

CASE LAW NO. 26/2018/AL

On the Statute of Limitations for Dividing Inherited Real Estate

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

Source of the Case Law:

The Cassation Decision No. 06/2017/ĐS-GĐT dated March 27th, 2017, of the Judicial Council of the Supreme People's Court regarding the case of “Inheritance Dispute and Division of Common Property” in Hà Nội between the plaintiffs Mr. Cán Xuân V, Mrs. Cán Thị N1, Mrs. Cán Thị T1, Mrs. Cán Thị H, Mr. Cán Xuân T, Mrs. Cán Thị N2, and Mrs. Cán Thị M1. The representative for the co-plaintiffs was Mrs. Cán Thị N2 and the defendants were Mrs. Nguyễn Thị L and Mr. Cán Anh C. The authorized representative for the co-defendants was Mr. Lê Hồng L. The interested parties include 07 people.

Location of the Case Law's Content:

Paragraphs 5,6 and 7 of the "Court's Opinion" section.

Summary of the Case Law:

- Case Background:

The decedent passed away before the Inheritance Ordinance was announced on August 30th, 1990. The first-instance trial occurred under Civil Code No. 91/2015/QH13.

- Legal Resolution:

In this case, the statute of limitations for requesting division of the inherited real estate begins on August 30th, 1990, the date of the Inheritance Ordinance's announcement. The duration of the statute of limitations is

determined by Civil Code No. 91/2015/QH13.

Relevant Legal Provisions:

- Clause 1, Article 623 of the Civil Code of 2015;
- Clause 4, Article 36 of the Inheritance Ordinance dated August 30th, 1990.

Keywords:

“Division of inherited estate”; “Statute of limitations for requesting division of inherited estate”; “Starting point of the statute of limitations”.

CASE DETAILS

In the lawsuit filed on November 2nd, 2010, and throughout the proceedings, the representative of the plaintiffs, Mrs. Cấn Thị N2, stated:

Mr. Cấn Văn K and Mrs. Hoàng Thị T had 8 children, namely: Mr. Cấn Xuân V, Mrs. Cấn Thị N1, Mrs. Cấn Thị N2, Mrs. Cấn Thị M1, Mrs. Cấn Thị T1, Mrs. Cấn Thị H, Mr. Cấn Xuân T, and Mr. Cấn Văn S (who died in 2008) with a wife named Mrs. Nguyễn Thị M and two children, Cấn Thùy L and Cấn Hoàng K.

Mrs. T died in 1972. In 1973, Mr. K married Mrs. Nguyễn Thị L and they had four children: Mrs. Cấn Thị C, Mrs. Cấn Thị M2, Mr. Cấn Anh C, and Mrs. Cấn Thị T2.

During their lifetimes, Mr. K and Mrs. T acquired 612m² of land with two three-room houses in Village T, Commune P, District Th, Hà Nội City, which were issued a land use right certificate in 2002 under Mr. Cấn Văn K's household name. After Mrs. T's death, Mr. K and Mrs. L managed all the land and houses mentioned above. Mr. K passed away in 2002, leaving the property managed by Mrs. L and Mr. Cấn Anh C.

Mr. K and Mrs. T died without leaving a will. The co-plaintiffs, children of Mr. K and Mrs. T, are now suing to divide the common property of Mrs. T and the estate of Mr. K according to the law. Among the plaintiffs, Mrs. N1, Mrs. N2, Mrs. M1, Mrs. T1, Mrs. H, Mr. T, Mrs. C, and Mrs. Nguyễn Thị M (Mr. S's wife) requested their shares be transferred to Mr. V for the purpose of ancestor worship.

The defendants, Mrs. Nguyễn Thị L and Mr. Cán Anh C, confirmed the inheritance and the relationship as stated by the plaintiffs. Mrs. L acknowledged that before marrying, Mr. K owned a three-room house with a thatched roof and a three-room kitchen on the 612m² of land. During their management and use, the couple renovated and rebuilt some additional structures. In 2002, the State issued a land use right certificate in Mr. Cán Văn K's household name. At that time, Mr. K's household had six members: Mr. K, Mrs. L, Mr. T, Mrs. M2, Mrs. T2, and Mr. C. Now, as the plaintiffs had filed the lawsuit, the defendants proposed resolving the case according to the law.

The Interested Parties:

Mrs. Cán Thị C, Mrs. Cán Thị T2, Mrs. Cán Thị M2, Mrs. Nguyễn Thị M, and Mrs. Lê Thị H acknowledged the relationship as stated by the plaintiffs and defendants and proposed resolving the case according to the law. If the plaintiffs' requests were granted, Mrs. Nguyễn Thị M and Mrs. C would transfer their shares to Mr. V; Mrs. M2 would leave her share to Mr. C; and Mrs. T2 requested her share.

First-instance Civil Judgment No. 30/2012/DS-ST dated July 20th, 2012, by the People's Court of Hà Nội:

The court accepted the plaintiffs' requests by Mr. Cán Xuân V, Mrs. Cán Thị N1, Mrs. Cán Thị T1, Mrs. Cán Thị H, Mr. Cán Xuân T, Mrs. Cán Thị N2, and Mrs. Cán Thị M1.

