NANMWARKI, NANIKEN OF NETT, et al., Appellants

v.

ETSCHEIT FAMILY, Appellees

Civil Appeal No. 348

Appellate Division of the High Court

Ponape District

December 1, 1982

Appeal from a judgment by the Trial Division in a quiet title action. The Appellate Division of the High Court, Nakamura, Associate Justice, held that eight individuals who filed a separate appeal were not proper parties to the action and their appeal was dismissed, and held that the land title claim, based on an alleged defect in the possessors' title which occurred in 1895, was barred by the doctrine of laches or stale claim, and by the doctrine of unconscionability, and therefore the judgment of the trial court was affirmed.

1. Appeal and Error—Generally

The right to appeal can be determined only by the court to which the appeal is taken, and the question, being jurisdictional, may be raised by the court itself.

2. Appeal and Error—Right To Appeal

Separate appeal filed in the Appellate Division by eight individuals "as individual appellants formerly spoken for" by the original respondents to the action, was dismissed, where the record revealed nothing that would indicate that the eight individuals were parties to the action or that their interests were somehow represented by the original respondents.

3. Laches—Generally

Whether laches applies to a given case depends upon the circumstances of the particular case and is a question primarily addressed to the discretion of the Trial Court.

4. Real Property—Quiet Title—Laches

Trust Territory courts in handling actions to quiet title to land are expected to aid those who have been reasonably active in pressing their claims, but to refuse relief to those who have not made proper efforts to press their claims.

5. Real Property—Quiet Title—Laches

The doctrine of laches or stale demand barred appellants from asserting any right or title in land, where the alleged error in the chain of title occurred in 1895, and in the intervening years no claim of an interest in the land was made by appellants or their predecessors in interest.

6. Real Property—Quiet Title—Laches

It would be unconscionable to allow a claim of ownership of land where the alleged error in the chain of title occurred in 1895, the party claiming title and their predecessors in interest did not take any prior action consistent with a claim of ownership, and the possessors of the land expended money and made improvements on the land.

7. Real Property—Quiet Title—Laches

Invocation of the doctrine of laches or stale demand to bar a claim to ownership of land based on an alleged defect, in title of present possessor occurring in 1895, did not contradict the customs and traditions of Nett Municipality and was not contrary to the Constitution of the Federated States of Micronesia.

Counsel for Appellants: EDWARD C. ARRIOLA, RUSSEL E. WELLER, JR., LAVAIL HULL

Counsel for Appellees: MARTIN E. MIX, EDWEL SANTOS

Before BURNETT, *Chief Justice*, and NAKAMURA, *Associate Justice*

NAKAMURA, *Associate Justice*

This is an appeal from the judgment entered by the Trial Division of the High Court sitting in Ponape State. The trial court found that the land commonly known as "Mpomp," located in Nett Municipality, is owned by the Etscheit family, the appellees herein.

Although the original action arose out of a request by the appellees for a restraining order, by stipulation of counsel, the case resolved itself into a quiet title action. As the action was treated as such by the trial court, it will be so treated here.

At the outset, we note that two separate appeals were filed in this action. The first was filed by the Nanmwarki and Naniken of Nett Municipality. The second was filed by Suliana Panuelo, Dura Rex, Emerliana Martin, Nadip Cantero, Pastor Phillip, Antonio Sultan, Valentine Sultan, and Teresita Damarlane, as "individual appellants formerly spoken for by the Nanmwarki and Naniken of Nett."

It appears from the record that the trial court construed the original petition for a restraining order as the "complaint" in this action. The respondents, the Naniken of Nett Municipality and the Nanmwarki of Nett Municipality, "individually and as representatives of their constituents and subjects," filed an amended answer to the petition-complaint. However, as stated earlier, the action, by stipulation of counsel, resolved itself into a quiet title action apparently between the Etscheit family and the Nanmwarki and Naniken of Nett Municipality only. With that conclusion reached, we turn our attention to the appeal filed by the eight named individuals.

[1, 2] The right to appeal can be determined only by the court to which the appeal is taken, and the question, being jurisdictional, may be raised by the court itself. 4 Am. Jur. 2d Appeal and Error § 172. A careful review of the pleadings and the record reveals nothing that would indicate that these eight individuals who filed an appeal in this action, were made parties to the action or that their interests were somehow appropriately represented by the Nanmwarki or Naniken of Nett. The record does not show that they were parties or privies to the action or that they were treated as such by the trial court. Therefore, we can only conclude that Suliana Panuelo, Dura Rex, Emerliana Martin, Nadip Cantero, Pastor Phillip, Antonio Sultan, Valentine Sultan, and Teresita Damarlane were not parties or privies to the quiet title action. Consequently, their appeal is hereby dismissed.

