

KLIU, Plaintiff
v.
IBLAI SASAO, Defendant
Civil Action No. 30-73
Trial Division of the High Court
Palau District
February 6, 1974

Ejectment action. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held plaintiff the owner upon defendant's admission that the prior owner had transferred the land to plaintiff.

1. Judgments—Res Judicata

Prior ejectment action against present plaintiff, by person other than present defendant, in which present plaintiff was held to be the owner of the land, was not res judicata with respect to present defendant, against whom plaintiff brought ejectment action, because the parties were different and there was no privity between present defendant and plaintiff in prior action.

2. Civil Procedure—Damages—Proof

Damages for wrongful use and occupancy of land the subject of ejectment action were waived where plaintiff asked for them in complaint but presented no evidence as to the amount of her loss, which could have been shown by proving rental value or value of crops defendant used the land to raise.

Assessor: FRANCISCO MOREI, *Acting Presiding Judge, District Court*

Counsel for Plaintiff: FRANCISCO ARMALUUK

Counsel for Defendant: JOHN O. NGIRAKED

TURNER, *Associate Justice*

This was an action for ejectment from land known as Iteliang, Koror Municipality, Palau District, designated as Tochi Daicho lot No. 579 comprising approximately 1352 *tsubo*. Plaintiff also asked for damages arising out of defendant's use and occupancy of the land from 1970. The land was used by defendant as a garden, growing custom-

ary plants such as tapioca, melons, *taro*, yams and bananas. There were no trees on the property.

This land and an adjoining lot were listed in the Tochi Daicho as individually owned by Barau Tucherur, now deceased. Plaintiff claimed she obtained the land in question by written transfer from Tucherur.

Plaintiff, prior to May 10, 1968, entered the land to plant a garden. She was sued on that date in ejectment by Rechemiich and Tucherur. Before the case was heard Tucherur died. When the suit came before the court in 1970 the surviving plaintiff, Rechemiich, acknowledged that Kliu held title and that judgment in her behalf should be entered. Kliu was held to be the individual owner in a Judgment entered January 13, 1970.

[1] At some point prior to Judgment defendant Iblai replaced Kliu as user of the land, resulting in the present suit brought in 1973. The prior Judgment, although conclusively holding Kliu to be the owner, was not *res judicata* as against the defendant.

The doctrine of an earlier controlling judgment could not be applied even though the land was the same because the parties in the earlier and present action were not the same nor were they in privity because the present defendant did not claim through the prior owner.

As a result of the related, but tangled, chain of title the dispute is again settled by agreement without more than a statement of the conflicting claims. Defendant agrees that Tucherur transferred the land in question to plaintiff, even though he also, at an earlier date, gave land to the defendant.

The second Judgment should suffice and from now on there should be no further challenge (under existing circumstances) to plaintiff Kliu's ownership of the land.

[2] Although plaintiff asked in her complaint for damages for use and occupancy of the land she did not present

evidence as to the amount of her loss. To substantiate her claim plaintiff should have shown either the rental value of the land during the period of defendant's occupancy or in the alternative shown the value of the crops grown during the period. Having failed to present evidence on the claim, plaintiff waived her right to collect damages.

Plaintiff also asked for damages covering the cost of removing the plants grown on the land planted by defendant. Plaintiff wants to clear the land to construct a dwelling house on it.

Rather than estimate the cost of clearing it appears to be fairer to require defendant to remove the plantings at her own expense. Plaintiff agreed to this arrangement and to allowance of reasonable time for clearing the land.

Ordered, adjudged and decreed:—

1. As between the parties and all those claiming under them, the land Iteliang, Koror Municipality, Palau District, designated as Tochi Daicho lot No. 579, is individually owned by Kliu.

2. Defendant shall be granted sixty days within which to clear the land and if defendant fails to do so plaintiff may obtain an appropriate order from the Court requiring defendant to pay plaintiff her actual cost in clearing the land.

3. Plaintiff is allowed such costs as she may claim in accordance with law.