

## **CASE LAW NO. 24/2018/AL**

### **On Conversion of Inherited Property to Individual Legal Ownership**

*Approved by the Judicial Council of the Supreme People's Court on October 17<sup>th</sup>, 2018, and published under Decision No. 269/QĐ-CA on November 6<sup>th</sup>, 2018, by the Chief Justice of the Supreme People's Court.*

#### **Source of the Case Law:**

The Cassation Decision No. 27/2015/ĐS-GĐT dated October 16<sup>th</sup>, 2015, of the Judicial Council of the Supreme People's Court regarding the civil case of "Land Use Rights Inheritance Dispute" in Hà Nội between the plaintiffs, Mrs. Phạm Thị H, Mrs. Phạm Thị H1, and Mrs. Phạm Thị H2, and the defendant, Mr. Phạm Văn H3, and other 12 interested parties.

#### **Location of the Case Law's Content:**

Paragraph 4 of the "Court's Opinion" section.

#### **Summary of the Case Law:**

##### ***- Case Background:***

A married couple owned a house and land jointly. Following the death of one spouse, the surviving spouse and the heirs of the deceased agreed to divide the property. This agreement was implemented and reflected in land records, with no heir raising objections. The dispute arose only after the surviving spouse's death.

##### ***- Legal Resolution:***

In this case, the court must determine that the house and land had been legally transferred to the individual owners as per the agreed-upon division. These individuals have the right to seek legal recourse if their property is unlawfully occupied or used by others, but they cannot request a new division

of the inheritance as it has already been legally settled.

**Relevant Legal Provisions:**

Articles 219, 223, 226 of the 2005 Civil Code (corresponding to Articles 213, 218, 220 of the 2015 Civil Code).

**Keywords:**

“Inheritance”; “Marital Property”; “Division of House and Land in Practice”.

**CASE DETAILS**

In the quite title lawsuit dated June 30<sup>th</sup>, 2004, and subsequent requests and testimonies during the proceedings, the plaintiffs, Mrs. Phạm Thị H, Mrs. Phạm Thị H1, and Mrs. Phạm Thị H2, stated:

Their parents, Mr. Phạm Văn H (deceased in 1978) and Mrs. Ngô Thị V (deceased on August 21<sup>st</sup>, 1994), had seven children: Mr. Phạm Văn H3, Mr. Phạm Văn Đ (deceased in 1998), Mr. Phạm Văn T, Mr. Phạm Văn Q (deceased in 2000), and the plaintiffs, Mrs. Phạm Thị H, Mrs. Phạm Thị H1, and Mrs. Phạm Thị H2. During their lifetime, the parents owned a house and kitchen on approximately 464m<sup>2</sup> of land in Q town, Hà Tây province (now part of Hà Nội).

In 1991, Mrs. V divided the land among her seven children: each of the four sons received a portion, and one portion (with a 3m frontage facing the road, measuring 44.4m<sup>2</sup>) was shared among the three daughters (the plaintiffs). Immediately after the division, Mr. Đ sold his share and moved to Sông Bé province (now Bình Dương). Mr. T and Mr. Q received land and built houses on their portions. The portion allocated to the plaintiffs was adjacent to the portion allocated to Mr. H3 (with a 4m frontage facing the road). Since Mr. H3 already had a house and land elsewhere, he did not use his allocated portion. During this time, the plaintiffs were in the South, so Mr. H3 managed both his

and the plaintiffs' allocated portions, totaling 110m<sup>2</sup> (with a 7m frontage). For many years, Mr. H3 acknowledged that he was managing the land allocated to the plaintiffs.

In 2002, when the plaintiffs returned to re-inter their mother's remains, Mr. H3 still agreed that when the plaintiffs were ready, they could return and build houses on the land. However, in 2004, when the three sisters wanted to build houses on the land, Mr. H3 did not acknowledge that the land belonged to them and had divided the land among his children, Mr. Phạm Văn L and Ms. Phạm Thị T, without returning the land to the plaintiffs.

The plaintiffs requested the Court to compel Mr. H3 to return the land that their mother and siblings had agreed to divide in 1991; at times, they requested the Court to resolve the inheritance according to the law by dividing 44.4m<sup>2</sup> of land. When the Hà Nội People's Court resumed the case in 2010, the plaintiffs requested the Court to divide the inheritance of their parents' estate of 115m<sup>2</sup> (actually measured at 110m<sup>2</sup>) currently managed by Mr. H3.

