

CASE LAW NO. 05/2016/AL

The Cassation Decision No. 39/2014/DS-GĐT dated October 9th, 2014, of the Judicial Council of the Supreme People's Court on the case of "Inheritance Dispute" in Hồ Chí Minh City

Approved by the Judicial Council of the Supreme People's Court on April 6th, 2016, and published under Decision No. 220/QĐ-CA on April 6th, 2016, by the Chief Justice of the Supreme People's Court.

Source of the Case Law:

The Cassation Decision No. 39/2014/DS-GĐT dated October 9th, 2014, of the Judicial Council of the Supreme People's Court on the case of "Inheritance Dispute" in Hồ Chí Minh City between the plaintiffs, Mrs. Nguyễn Thị Thuởng and Mrs. Nguyễn Thị Xuân, and the defendants, Mr. Nguyễn Chí Trãi (Cesar Trai Nguyen), Ms. Nguyễn Thị Thuý Phượng, and Ms. Nguyễn Thị Bích Đào. The interested parties are Nguyễn Thị Xê, Nguyễn Chí Đạt (Danforth Chi Nguyen), Nguyễn Thuần Lý, Nguyễn Thị Trinh, Nguyễn Chí Đức, Nguyễn Thị Thuý Loan, Phạm Thị Liên, Phạm Thị Vui, Trần Đức Thuận, and Trần Thành Khang.

Summary of the Case Law:

In an inheritance dispute, where a party is entitled to a portion of the inheritance and has contributed to the management and maintenance of the inherited property but disagrees with the division of the inheritance (claiming that the statute of limitations for inheritance claims has expired) and does not specifically request the court to consider their contributions, the court must take these contributions into account if it decides to divide the inheritance. This is because the request not to divide the inheritance is more significant than the request to consider the contributions.

Relevant Legal Provisions:

Clause 1, Article 5, and Article 218 of the Civil Procedure Code of 2004.

Keywords:

"Claim in lawsuit"; "Counterclaim"; "Contributions to the management and maintenance of inherited property".

CASE DETAILS

In the complaint dated July 18th, 2008, and during the resolution of the case, Mrs. Nguyễn Thị Thuởng and Mrs. Nguyễn Thị Xuân stated:

Their parents, Mr. Nguyễn Văn Hưng (died in 1978) and Mrs. Lê Thị Ngự (died in 1992), had six children: Mrs. Nguyễn Thị Xê, Mr. Nguyễn Chí Trái, Mrs. Nguyễn Thị Xuân, Mrs. Nguyễn Thị Thuởng, Mrs. Nguyễn Thị Trinh, and Mr. Nguyễn Chí Trái. Mr. Trái had a wife, Ms. Ông Thị Mạnh, and five children: Mr. Nguyễn Thuần Lý, Mr. Nguyễn Thuần Huy, Ms. Nguyễn Thị Quới Đường, Mr. Nguyễn Chí Đạt (born in 1966), and Mr. Nguyễn Chí Đạt (born in 1968). By Decision No. 413/2008 dated March 31th, 2008, the People's Court of Hồ Chí Minh City declared Mr. Trái, Ms. Mạnh, Mr. Thuần Huy, Ms. Quới Đường, and Mr. Nguyễn Chí Đạt (born in 1968) dead.

The house at 263 Trần Bình Trọng Street, Ward 4, District 5, Hồ Chí Minh City was acquired by Mr. Hưng and Mrs. Ngự from Mr. Đào Thành Phụng in 1953, and in 1966, they built the current house. The house has not been issued a certificate of home ownership or land use rights, only declared in 1999. Both Mr. Hưng and Mrs. Ngự died without leaving a will, and the house is currently managed by Ms. Nguyễn Thị Thuý Phượng, Mr. Nguyễn Chí Trái's daughter. During her management, Ms. Phượng rented out part of the house to Ms. Nguyễn Thị Bích Đào for a bakery. Ms. Phượng made minor repairs to the house. Mr. Trái and his wife did not contribute to the construction or repairs as Mr. Trái was in re-education, and his wife had no job or income to contribute. The plaintiffs will compensate Ms. Phuong for the repair costs, provided she furnishes evidence of the expenses incurred and formally requests payment.