Respondents, the Nanmwarki and Naniken of Nett, have raised numerous grounds for error in their appeal. The trial court decided in favor of the appellees, on the grounds that the appellants were barred by their failure to institute an action within twenty years pursuant to 6 TTC § 302

and in addition, were barred from asserting their rights under the equitable doctrine of laches or stale demand.

A review of the trial court's findings of fact reveals that sometime between 1873 and 1879 one Johann S. Kubary arrived in Ponape. While on Ponape, he was given a large tract of land, now known as "Mpomp." After his death in 1896, an auction of the land was held by the then-governing authorities, the Imperial German Government, in April of 1903. The land in question was then purchased by a Domenikus Etscheit, ancestor to the appellees herein. When Domenikus Etscheit died, all of the land passed by his will to Florentine Etscheit, the mother of Carlos and Leo Etscheit. In 1935, Florentine Etscheit, by deed, quitclaimed approximately 30 hectares of the land "Mpomp" to Carlos Etscheit. In 1948, she quitclaimed her remaining estate to the appellees and their sisters.

The Japanese administration took over the land when they came into power on Ponape after World War One. In January, 1926, the land was returned to the appellees by the Japanese Governor. However, during World War Two, the land in question was again confiscated by the Japanese government. After the end of the war, the Etscheit family regained possession of the land. Appellees entered into a Memorandum of Understanding with the Government of the Trust Territory of the Pacific on September 14, 1956. The Understanding allowed the land to be quitclaimed to the appellees in return for certain releases of claims and contingent upon the payment of a substantial sum of money to the Trust Territory by the appellees.

The chain of title described above is that relied upon by the appellees to establish their claim of ownership of the land. The crux of the appellants' argument on appeal is that the trial court erred in failing to determine what interest was conveyed to Johann S. Kubary by the Lepen Nett in 1895 for the land. Such failure, they contend, con-

tributed to several erroneous findings. However, even if we were to find that Kubary received only a "usufruct interest" in "Mpomp" rather than the land in fee simple as the appellants contend, it would make no difference to the outcome of this decision. It is our position that the trial court was correct in finding that the appellants are barred by the equitable doctrine of laches or stale demand from asserting *any* right or title to the land known as "Mpomp."

[3] As stated in *Rabauliman v. Matagolai*, 7 T.T.R. 424, 425 (App. Div. 1976), "Whether laches applies to a given case depends upon the circumstances of the particular case and is a question primarily addressed to the discretion of the Trial Court. *Burnett v. New York Cent. R. Co.*, 380 U.S. 424, 13 L. Ed. 2d 941, 85 S. Ct. 1050 (1965)."

During each of the various foreign administrations, German, Japanese and American, the trial court found that no action was ever brought by the appellants or their predecessors in interest for the return of the property in question, although each administration maintained a court system for such purpose.

[4] Trust Territory courts in handling actions to quiet title to land are expected to aid those who have been reasonably active in pressing their claims, but to refuse relief to those who have not made proper efforts to press their claims. *Malarme v. Ligor*, 4 T.T.R. 204 (Tr. Div. 1969).

The court in *Armaluuk v. Orrukem*, 4 T.T.R. 474, 478 (Tr. Div. 1968), explained the doctrine of stale demand as follows:

> The doctrine of stale demand is based on the theory that if a person of sound mind stands by for 20 years or more and lets someone else openly and actively use or publicly claim ownership of land, the person who so stands by will ordinarily be held to have lost whatever rights he may previously have had in the land and the courts will not, and should not, assist him in regaining such rights.

[5] It is clear from the record that the Etscheit family has invested time and money over the years in order to regain possession of the land from various administrations and to protect their interests in the land for well over twenty years. Furthermore, no such action can be attributed to the appellants or their privies.

[6] In addition, we feel it would be unconscionable to allow the appellants to now claim ownership of the land when the actions of their predecessors in interest have been inconsistent with a present claim of ownership. Possession and ownership of the land known as "Mpomp" by the Etscheit family has been recognized by former leaders of Nett, namely, the immediate prior Nanmwarki, Max Iriarte, who negotiated with the appellees for a Grant of Right of Way in Perpetuity on several occasions in the early 1970's. These documents designated appellees as "owners or possessing right under legal custom of the property in question." They clearly indicate to us that the Nanmwarki recognized the Etscheits as the owners of the land. Therefore, we hold that it would be unconscionable to permit the appellants to maintain such a position, given their prior silence during which time the appellees were expending money and making improvements on the land.

[7] Finally, we find no merit to the appellants' arguments that the invocation of the doctrine of laches or stale demand in this case contradicts the customs and traditions of Nett Municipality or that it is contrary to the Constitution of the Federated States of Micronesia.

Although appellants have raised other issues in their brief on appeal, we need not consider said issues in view of our concurrence with the trial court's application of laches or stale demand in this action.

Accordingly, between the Nanmwarki, Naniken of Nett and the Etscheit family, and those persons claiming under them, the judgment of the trial court is AFFIRMED.