The defendant, Mr. Phạm Văn H3, and his authorized representative, Ms. Phạm Thị T, stated:

Initially, Mr. H3 admitted that their parents had the property as described by the plaintiffs, and in 1972, he got married and was given 162m<sup>2</sup> of land by his parents. Later, the defendant changed his testimony, claiming that the 162m<sup>2</sup> of land was created by him and his wife, Mrs. Nguyễn Thị N, through reclaiming a garbage pit and swamp into a house foundation and had been using it since then, not part of Mrs. V's and Mr. H's land.

In 1983, Mr. H3 moved to another house but continued to manage all his parents' properties and his old house because Mrs. V and his siblings had moved south to build a new economic zone. In 1987, he registered and was issued a land use right certificate for the 162m<sup>2</sup> plot. In 1988, Mrs. V returned and divided the land but only among her four sons, not the three daughters as

claimed by the plaintiffs. The positions and areas of the land allocated to Mr. Đ, Mr. T, and Mr. Q were consistent with the plaintiffs' statements. When Mrs. V divided the land, Mr. H3 agreed to give 52m<sup>2</sup> from his 162m<sup>2</sup> to Mr. Q, leaving him with only 110m<sup>2</sup>. In 2004, he allocated 65m<sup>2</sup> to his son Mr. L and 45m<sup>2</sup> to his daughter Ms. T and requested the division into two plots for his children, but the land certificate had not been issued before the plaintiffs' dispute. Mr. H3 denied that Mrs. V divided the land in 1991 as described by the plaintiffs. He claimed the plaintiffs' lawsuit had expired under the inheritance statute of limitations and asserted that the 110m<sup>2</sup> was his property, rejecting the plaintiffs' claims.

#### Statements of Interested Parties:

Ms. Phạm Thị T and Mr. Phạm Văn L supported Mr. H3's statements. Ms. T5 confirmed that she built a house on the disputed land in 2003.

Mr. Phạm Văn T stated that the origin of the house and land was as described by the plaintiffs. He confirmed that in 1991, Mrs. V organized a family meeting and agreed to divide the land (verbally) among the children, with the three daughters receiving a shared portion managed by Mr. H3 along with his allocated portion. He confirmed receiving his share of the land and later transferring a part to another person. He requested the Court to resolve the issue by compelling Mr. H3 to return the land to the three sisters.

Mrs. Nguyễn Thị T and her children with Mr. Phạm Văn Đ; Mrs. Phùng Thị H4 and her children with Mr. Phạm Văn Q, confirm that Mrs. V divided the land among her children. However, Mrs. T and Ms. H4, being daughters-in-law, did not participate and thus were unaware of this division. Mrs. T confirms that the portion of land received by Mr. Đ was subsequently sold to raise funds for his move to the South. Ms. H4 confirms that the portion received by Mr. Q has been used by her family as a residence until now. Given that Mr. Đ and Mr. Q have already received their share of the land, Mrs. T, Mrs. H4, and their children do not make any claims in this case.

After the Hà Nội People's Court first accepted jurisdiction over the case in 2010, both Mr. T and the heirs of Mr. Đ and Mr. Q stated that they do not make any claims regarding the 110m<sup>2</sup> of land contested by the plaintiffs, agreeing to allocate shares of inheritance to the three plaintiffs and Mr. H3 from the inheritance of Mr. T, Mr. Đ, and Mr. Q in the disputed property.

The case has undergone several instances of first-instance and appellate trial:

- First-instance Civil Judgment No. 07/2005/DSST dated July 7<sup>th</sup>, 2005, by the People's Court of Quốc Oai District, Hà Tây (former) Province;

- Appellate Civil Judgment No. 126/2005/DSPT dated November 30<sup>th</sup>, 2005, by the People's Court of Hà Tây (former) Province,;

- Cassation Decision No. 106/2007/DS-GĐT dated April 23<sup>rd</sup>, 2007, by Civil Court (former) of the Supreme People's Court accepting the Appeal No. 23/2007/KN-DS dated March 2<sup>nd</sup>, 2007, of the Chief Justice of the Supreme People's Court, vacating the First-Instance Judgment and the Appellate Judgment, and remand the case to the People's Court of Quốc Oai District for a new first-instance trial.