Specifically: It confirmed the common property comprising a four-room

house, an ancestral house, a kitchen, a brick courtyard, boundary walls, a cement-roofed shed, a bathroom, an inox tank, and boundary walls on 612m² of land in Village T, Commune P, District Th, Hà Nội, valued at VND 1,565,504,366, of which the assets of Mr. K and Mrs. T were valued at VND 1,536,331,972, the assets of Mr. K and Mrs. L at VND 21,338,977, and the assets of Mr. C and Mrs. H at VND 7,833,417.

Mrs. T passed away in 1972, dividing her common assets among her children, namely Mr. V, Mrs. N2, Mrs. T1, Mrs. H, Mr. T, Mrs. N1, Mrs. M1, and Mr. S. Each child received VND 96,020,748. Since Mr. S passed away, his share was inherited by his wife, Mrs. Nguyễn Thị M, and their two children, L and K.

Mr. K passed away in 2002, with his first order of inheritance including Mr. V, Mrs. N2, Mrs. T1, Mrs. H, Mr. T, Mrs. N1, Mrs. M1, and Mr. S (deceased, with his share inherited by his wife Mrs. Nguyễn Thị M and their two children L and K), Mrs. L, Mr. C, Mrs. C, Mrs. M2, and Mrs. T2. Each received VND 30,365,575.

The court accepted the voluntary transfer of assets from Mrs. N2, Mrs. N1, Mrs. T1, Mrs. H, Mr. T, Mrs. C, Mrs. M1, and Mrs. Nguyễn Thị M (Mr. S's wife) to Mr. V.

The court also accepted the voluntary transfer of assets from Mrs. M2 to Mr. C.

Division of Specific Assets:

Mr. Cán Xuân V was granted ownership of three outer rooms measuring 31.4m², valued at VND 4,435,233; a brickyard valued at VND 1,456,475; a surrounding wall of 27.63m² valued at VND 810,488; a bathroom wall with no remaining usable value; a brick wall valued at VND 242,804; a flower wall in front of the ancestor worship house with no remaining usable value; a drilled well with no remaining usable value; a single-story house (for ancestor

worship) and front porch valued at VND 5,678,736; a kitchen valued at VND 3,696,503; a bathroom valued at VND 4,114,332; a 2m³ stainless steel water tank valued at VND 2,000,000; two water tanks with no remaining usable value; a corrugated iron roof over the brickyard valued at VND 1,719,085; a livestock house with no remaining usable value; a gate with no remaining usable value; and trees (one custard apple tree, one mango tree, one pomelo tree) valued at VND 470,000, associated with the right to use 367.1m² of land valued at VND 917,750,000. The total value is VND 942,656,000, with Mr. V's share being VND 1,041,456,159. Mr. V was also to receive an additional VND 99,032,460 from Mrs. L's estate. Mr. V's total share was VND 1,041,456,000 (with an accompanying diagram).

Mrs. Nguyễn Thị L, Mr. Cấn Anh C and his wife, Mrs. Cấn Thị M2, and Mrs. Cấn Thị T2 were granted ownership of one 13.3m² room valued at VND 1,896,739; a surrounding wall valued at VND 1,934,843; a brick wall valued at VND 666,841; a brickyard valued at VND 400,000; a cement-roofed shed valued at VND 1,462,287; and trees valued at VND 4,470,000, associated with the use of 244.9m² of land valued at VND 612,250,000. The total value is VND 623,080,710, with their share being VND 524,048,198. Mrs. L and Mr. C were to pay Mrs. T2 VND 30,365,575 and Mr. V an additional VND 99,032,503. Mrs. L was to open a door and a path on her own land.

As the rafters between Mr. V's and Mrs. L's rooms were shared, whoever demolished their house first had to leave them for the other party.

The First-instance Court also made a decision regarding court fees.

On August 13th, 2012, Mrs. L and Mr. C appealed.

In the Appellate Civil Judgment No. 106/2013/DS-PT dated June 17th, 2013, the Appellate Court of the Supreme People's Court in Hà Nội decided:

To accept the defendants' appeal and amend the First-Instance Judgment.

To accept part of the claims of Mr. Cấn Xuân V, Mrs. Cấn Thị N1, Mrs. Cấn Thị T1, Mrs. Cấn Thị H, Mr. Cấn Xuân T, Mrs. Cấn Thị N2, and Mrs. Cấn Thị M1.

Specifically, it confirmed the common property, including a single-story house, a ancestor worship house, a kitchen, a brickyard, a surrounding wall, a cement-roofed shed, a bathroom, a stainless steel tank, and a surrounding wall on a 612m² land area in T Village, P Commune, Th District, Hà Nội, with a value of VND 1,565,504,366. Of this, the share of Mrs. K and Mrs. T was VND 1,536,331,972, the share developed by Mrs. K and Mrs. L was VND 21,338,977, and the share developed by Mr. C and Mrs. H was VND 7,833,417.