The plaintiffs requested the inheritance division of the house according to the law and asked to receive the house, compensating the other heirs with money. Ms. Phụng, not being an heir, must return the house and is not entitled to support for relocation.

The Defendant's Statement

The defendant, Ms. Nguyễn Thị Thuý Phụng, stated

She agrees with the family relationship described. Her father, Mr. Nguyễn Chí Trãi, and her mother, Ms. Nguyễn Thị Tư, had three children: herself, Mr. Nguyễn Chí Đức, and Ms. Nguyễn Thị Thuý Loan (Mr. Đức and Ms. Loan currently live in Canada). The house at 263 Trần Bình Trọng Street was bought by her grandparents in 1953 when it was a tile-roofed, wooden-walled house. In 1955, her parents married and lived in this house. In 1978, her father emigrated to the US, and her mother died in 1980. She has lived in this house since childhood, making several repairs such as installing aluminum doors, building a mezzanine wall, tiling the terrace, and constructing a rear wall. She claims a portion of her father's inheritance because, in 2006, her father made a deed of gift giving her his inheritance in Vietnam, thus she is entitled to the portion her father would inherit from Mr. Hung and Mrs. Ngự. She disagrees with the plaintiffs' request, arguing that the statute of limitations for inheritance division has expired, and she currently lives in the house with her two children. She has rented part of the house to Ms. Nguyễn Thị Bích Đào for a bakery, and they will resolve the rental issues between themselves.

The defendant, Mr. Nguyễn Chí Trãi, stated:

In a document dated October 14th, 2009, Mr. Trãi requested that on April 25th, 2006, he made a deed of gift of his inheritance to Ms. Phụng, allowing her to inherit the portion he would receive from his parents. He now wishes to cancel this document and authorize Mrs. Thuởng and Mrs. Xuân to represent him in court, with his inheritance to be given to his son, Mr. Nguyễn Chí Đức,

currently residing in Canada.

After the first-instance trial, on April 22th, 2010, Mr. Trãi submitted a statement disagreeing with the inheritance division of the house at 263 Trần Bình Trọng Street and requested that Ms. Phượng continue to manage it for living purposes, asserting that he and his wife had contributed to the house. However, on July 14th, 2010, Mr. Trãi issued another document gifting his inheritance portion to his son, Mr. Nguyễn Chí Đức. On March 11, 2011, Mr. Trãi submitted a statement agreeing with the first-instance judgment and did not appeal.

Statements of the Interested Parties

- Mrs. Nguyễn Thị Trinh (daughter of Mr. Hung and Mrs. Ngự) agreed with the plaintiffs' statements about family relationships and the property's origin. In 1966, when the house was dilapidated, their parents repaired it with contributions from their children, including herself, but she does not claim her contribution. She disputed Ms. Phượng's claim of her parents' and her own contributions to the house repairs. She requested her inheritance portion be managed by Mrs. Xuân and Mrs. Thương and that Mrs. Đào and Ms. Phượng return the house.

- Mr. Nguyễn Chí Đạt (born in 1966) and Mr. Nguyễn Thuận Lý stated that their parents, Mr. Nguyễn Chí Trãi and Ms. Ông Thị Mạnh, and their three younger siblings died at sea during an escape attempt in 1982. They agreed with the plaintiffs' request for inheritance division and asked to receive their inheritance from Mr. Hung and Mrs. Ngự, with Mrs. Thương and Mrs. Xuân managing it.

- Mrs. Nguyễn Thị Xê (daughter of Mr. Hung and Mrs. Ngự) agreed with the plaintiffs' presentation regarding family relations and their requests, and assigned her inheritance share to her two children, Phạm Thị Vui and Phạm Thị Liên.

- Ms. Nguyễn Thị Thuý Loan and Mr. Nguyễn Chí Đức, according to the power of attorney dated May 21st, 2007 (which was legalized by consular authorities), authorized Ms. Nguyễn Thị Thuý Phương to handle all matters related to disputes or division of assets and real estate in Vietnam. (This power of attorney was presented by Phương according to her petition dated March 25th, 2011, after the first-instance trial).

Ms. Loan submitted a document (with the power of attorney attached) requesting to be absent from the trial on August 13th, 2009. She stated that her parents contributed financially to the disputed property, while the other relatives did not. Since 1975, everyone else left, and only Phương stayed with the grandparents. Therefore, she requested the court to allow Phương to remain in the disputed house and land.