- First-instance Civil Judgment No. 01/2009/DSST dated January 7<sup>th</sup>, 2009, by the People's Court of Quốc Oai District;

- Appellate Civil Judgment No. 87/2009/DSPT dated April 2<sup>nd</sup>, 2009, by the People's Court of Hà Nội, which vacated the First-instance Judgment for retrial and remanded the case file to the People's Court of Hà Nội for retrial.

- Decision No. 41/2010/QĐST-DS dated July 20<sup>th</sup>, 2010, by the People's Court of Hà Nội suspending the case proceedings;

- In Decision No. 183/2010/QĐ-PT dated November 19<sup>th</sup>, 2010, the Appellate Court of the Supreme People's Court in Hà Nội (former) vacated the aforementioned First-instance Judgment and remanded the case to the People's

Court of Hà Nội for a new first-instance trial.

- First-instance Civil Judgment No. 24/2013/DSST dated May 30<sup>th</sup> - 31<sup>st</sup>, 2013, by the People's Court of Hà Nội, it was decided:

1. The Court accepts the request to initiate the division of the inheritance of Mrs. Phạm Thị H, Phạm Thị H1, and Phạm Thị H2.

The Court determines that the right to use Plot 252 on map sheet 2, with an area of 110m<sup>2</sup>, located in Q Town - Hà Nội, is the property of Mrs. Ngô Thị V and Mr. Phạm Văn H, with a value of VND 1,321,200,000.

The property is divided equally between Mrs. V and Mr. H, each receiving VND 660,600,000.

Mr. H's share, equivalent to 55m<sup>2</sup> of land valued at VND 660,600,000, is no longer subject to inheritance division due to the expiration of the statutory period.

Mrs. V's share, also equivalent to 55m<sup>2</sup> of land valued at VND 660,600,000, is divided among Mr. H3, Mrs. H, Mrs. H2, and Mrs. H1, with each receiving VND 120,120,000.

Mr. H3 is granted ownership of a portion of the property valued at VND 240,240,000.

Mrs. H, Mrs. H2, and Mrs. H1 are each granted a portion of the property valued at VND 120,120,000, totaling VND 360,360,000.

Mrs. H, Mrs. H1, and Mrs. H2 are granted the right to use a single-story house located on Plot 252, Map Sheet 2, Q Town, Hà Nội, with an area of 44.4m<sup>2</sup> and a value of VND 532,800,000 (see attached diagram).

Mr. Phạm Văn H3 is granted the right to use 10.7m<sup>2</sup> of land. Mr. H3, Ms. T, and Mr. H will continue to manage the 55m<sup>2</sup> of land belonging to Mrs. H due to the expiration of the statutory period on Plot 252, Map Sheet 2, Q Town (see

attached diagram) until further notice from competent state authorities. Mr. H3, Ms. T, and Mr. H are granted ownership of the 2-story house with a rooftop on 65.7m<sup>2</sup> of land on Plot 252, Map Sheet 2, Q Town, Hà Nội, valued at VND 300,000,000 (see attached diagram). Mr. H3 will receive VND 172,440,000, and Ms. T and Mr. H will receive VND 20,000,000 for repairs and renovations paid by Mrs. H, Mrs. H1, and Mrs. H2.

Mrs. H, Mrs. H1, and Mrs. H2 are responsible for paying Mr. H3 VND 172,440,000 and VND 20,000,000 for repairs and renovations for Ms. T and Mr. H.

The land use right certificate issued by the People's Committee of Quốc Oai District on September 10<sup>th</sup>, 1987, for Plot 210, Map Sheet 2, with an area of 162m<sup>2</sup>, under the name of Mr. Phạm Văn H3, is revoked.

The Court acknowledges the voluntary waiver of inheritance rights by Mr. Phạm Văn T, Mrs. Nguyễn Thị T, and their children: Phạm Thị Thu T2, Phạm Thị Thu T3, Phạm Thị Thanh T4; Mrs. Phùng Thị H4, and her children: Phạm Thị H5, Phạm Đức H, Phạm Đức M, regarding the 110m<sup>2</sup> of land on Plot 252, Map Sheet 2, Q Town, Hà Nội, belonging to Mrs. V and Mr. H.

