

## CASE LAW DRAFT NO. 10/2024

### **On the agreement to divide the inheritance as land use rights in violation of the conditions for parcel division regulations**

*Approved by the Judges' Council of the Supreme People's Court on [date] [month] 2024 and published under Decision No. [number]/QĐ-CA on [date] [month] 2024 by the Chief Justice of the Supreme People's Court.*

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

The Cassation Decision No. 163/2023/DS-GDT dated August 10<sup>th</sup>, 2023, regarding the case of “Inheritance dispute” by the High People's Court in Hồ Chí Minh City between the plaintiff, Mrs. Nguyễn Thị T, and the defendant, Mr. Nguyễn Văn D.

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

Paragraph 1 of the “Court's Opinion” section.

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

##### ***- Factual Background:***

In an inheritance dispute, the heirs agreed to divide the inheritance, which included land use rights into different portions. However, each land portion did not meet the conditions for parcel division according to the regulations of the competent state authority.

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

In this case, the Court must determine that the agreement among the heirs violates legal prohibitions and does not recognize the heirs' agreement.

#### **Relevant Legal Provisions:**

Articles 117, 123, 656, and 657 of the 2015 Civil Code.

**Keywords:**

"Agreement to divide inheritance"; "parcel division conditions"; "violation of legal prohibition".

**CASE DETAILS**

In the matter before the court, Mrs. Nguyễn Thị T and Mr. Nguyễn Văn H were married and cohabitated since 1957. Regrettably, Mr. H passed away in 1993. The couple had 11 children together and acquired a property, specifically a piece of land measuring 1,731.4m<sup>2</sup>, situated at plot 50, map sheet 32, Block 5, Ward A, City B, Vĩnh Long Province. Presently, this property is registered under the name of Mr. Nguyễn Văn D, one of their children, as indicated in the land use rights certificate.

On September 25<sup>th</sup>, 2019, Mrs. T initiated legal proceedings seeking the division of the inheritance concerning the aforementioned land among their heirs. These heirs include their children: Mr. Nguyễn Văn D, Mr. Nguyễn Văn S, Mrs. Nguyễn Thị T1, Mrs. Nguyễn Thị N, Mrs. Nguyễn Thị Tuyết M, Mr. Nguyễn Văn H1, Mr. Nguyễn Văn H2, Mr. Nguyễn Văn Đ, Mr. Nguyễn Thanh B, Mrs. Lương Bạch X, and Mrs. Nguyễn Thị Thanh T2.

Tragically, on April 14<sup>th</sup>, 2021, Mrs. T passed away. The procedural rights and obligations of Mrs. T's heirs now rest with Nguyễn Văn D, Nguyễn Văn S, Nguyễn Thị T1, Nguyễn Thị N, Nguyễn Thị Tuyết M, Nguyễn Văn H1, Nguyễn Văn H2, Nguyễn Văn Đ, Nguyễn Thanh B, and Nguyễn Thị Thanh T2. These heirs have subsequently sought the partition of the communal property, namely the aforementioned land.

During the course of the litigation, the parties involved reached an amicable agreement on the resolution of the case.

In Decision No. 39/2021/QĐST-DS dated November 24<sup>th</sup>, 2021, the People's Court of Vĩnh Long City, Vĩnh Long Province, acknowledged and

approved the agreement reached by the parties, which includes the following provisions:

*\* Mr. Nguyễn Văn D is granted the right to use:*

- Plot 50-7, map sheet 32, measuring 83.4m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

- Plot 50-9, map sheet 32, measuring 37m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

- Plot 50-10, map sheet 32, measuring 50.4m<sup>2</sup>, perennial crop land, Ward 2, Vĩnh Long City, Vĩnh Long Province.

*\* Mr. Nguyễn Văn S is granted the right to use:*

- Plot 50-4, map sheet 32, measuring 88.5m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

*\* Mrs. Nguyễn Thị T1 is granted the right to use:*

- Plot 50-17, map sheet 32, measuring 39.9m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

- Plot 50-18, map sheet 32, measuring 49.8m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

*\* Mrs. Nguyễn Thị N is granted the right to use:*

- Plot 50-2, map sheet 32, measuring 678.6m<sup>2</sup>, with 120m<sup>2</sup> designated as residential land and 558.6m<sup>2</sup> as perennial crop land, Ward A, City B, Vĩnh Long Province.

