONS, Appellee

Civil Appeal No. 4

Appellate Division of the High Court

February 6, 1956

See, also, 1 T.T.R. 219

Appeal from the Trial Division of the High Court, Palau District, involving title to land. The Appellate Division of the High Court, Judge Paul D. Shriver, held that under Palau customary law, a clan chief could recover title to his land where it was transferred without notification to prominent members of clan.

Affirmed.

1. Palau Land Law—Chief's Title Land

Under Palau custom, chief's title land is symbol of tribal unity and existence, and general pattern is for land to pass from chief to chief for use during period he is head of clan.

2. Palau Land Law—Chief's Title Land—Sale

Under Palau custom, where chief's title land is sold, land survey authorities inform clan members they must find other land for chief if clan is to be recognized.

3. Palau Land Law—Chief's Title Land—Transfer

Under Palau custom, determination to dispose of chief's title land requires notification of all clan members and counsel of clan elders.

4. Palau Land Law—Chief's Title Land—Transfer

Under Palau custom, where there is no consideration for transfer of chief's land and where prominent members of clan were not aware of it, chief is entitled to recover land.

Before SHRIVER and MANIBUSAN, *Temporary Judges*
SHRIVER, *Temporary Judge*

OPINION OF THE COURT

This is an appeal from the Palau District. In the absence of briefs and oral argument, the court has considered the appeal on the record, including the transcript

of testimony. The findings of fact and conclusions of law of the trial court were entered in Civil Action No. 14 on January 31, 1955, 1 T.T.R. 219. We hold that such findings and conclusions are supported by the evidence.

In 1942 the members of the Techekii clan, residing in Koror, met and elected a clan chief and also attempted to transfer the traditional chief's title land to Kisaol. The appellee, the plaintiff below, lived some distance from Koror and with others similarly situated, was not notified of the clan meeting or otherwise given an opportunity to participate in person or by representative. He was subsequently elected clan chief and began this action to recover the chief's title land upon the ground that the purported transfer was without legal effect under established Palauan custom.

[1, 2] Chief's title land, under Palauan custom, is a symbol of tribal unity and existence. It is a physical indication that the clan has not been dissolved and that its chief is the person who exercises control over the land while holding that office. While it appears that in some instances chief's title land had been sold, it is equally clear that these are exceptions and that the general pattern is for chief's title land to pass from chief to chief for use during the period he is head of the clan. There is evidence that even in instances when chief's title land had been sold, the land survey authorities informed clan members that they must find other chief's title land to replace it if they were to be recognized as a clan (Tr. p. 19).

[3] It is not necessary for us to consider what steps are required to dispose of chief's title land or whether a majority of clan members may make a determination binding upon the minority. Any such determination is of such grave import to the clan that all members should be notified and have the opportunity to participate if at all

possible. The counsel of the clan elders would be sought and through their influence differences in view would, in all probability, be reconciled. It is not a routine matter but affects the very life of the clan and its continuing identity.

The record in this case shows that the appellee, who was of sufficient importance to be elected chief subsequently, was not notified nor were two other members. The meeting at which the transfer was decided upon was apparently held in an atmosphere of doubt and uncertainty. Even the chief elected at such meeting did not know that the appellant was being given chief's title land. It would also appear highly probable that there were influences at work to place the land in possession of Japanese civilians since the appellant promptly leased the land to them. Nor is it entirely clear that the members present intended to transfer the land or to do more than permit the appellant to administer it.

[4] It would be unsound to attempt to equate Palauan custom with American land law, but it is noted that this purported transfer did not involve the payment of any consideration to the clan or its members. In conclusion we agree with the trial court that in the circumstances of this case there was no valid transfer of the land and that the appellee, as clan chief, is entitled to its recovery to be held and used by him while he is chief.

The judgment is affirmed.