The Court acknowledges the voluntary agreement of Mr. Phạm Văn H3, Mrs. Phạm Thị H, Mrs. Phạm Thị H2, Mrs. Phạm Thị H1, Mr. Phạm Văn T, Mrs. Nguyễn Thị T, and their children: Phạm Thị Thu T2, Phạm Thị Thu T3, Phạm Thị Thanh T4, Mrs. Phùng Thị H4, and her children: Phạm Thị H5, Phạm Đức H, Phạm Đức M, not to request the Court to resolve the following issues:

- + The 4-room makeshift house on the land of Mrs. V and Mr. H;
- + Funeral expenses;
- + Rights to Plot 253 under the name of Phạm Văn Q, Plot 261 under the name of Phạm Văn T (189m<sup>2</sup>, including plot 261b), and Plot 260 under the

name of Nguyễn Thị P (94m<sup>2</sup>);

+ The transfer of land by Mr. T and Mr. Đ to others;

+ The amount of VND 8,733,000.

The Court also ruled on court fees, right to appeal, and late payment interest.

On June 14<sup>th</sup>, 2013, Ms. T, Mr. H, and Mr. L filed an appeal.

In the Appellate Civil Judgment No. 53/2014/DSPT dated April 4<sup>th</sup>, 2014, the Appellate Court of the Supreme People's Court in Hà Nội ruled to uphold the First-instance Judgment.

On August 19<sup>th</sup>, 2014, Mr. Phạm Văn H3 submitted a petition for a cassation review.

In the Appeal No. 152/2015/KN-DS dated May 28<sup>th</sup>, 2015, the Chief Justice of the Supreme People's Court lodged an appeal against the Appellate Civil Judgment No. 53/2014/DSPT dated April 4<sup>th</sup>, 2014 by the Appellate Court of the Supreme People's Court in Hà Nội, proposed that the Judicial Council of the Supreme People's Court to conduct a cassation trial in order to vacate the Appellate Civil Judgment No. 53/2014/DSPT dated April 4<sup>th</sup>, 2014 by the Appellate Court of the Supreme People's Court in Hà Nội and the First-instance Civil Judgment No. 24/2013/DSST dated May 30<sup>th</sup> - 31<sup>st</sup>, 2013 by the Hà Nội People's Court, and to remand the case file to the Hà Nội People's Court for a first-instance retrial.

During the cassation session, the representative of the Supreme People's Procuracy concurred with the appeal by the Chief Justice of the Supreme People's Court.

#### **COURT'S OPINION:**

[1] Mr. Phạm Văn H (deceased in 1978) and his wife, Mrs. Ngo Thi V,



had 7 children together: Mr. Phạm Văn H3, Mr. Phạm Văn D (deceased in 1998), Mr. Phạm Văn T, Mr. Phạm Văn Q (deceased in 2000), Mrs. Phạm Thị H, Mrs. Phạm Thị H1, Mrs. Phạm Thị H2. During their lifetime, they established a makeshift house on approximately 464m<sup>2</sup> of land in Street H, Town Q, (former) Hà Tây province (now Hà Nội). The land was originally allocated to them in the land reform.

[2] After Mr. H passed away, Mr. H3 and Mrs. N lived in and managed the house and land, while Mrs. V and other children moved to build new economic zones in the South. In 1983, Mr. H3 and Mrs. N relocated to another residence but continued to oversee the management of the house and land. The People's Committee of District Q confirmed in the land registry records kept at the People's Committee that the land of the deceased was divided into 2 plots: Plot 210 with an area of 162m<sup>2</sup> under Mr. H3's name and Plot 213 with an area of 300m<sup>2</sup> under Mr. T's name. Subsequently, Mrs. V returned to this house and land and lived here until her passing in 1994. After returning, she convened a meeting with her children and took the initiative to divide the entire plot of land into four separate parts for her children, all of whom agreed without objection to implement this division. Therefore, Mr. T and Mr. H3 agreed along with Mrs. V on the division of the 464m<sup>2</sup> of land, demonstrating that Mr. T and Mr. H3 were only nominal holders in the land registration documents, while the house and land remained owned by Mrs. V and Mr. H had not yet been divided. Mr. H3 also failed to provide evidence proving that the 162m<sup>2</sup> was his own property.