*\* Mrs. Nguyễn Thị Tuyết M is granted the right to use:*

- Plot 50-1, map sheet 32, measuring 70.6m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

*\* Mr. Nguyễn Văn H2 is granted the right to use:*

- Parcel number 50-13, map sheet 32, measuring 37.5m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

- Parcel number 50-14, map sheet 32, measuring 50.2m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

*\* Mr. Nguyễn Văn H1 is granted the right to use:*

- Parcel number 50-11, map sheet 32, measuring 36.9m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

- Parcel number 50-12, map sheet 32, measuring 49.9m<sup>2</sup>, perennial crop land, Ward 2, City of Vĩnh Long, Vĩnh Long Province.

*\* Mr. Nguyễn Văn Đ is granted the right to use:*

- Parcel number 50-8, map sheet 32, measuring 82.3m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

*\* Mr. Nguyễn Thanh B is granted the right to use:*

- Parcel number 50-5, map sheet 32, measuring 72.7m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

- Parcel number 50-6, map sheet 32, measuring 11.9m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

*\* Ms. Lương Bạch X is granted the right to use:*

- Parcel number 50-19, map sheet 32, measuring 37.7m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

- Parcel number 50-20, map sheet 32, measuring 46.1m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

*\* Ms. Nguyễn Thị Thanh T2 is granted the right to use:*

- Parcel number 50-15, map sheet 32, measuring 38.9m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

- Parcel number 50-16, map sheet 32, measuring 49.5m<sup>2</sup>, perennial crop land, Ward A, City B, Vĩnh Long Province.

The parties are directed to proceed with the relevant state authorities to complete the procedures for issuing land use rights certificates, residential house ownership, and other property attached to the land, in accordance with the applicable legal provisions.

Furthermore, the first-instance court also decided on court fees and other litigation costs.

In Dispatch No. 209/TAT-PKTNV&THA dated November 15<sup>th</sup>, 2022, the Chief Justice of the People's Court of Vĩnh Long Province appealed for a cassation review of aforementioned Decision.

In Decision No. 61/2023/KN-DS dated July 14<sup>th</sup>, 2023, the Chief Justice of the High People's Court in Hồ Chí Minh City appealed for a cassation review of the Decision to recognize the above-mentioned agreement. The Chief Justice requested the Judges' Committee of the High People's Court in Hồ Chí Minh City to conduct a cassation trial towards annulling the Decision to recognize the aforementioned agreement between the parties.

At today's hearing, the representative of the High People's Procuracy in Hồ Chí Minh City requested the Judges' Committee of the High People's Court in Hồ Chí Minh City to accept the appeal of the Chief Justice of the High People's Court in Hồ Chí Minh City and to annul the Decision to recognize the the aforementioned agreement between the parties.

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

Upon examination, the court finds that the agreements reached by the parties contravene legal prohibitions. Specifically, with the exception of Mrs. Nguyễn Thị N receiving a parcel measuring 678.6m<sup>2</sup> that meets the requirements for parcel division, the sizes of the other parcels do not satisfy the minimum area criteria for parcel division set forth in Decision No. 27/2021/QĐ-UBND dated November 1<sup>st</sup>, 2021, issued by the People's Committee of Vĩnh Long Province regarding minimum area limits for parcel division across different types of land in the province.

According to Dispatch No. 3836/STNMT dated September 26<sup>th</sup>, 2022, from the Department of Natural Resources and Environment of Vĩnh Long Province, it is affirmed that under the provisions of Decision No. 27/2021/QĐ-UBND dated November 1<sup>st</sup>, 2021, of the People's Committee of Vĩnh Long Province and Clause 2, Article 29 of Decree No. 43/2014/NĐ-CP dated May 15, 2014, of the Government, when land registered for division results in at least one parcel falling below the minimum area specified by the provincial People's Committee, a certificate of land use rights cannot be issued.

