

TAISAKAN v. TAISAKAN

on the judgment amount from date of entry until paid at the rate of 6% per annum.

2. Plaintiffs are denied their prayer in their complaint to take over the operation of the Peleliu Club until the judgment has been paid, but the parties are reminded that if the time of judgment payments are not promptly agreed upon, some form of relief may be available in response to a motion for order in aid of judgment.

3. No costs are allowed.

CECILIA S. TAISAKAN, Plaintiff

v.

JESUS A. TAISAKAN, Defendant

Civil Action No. 1014

Trial Division of the High Court

Mariana Islands District

August 6, 1973

Suit by wife against husband, for specific performance of promise to transfer one-half interest in homestead deeded to husband only. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, upheld District Court's dismissal on ground interest in land was involved and a statute provided District Court had no jurisdiction over such cases.

1. Courts—District Court—Jurisdiction

Wife's action against her husband for specific performance of alleged promise to transfer land depended upon what interest, if any, wife had in the land, which had been conveyed to the husband only and which wife claimed a one-half interest ownership of; and District Court properly dismissed for want of jurisdiction due to statute providing District Court did not have jurisdiction where title to or interest in land was involved. (5 TTC § 101)

2. Courts—District Court—Jurisdiction

In action for specific performance of promise to transfer land, statute providing District Court had no jurisdiction where title to or interest in land was involved could not be avoided by first granting the alternative relief of money damages equal to the value of the land and then ordering transfer of the land in satisfaction of the judgment, for when money judgment is satisfied through execution, the attached property is sold

and the purchase payment is transferred to the judgment creditor.
(5 TTC § 101; 8 TTC §§ 1, 55, 61(3))

TURNER, *Associate Justice*

This was an appeal by plaintiff from the order of the District Court dismissing the complaint filed in that court for want of jurisdiction. After argument by counsel for plaintiff, the District Court judge held there was no jurisdiction because the action involved determination of the plaintiff's interest in land and therefor pursuant to 5 TTC § 101, District Court jurisdiction was denied and by 5 TTC § 53 was vested in the Trial Division of the High Court.

Plaintiff advanced two arguments for reversal of the dismissal and remand for trial in the District Court. The first of these was that the plaintiff and defendant are wife and husband and that if either sued the other in District Court for divorce, the decree could provide for distribution of the real property in the marital estate in conformity with the trial court's determination. The fault with this argument lies in the fact the statute relating to jurisdiction of the District Court contains a specific exception which permits "transfer" of real property in divorce cases. The present case is not one for divorce and even if it were the District Court could not decide the issue of ownership or other interest in land because the statutory exception limits the court to a transfer of land interests and specifically denies permission "to adjudicate the validity of such party's ownership of the land or interest therein in question." 5 TTC § 101. The District Court jurisdictional statute defeats appellant's argument she could obtain the relief sought through an action for divorce.

[1] Plaintiff argues, but is unable to sustain the argument without proof, that plaintiff wife owned a one-half interest in a homestead grant and therefor the court should

distribute such interest without the necessity for determination of ownership. The assumption of ownership cannot be sustained on the facts. The homestead deed conveyed to the husband only. What, if any ownership, the wife had in the land conveyed to her husband depends upon applicable law and custom and a determination by the court based upon such proof. Clearly, this suit for specific performance of an alleged promise to transfer land depends upon a determination of what interest, if any, the wife had in the land. Such determination may not be made by the District Court under its statutory jurisdiction.

[2] The second argument offered for District Court jurisdiction was that if the court granted the alternative relief of money damages in the amount of the land value, it could thereafter transfer the land in satisfaction of the judgment. Plaintiff argued:—

“Plaintiff could sue for damages and after obtaining judgment could then seek a court order requiring defendant to transfer the land in question as payment for the damages awarded.”

Plaintiff misconstrues the statute providing for satisfaction of a money judgment by writ of execution against land or other property or by order in aid of judgment when appropriate. 8 TTC § 1, 8 TTC § 55 and 8 TTC § 61 (3). Execution by writ requires sale of the property attached and transfer of purchase payment to the judgment creditor rather than transfer of the property itself in satisfaction of a money judgment.

The plaintiff also urges that statutory construction “in case of doubt” requires an interpretation to “maintain the court’s jurisdiction.” The rule applies to courts of general jurisdiction and the opposite presumption applies to courts of limited jurisdiction, such as the Trust Territory District Courts. 21 C.J.S., Courts, Secs. 96 and 97.

Plaintiff cited *Remoket v. Olekeriil*, 3 T.T.R. 339, and *Tasio v. Trust Territory*, 3 T.T.R. 262. *Remoket* at 3 T.T.R. 344 held:—

“The complaint asked for recovery of money because of rights in land from which the money was derived. The action should have been brought in the Trial Division of the High Court. The District Court did not have jurisdiction of the subject matter.”

That decision supports the District Court order of dismissal in the present case. *Tasio*, also cited, is not applicable. It related to a criminal proceeding in which the Appellate decision admonished “that criminal statutes should not be used to try disputed rights in land.”

Finally, we must conclude, as indicated at the outset of this opinion, that proof of plaintiff wife’s interest in the land in question is essential to her maintaining the action. In *Weidman v. Weidman*, 76 A.L.R. 1359, 1362 (Mass.), the court said, appropriate to the issue presented in the present case, under the common law, one spouse cannot sue the other. (41 Am. Jur. 2d., 437, Sec. 515.) However, in equity they are allowed to sue each other, at least when separate property is concerned, for various reasons, the court explained such as “to determine property rights, to determine whether certain property is the separate property of the wife or of the husband, or to protect the wife with respect to her separate estate”

The common law rule is applicable in the Trust Territory in the absence of statute.

The order of the District Court dismissing the complaint must be affirmed. The plaintiff must bring her action in the High Court.