In the First-instance Civil Judgment No. 3363/2009/DSST dated November 18th, 2009, the People's Court of Hồ Chí Minh City ruled:

- It was determined that the house and land at 263 Tran Binh Trong Street are the estate of the late Mr. Nguyễn Văn Hưng and Mrs. Lê Thị Ngự; each heir's share is 10,655,687,000 VND divided by 6, equaling 1,775,947,800 VND.

- Ms. Phương and Mrs. Đào must return the disputed house and land to Mrs. Thuởng and Mrs. Xuân. Mrs. Thuởng and Mrs. Xuân are responsible for paying the other heirs the amount they are entitled to.

- It was acknowledged that Mr. Nguyễn Chí Trãi transferred his inheritance share to his son, Mr. Nguyễn Chí Đức.

On November 30th, 2009, Ms. Nguyễn Thị Thuý Phương filed an appeal, arguing that since Mr. Hưng and Mrs. Ngự had been dead for over 10 years, the statute of limitations for inheritance claims had expired.

On March 15th, 2011, Phương filed an additional appeal, stating:

- Her father, Trãi, did not agree to the division and consented to her managing the house. The co-heirs did not have a document confirming that the disputed house was undivided common property. Her parents and siblings, including herself, had lived in the house for over 50 years, maintaining and preserving it, and forcing her and her children out now was unreasonable.

In the Appellate Civil Judgment No. 116/2011/DS-PT dated May 10th, 2011, the Appellate Court of the Supreme People's Court in Hồ Chí Minh City upheld the First-instance Judgment.

On June 16th, 2011, Nguyễn Thị Thuý Phượng submitted a request for a cassation review of the above Appellate Judgment.

In the Decision No. 158/2014/KN-DS dated May 6th, 2014, the Chief Justice of the Supreme People's Court issued a protest against the above Appellate Judgment and requested the Judicial Council of the Supreme People's Court to conduct a cassation trial to vacate the above Appellate Judgment and the First-instance Civil Judgment No. 3363/2009/DSST dated November 18th, 2009, of the People's Court of Hồ Chí Minh City, and to remand the case to the People's Court of Hồ Chí Minh City for retrial in accordance with the law.

At the cassation trial, the representative of the Supreme People's Procuracy agreed with the protest of the Chief Justice of the Supreme People's Court.

COURT'S OPINION:

Mr. Nguyễn Văn Hưng (deceased 1978) and Mrs. Lê Thị Ngự (deceased 1992) had six children: Mr. Nguyễn Thị Xê, Mr. Nguyễn Chí Trãi, Mrs. Nguyễn Thị Xuân, Mrs. Nguyễn Thị Thương, Mrs. Nguyễn Thị Trinh, and Mr. Nguyễn Chí Trai. Mr. Nguyễn Chí Trai and Mrs. Ông Thị Mạnh had five children: Mr. Nguyễn Thuận Lý, Mr. Nguyễn Thuận Huy, Ms. Nguyễn Thị Quới Đường, Mr. Nguyễn Chí Đạt (born 1966), and Mr. Nguyễn Chí Đạt (born

1968). Mr. Trai, Mrs. Mạnh, Mr. Huy, Ms. Đường, and Mr. Nguyễn Chí Đạt (born 1968) were declared dead on March 31st, 2008, as per Decision No. 413/2008 dated March 31st, 2008, of the People's Court of Hồ Chí Minh City.

Mr. Hung and Mrs. Ngự died intestate. Their children and Ms. Phượng (Mr. Trai's daughter) acknowledged that the house at 263 Trần Bình Trọng Street, Ward 4, District 5, Hồ Chí Minh City, was purchased by Mr. Hung and Mrs. Ngự from Mr. Đào Thành Phụng in 1953 and was their property, currently managed by Phượng.

In 2008, Mrs. Xuân and Mrs. Thuởng filed a lawsuit requesting the division of Mr. Hung and Mrs. Ngự's estate.