Consequently, the People's Court of Vĩnh Long City, Vĩnh Long Province, has erroneously decided to acknowledge the aforementioned agreements between the parties. Therefore, it is necessary to invalidate the decision recognizing these agreements and resolve the case in conformity with applicable legal provisions.

In light of the foregoing,

**IT IS DECIDED:**

Pursuant to Articles 337 and 343 of the Civil Procedure Code 2015:

1. The Cassation Appeal No. 61/2023/KN-DS, dated July 14, 2023, of the Chief Justice of the High People's Court in Hồ Chí Minh City, is hereby accepted.

2. Decision No. 39/2021/QĐST-DS, dated November 24<sup>th</sup>, 2021, issued by the People's Court of Vĩnh Long City, Vĩnh Long Province, concerning the case "Inheritance Dispute" involving the plaintiff Ms. Nguyễn Thị T and the defendant Mr. Nguyễn Văn D, is hereby annulled. The case file is to be remanded to the People's Court of Vĩnh Long City, Vĩnh Long Province, for a new first-instance trial in accordance with the stipulated legal provisions.

3. This cassation decision shall take legal effect immediately upon issuance.

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

*“Upon examination, the court finds that the agreements reached by the parties contravene legal prohibitions. Specifically, with the exception of Mrs. Nguyễn Thị N receiving a parcel measuring 678.6m<sup>2</sup> that meets the requirements for parcel division, the sizes of the other parcels do not satisfy the minimum area criteria for parcel division set forth in Decision No. 27/2021/QĐ-UBND dated November 1<sup>st</sup>, 2021, issued by the People's Committee of Vĩnh Long Province regarding minimum area limits for parcel division across different types of land in the province.*

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## **THE RATIONALE FOR THE CASE LAW DRAFT’S PROPOSAL**

One of the fundamental principles governed by civil law is the principle that *"Individuals and legal entities establish, exercise, and terminate their civil rights and obligations on the basis of freedom and voluntary commitment. All commitments and agreements that do not violate the prohibitions of the law, and do not contravene social ethics, are valid and enforceable against the parties and must be respected by other subjects"* (Clause 2, Article 3 of the Civil Code). Therefore, the *"purpose and content of civil transactions not violating the prohibitions of the law"* constitutes one of the essential conditions for the effectiveness of civil transactions (Article 117 of the Civil Code). If a civil transaction fails to meet this condition, it is considered null and void (Article 123 of the Civil Code).

In practical application, there exist diverse interpretations of what qualifies as *"violation of the prohibitions of the law"*. Literally interpreted, this phrase refers to situations where the law expressly forbids certain transactions or agreements, or where transactions occur outside the bounds established by law. These prohibitions are specified in numerous legal instruments such as the Criminal Code, Marriage and Family Law, Land Law, among others. Additionally, these prohibitions are detailed in subsidiary legal documents like resolutions and decisions issued by local People's Committees. Therefore, it is crucial to accurately determine whether an action constitutes a *"violation of the prohibitions of the law"*, encompassing both statutory prohibitions and those set forth in subsidiary legislation, to apply this provision correctly and prevent arbitrary nullification of transactions, which could lead to significant consequences.

In the specific case under consideration for this judgment, the parties

agreed to divide inheritance rights over land parcels that do not meet the minimum area required for parcel division according to the Provincial People's Committee's decision on minimum parcel sizes for various land types in the province. Consequently, the Cassation Panel concluded that this agreement falls under the category of "*violation of the prohibitions of the law*" (specifically, contravening regulations set forth in subsidiary legislation or "**prohibitions of the laws**"). Therefore, the Court did not recognize the parties' agreement in this instance. This decision by the cassation court provides a clear resolution that elucidates the provisions concerning "violation of the prohibitions of the law" as stipulated in the Civil Code, thereby offering clarity on this matter.

Such scenarios are common in the practical adjudication of civil cases in courts, where differing interpretations persist. Therefore, opting to develop case law from this cassation decision contributes to ensuring consistent application of the law in cases presenting similar legal complexities.