propriety of the result there obtained. It follows that the motion of the defendant must be granted, and Truk District Civil Action No. 405 is hereby ordered dismissed.

ATEN, Plaintiff
v.
ERNIST LUDWIG, Defendant
Civil Action No. 372
WISIM, Plaintiff
v.
ERNIST LUDWIG, Defendant
Civil Action No. 404
Trial Division of the High Court
Truk District
April 30, 1969

See, also, 4 T.T.R. 354

Action to determine ownership of land on Udot Island, Truk District. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that defendant's predecessor had only leased land in question and as a result could not have sold full title to it to defendant.

1. Judgments-Res Judicata

The right to intervene cannot subject a person to being bound by the result of an action under the doctrine of res judicata.

2. Judgments-Collateral Attack

Where a judgment, on its face, purports to apply to land neither owned nor claimed by those to whom it is directed, the court is free to read it in connection with the entire record for the purpose of determining its proper application, and to do so is not to attack the judgment, but to define it.

3. Truk Land Law-Generally

The official position of the Japanese Government prohibited the purchase of land by non-natives.

BURNETT, *Associate Justice*

FINDINGS OF FACT

1. The land Fanopur, claimed by the plaintiff Aten, and the portion of the land Fankurkur claimed by the defendant Wisim, were not in issue in Truk District Civil Action No. 127, 2 T.T.R. 428.

2. The transaction between the owners of these lands and the Okinawan national Kamekichy was a lease for a term of years only, rather than a sale.

OPINION

These civil actions were consolidated for trial by reason of issues common to all. They involve conflicting claims of rights of ownership in the lands Fanopur and Fankurkur, which are divisions of the land Pow located in Maulitiw Village, Udot Island, Truk District. Resolution of the dispute is complicated by the decision in a prior action, *Ernist L. v. Akung,* 2 T.T.R. 428, which involved two of eleven divisions of the land Pow, but in which the judgment purported to confer title to the entire area on the plaintiff Ernist L. Judgment in that action was affirmed in 3 T,T.R. 594.

Defendant contends that these, plaintiffs are now precluded from asserting their claim by reason of the judgment in Civil Action No. 127, 2 T.T.R. 428, under the doctrine of res judicata.

[1] The defense clearly has no application. Neither was a party to Civil Action No. 127, 2 T.T.R. 428, in which this defendant was plaintiff, and obviously their rights cannot have been prejudiced thereby. The right to intervene, which, of course, both then had by reason of the general description of the entire land Pow which was employed, cannot subject them to being bound by the result of

that action under the doctrine of res judicata. *30A* Am. Jur., Judgments, § 394.

It may be noted parenthetically that Wisim did in fact attempt to intervene, but was not permitted to do so for some reason not appearing in the record of that action.

[2] Nor are these parties engaged in an attack on the judgment, either collateral or direct. Neither they nor anyone shown to be in privity with them were parties to the action nor named in the judgment. Where the judgment, on its face, purports to apply to land neither owned nor claimed by those to whom it is directed, then we are free to read it in connection with the entire record for the purpose of determining its proper application. To do so is not to attack the judgment, but to define it.

Defendant cites *Tuchurur v. Rechuld,* 2 T.T.R. 357; some of the language there employed might well lead one to believe that it sUPRorts his position, particularly in its erroneous reference to the doctrine of stare decisis. A closer reading of the opinion demonstrates, however, that dismissal there was grounded upon not only an identity of issues of fact, but a close relationship between the plaintiff in Civil Action No. 298, 2 T.T.R. 357, and the plaintiff in an earlier action against the same defendant. That situation does not appear here.

There is a further distinction which must be observed. In both Civil Action No. 127, 2 T.T.R. 428, and these actions, defendant derives his claim from the same source, that is, purchase from Kamekichy. Kamekichy, however, obtained whatever rights he held from eleven different sources. The conclusion of the court in Civil Action No. 127, 2 T.T.R. 428, that he had purchased land from Akung and Kintoki, by no means compels the conclusion that he also purchased, rather than leased from Aten and Wisim.

In support of their claims both plaintiffs testified directly as to their transaction with the Okinawan national Kame-

kichy, from whom defendant claims to have bought the land. Aten testified that he had leased his land in 1941 to Kamekichy for a period of three years for farming purposes. Wisim testified to a similar lease, made in his absence, and on his behalf, by his uncle Maipa.

Defendant agrees that Aten and Wisim originally owned Fanopur and Fankurkur, but contends that rather than leasing they sold to Kamekichy who in turn sold the lands to him. None of the evidence which he presented, however, related directly to the initial transaction. His only testimony as to that issue was limited to statements made to him and to others by Kamekichy, statements which were clearly self-serving, viewed in the light of the circumstances under which they were made.

[3] Plaintiffs produced extensive testimony in corroboration of their position. Their witnesses identified Kamekichy as a member of a Japanese Farmers' Co-op, and described the customary practice of the Co-op as to lease, rather than purchase, of land for farming. We may also take notice of the official position of the Japanese Government, prohibiting the purchase of land by non-natives.

"During the Japanese period the government is said to have forbidden further transfer of land to non-natives. No cases of such transfers were reported." Land Tenure Patterns, Vol. 1, Pt. III, Native Land Tenure in the Truk District, p. 186.

And on *page 188:*

"During the war years, many of the Japanese civilians with temporary rights to native land were evacuated or conscripted on fairly short notice and to get as much cash as they could they arranged quick transfers of their rights to others . . . . In some cases the persons buying these temporary rights maintain they thought that they were buying full title to the land and paid accordingly."

On the whole, I find the evidence on behalf of the plaintiffs to be convincing notwithstanding the apparently con-

trary finding of the court in Civil Action No. 127, 2 T.T.R. 428, as to other parties and other lands.

Defendant's use of the land and produce left on it by Kamekichy would appear to compensate him sufficiently for whatever expenditure he may have made to Kamekichy.

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

1. As between these parties and all persons claiming under them the land Fanopur, Maunitiw Village, Udot Island, Truk District, is owned by Aten, and the defendant Ludwig has no rights therein.

2. As between these parties and all persons claiming under them the portion of the land Fankurkur which is claimed by Wisim, located in Maunitiw Village, Udot Island, Truk District, is owned by Wisim, and the defendant Ludwig has no rights therein.

3. No costs are assessed against any party.

TARZAN TINTERU, Appellant-defendant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee-plaintiff

Criminal Case No. 58

Trial Division of the High Court

Marshall Islands District

June 9, 1969

Appeal from sentence. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that evidence sustained verdict however sentence of banishment could only be rendered by the High Court and any such sentence by a .community Court or District Court was void.

1. Appeal and Error-Generally

Where evidence .supported the verdict, the verdict of the court should not be reversed on the ground of failure of evidence to support the verdict.