The parties confirmed that Mr. Trãi resided in the USA before July 1, 1991. The first-instance and appellate courts, based on Resolution 1037/2006/NQ-UBTVQH11 dated July 27th, 2006, of the Standing Committee of the National Assembly, correctly determined that the statute of limitations for claiming the inheritance of Mr. Hung's estate was still valid. As for Mr. Ngự's estate, the statute of limitations had expired, but Trãi and the other heirs acknowledged that Mr. Ngự's estate was undivided common property and agreed to divide it equally among the heirs. Therefore, the first-instance and appellate courts correctly applied subsection a, point 2.4, section 2, part I of Resolution No. 02/2004/NQ-HĐTP dated August 10th, 2004, of the Judicial Council of the Supreme People's Court, guiding the application of the law in resolving civil and family cases, to divide Mr. Ngự's estate among the heirs.

Mr. Hung died in 1978, and according to the 1959 Marriage and Family Law, Mr. Trãi was entitled to 1/7 of Mr. Hung's estate. Mr. Trãi's share of Hung's estate was common property with his wife, Mrs. Tu. Mrs. Tu died in 1980, and her heirs included Mr. Trãi and their three children, including Ms. Phượng. Thus, Ms. Phượng was entitled to a portion of her mother Mrs. Tu's estate. However, Mr. Trãi's decision to allocate his entire inheritance share from Mr. Hung to Mr. Đức was incorrect.

Ms. Phụng, born in 1953, and the parties acknowledged that she had lived in her grandparents' house since childhood. Since 1982, she has been the head of the household at this property. Mrs. Ngự lived elsewhere while still alive, and Mrs. Thương transferred her household registration to this house in 1979 but did not reside there. Therefore, Ms. Phụng has directly managed and used the disputed property since Mrs. Ngự's death. The other heirs had stable residences elsewhere. In dividing the inheritance and common property, the first-instance and appellate courts did not consider accommodating Ms. Phụng with housing, but required her to hand over the house to the plaintiffs, including the share of inheritance from her mother Mrs. Tư, which was inappropriate.

Although Ms. Phụng is not a first-line heir of Mr. Hung and Mrs. Ngự, she is their granddaughter and has made significant efforts in managing the property and spent money on house repairs. However, during the legal proceedings, Ms. Phụng did not request consideration for her contributions, as she believed the case had exceeded the statute of limitations for dividing the inheritance and did not agree to return the house and land to the heirs. Therefore, Ms. Phụng's request to determine her rights was greater than the request to consider her contributions, but the first-instance and appellate courts did not consider her contributions, thus not fully addressing the parties' request.

In light of the foregoing, according to Clause 3, Article 297, Clauses 1 and 2, Article 299 of the Civil Procedure Code, amended and supplemented in 2011;

IT IS DECIDED:

1. To vacate the entire Appellate Civil Judgment No. 116/2011/DS-PT dated May 10th, 2011, of the Appellate Court of the Supreme People's Court in Hồ Chí Minh City, and vacate the entire First-instance Civil Judgment No. 3363/2009/DSST dated November 18th, 2009, of the People's

Court of Hồ Chí Minh City regarding the inheritance dispute between the plaintiffs Mrs. Nguyễn Thị Thuởng and Mrs. Nguyễn Thị Xuân, and the defendant Ms. Nguyễn Thị Thuý Phụng and other interested parties.

2. To remand the case file to the People's Court of Hồ Chí Minh City for retrial in accordance with the law.

CONTENT OF THE CASE LAW

“Mr. Hung died in 1978, and according to the 1959 Marriage and Family Law, Mr. Trãi was entitled to 1/7 of Hung's inheritance. Mr. Trãi's share of Mr. Hung's estate was common property with his wife, Mrs. Tư. Mrs. Tư died in 1980, and her heirs included Mr. Trãi and their three children, including Ms. Phụng.

Although Ms. Phụng is not a first-line heir of Mr. Hung and Mrs. Ngự, she is their granddaughter and has made significant efforts in managing the property and spent money on house repairs. However, during the legal proceedings, Ms. Phụng did not request consideration for her contributions, as she believed the case had exceeded the statute of limitations for dividing the inheritance and did not agree to return the house and land to the heirs. Therefore, Ms. Phụng's request to determine her rights was greater than the request to consider her contributions, but the first-instance and appellate courts did not consider her contributions, thus not fully addressing the parties' request.”