[3] The portions allotted to Mr. Đ (94m<sup>2</sup>), Mr. Q (78m<sup>2</sup>), and Mr. T (189m<sup>2</sup>) have been received and registered as land use rights, or transferred to others and duly amended in the land documents, with no disputes arising since then. Regarding the remaining 110m<sup>2</sup> of land (which includes a 7m stretch along the road) managed by Mr. H3, until 2004, only because Mr. H3 divided the land to his children that Mrs. H, Mrs. H1, and Mrs. H2 contested to reclaim the 44.4m<sup>2</sup>. At the time Mrs. V divided the land, all children were adults, some

had their own families with housing needs, and Mr. H3 already had land and a house; Mrs. H, Mrs. H1, and Mrs. H2 were residing in Bình Phước and thus had no need for residential construction. Mr. T acknowledged Mrs. V's land division, with all children in agreement, and Mr. T identified the 110m<sup>2</sup> of land managed by Mr. H3 as having been divided by Mrs. V for Mr. H3, Mrs. H, Mrs. H1, and Mrs. H2 to enjoy. Mr. T requested the court to settle the matter so that Mrs. H, Mrs. H1, and Mrs. H2 could reclaim their property. Mrs. Đ and Mrs. Q, as wives of Mr. Đ and Mr. Q, respectively, did not have specific knowledge of the division but agreed that Mrs. V had already divided the land among the children, so they did not make any demands and agreed that the 110m<sup>2</sup> should be allocated to Mr. H3, Mrs. H, and Mrs. H2. Therefore, there is sufficient basis to confirm that Mrs. V divided the land among Mrs. H, Mrs. H1, and Mrs. H2, and Mr. H3 managed this land.

[4] With the evidence presented, there is sufficient basis to confirm that the property of Mrs. V and Mr. H was agreed upon and divided among Mr. H's heirs since 1991, and there is sufficient basis to confirm the 110m<sup>2</sup> of land, with Mrs. H, Mrs. H1, and Mrs. H2 receiving 44.4m<sup>2</sup>. The division was carried out based on actual circumstances and has been adjusted in land records; the division agreement did not violate the rights of any heirs, and there were no disputes, thus establishing that the house and land are no longer the estate of Mrs. V and Mr. H but have been transferred to the lawful land use rights of individuals. Therefore, Mrs. H, Mrs. H1, and Mrs. H2 only have the right to sue for the return of the 44.4m<sup>2</sup> of land that has been legally divided since 1991; the parents' estate no longer exists, so there is no basis to accept the claims for the division of estate of Mrs. H and Mrs. V.

[5] The initial lawsuit and testimonies before the court of first-instance took up the case again in 2010, where the plaintiffs only demanded this 44.4m<sup>2</sup> of land. However, after the court of first-instance resumed jurisdiction over the case, the plaintiffs changed their testimonies, requesting the division of the 110m<sup>2</sup> of land as the inheritance property left by their parents managed by Mr.

H3, which is not a valid basis for acceptance. The court of first-instance did not clarify the plaintiffs' testimonies regarding this change in the claims, deciding to accept the request for the division of the 110m<sup>2</sup> of land; the appellate court upheld the decision of the court of first-instance, both without a valid basis.

In light of the foregoing, pursuant to Clause 3, Article 291, Clause 3, Article 297, and Clause 2, Article 299 of the Civil Procedure Code (as amended and supplemented in 2011);

#### **IT IS DECIDED:**

1. To vacate the Appellate Civil Judgment No. 53/2014/DSPT dated April 4<sup>th</sup>, 2014, of the Appellate Court of the Supreme People's Court in Hà Nội and the First-instance Civil Judgment No. 24/2013/DS-ST dated May 31<sup>st</sup>, 2013, of the Hà Nội People's Court regarding the case of "Land Use Rights Inheritance Dispute" between the plaintiffs Mrs. Phạm Thị H, Mrs. Phạm Thị H2, Mrs. Phạm Thị H1 and the defendant Mr. Phạm Văn H3.

2. To remand the case file to the Hà Nội People's Court for first-instance retrial in accordance with the provisions of the law.

#### **CONTENT OF THE CASE LAW:**

*“[4] ...the property of Mrs. V and Mr. H was agreed upon and divided among Mr. H's heirs since 1991, and there is sufficient basis to confirm the 110m<sup>2</sup> of land, with Mrs. H, Mrs. H1, and Mrs. H2 receiving 44.4m<sup>2</sup>. The division was carried out based on actual circumstances and has been adjusted in land records; the division agreement did not violate the rights of any heirs, and there were no disputes, thus establishing that the house and land are no longer the estate of Mrs. V and Mr. H but have been transferred to the lawful land use rights of individuals. Therefore, Mrs. H, Mrs. H1, and Mrs. H2 only have the right to sue for the return of the 44.4m<sup>2</sup> of land that has been legally divided since 1991; the parents' estate no longer exists, so there is no basis to accept the claims for the division of estate of Mrs. H and Mrs. V.”*