Mrs. T died in 1972, and the statute of limitations for inheritance claims had expired. As the co-heirs did not agree on the identification of Mrs. T's estate as undivided common property, the plaintiffs' request for the division of Mrs. T's estate as common property among her eight children was not accepted. Due to the expiration of the statute of limitations for inheritance claims, the co-heirs currently managing the estate, Mrs. Nguyễn Thị L and Mr. Cấn Anh C, were to continue managing, using, and owning it.

Mrs. K died in 2002, and her first order of inheritance included 13 people: Mrs. L, Mr. V, Mrs. N2, Mrs. T1, Mrs. H, Mr. T, Mrs. N1, Mrs. M1, Mr. S (deceased, with his share going to his wife, Ms. Nguyễn Thị M, and their two children, L and K), Mr. C, Mrs. C, and Mrs. M2, each entitled to an equal share of VND 30,365,575.

The court accepted the voluntary relinquishment of property by Mrs. N2, Mrs. N1, Mrs. T1, Mrs. H, Mr. T, Mrs. C, Mrs. M1, and Ms. Nguyễn Thị M (Mr. S's wife) to Mr. V, and by Mrs. M2 to Mr. C.

Division of Specific Assets:

Mr. Cấn Xuân V was allocated a portion of land with a ancestor worship

house, divided by a straight line across the land plot, coinciding with the outer edge of the main house's gable (with an accompanying diagram). Mr. V's allocated area (the side with the ancestor worship house) had a total area of 218.2m² (including 100m² of residential land and 118.2m² of garden land, with a 50-year term of use), valued at VND 545,500,000. The assets on this land included the ancestor worship house and the front porch area, valued at VND 5,300,888 + VND 377,848 = VND 5,678,736; the kitchen, valued at VND 3,696,503; the bathroom, valued at VND 4,114,332; and a 2m³ stainless steel tank, valued at VND 2,000,000. Two water tanks had no remaining usable value. The total value of the assets on the land was VND 15,489,571. The total value of Mr. V's allocated land and assets was VND 560,989,571.

Mr. Cấn Xuân V was not required to pay the remaining property value of VND 287,699,396 to Mrs. L and Mr. C.

The entire remaining land area of 393.8m² (including 200m² of residential land with indefinite term of use and 193.8m² of garden land with a 50-year term of use), and all remaining assets on the land, were allocated to Mrs. Nguyễn Thị L and Mr. Cấn Anh C for ownership and use. Mrs. L and Mr. C were responsible for paying Mrs. Cấn Thị T2 the value of her inheritance share, VND 30,365,575. Mrs. Nguyễn Thị L and Mr. Cấn Anh C were to open a new path to the shared alley of the hamlet.

The Appellate Court also made a decision regarding court fees.

After the appellate trial, on April 5th, 2014, Mrs. Cấn Thị N2, representing the plaintiffs, requested a cassation review of the aforementioned Appellate Civil Judgment.

In Decision No. 73/2016/KN-DS dated June 15th, 2016, the Chief Justice of the Supreme People's Court appealed the Appellate Civil Judgment No. 106/2013/DS-PT dated June 17th, 2013, of 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 to vacate the entire Appellate Civil Judgment and First-instance Civil Judgment No. 30/2012/DS-ST dated July 20th, 2012, of the Hà Nội People's Court. The case was to be remanded to the Hà Nội People's Court for a first-instance retrial in accordance with the law.

At 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. Cấn Văn K and Mrs. Hoàng Thị T had eight children: Mr. Cấn Xuân V, Mrs. Cấn Thị N1, Mrs. Cấn Thị T1, Mrs. Cấn Thị H, Mr. Cấn Xuân T, Mrs. Cấn Thị N2, Mrs. Cấn Thị M1, and Mr. Cấn Văn S (deceased in 2008, survived by his wife, Ms. Nguyễn Thị M, and two children, Cấn Thùy L and Cấn Hoàng K).

[2] Mr. K and Mrs. T created a property consisting of a single-story house, a kitchen, a bathroom, other structures, and trees on a 612m² land plot, plot number 120, map sheet number 11, in T Village, P Commune, Th District, Hà Nội city. Mrs. T passed away in 1972. In 1973, Mr. K married Mrs. Nguyễn Thị L and they had four children: Mr. Cấn Thị C, Mrs. Cấn Thị M2, Mrs. Cấn Thị T2, and Mr. Cấn Anh C. In 2002, the land was granted a land use rights certificate under the name of Mr. Cấn Văn K's household. Mr. K passed away in late 2002, and the property was managed and used by Mrs. L and Mr. Cấn Anh C. The co-plaintiffs, children of Mr. K and Mrs. T, requested the division of their mother's common property and the inheritance of Mr. K's estate according to the law. Thus, the first order of inheritance heirs of Mrs. T were nine people, including eight children and her husband, Mr. K. In 2002, when Mr. K passed away, his share of Mrs. T's estate was transferred to Mrs. L and their children.

[3] At the time the co-plaintiffs filed the lawsuit (November 2010), Mr. K

and Mr. Cấn Văn S had passed away, and their heirs inherited their respective shares of the estate. The First-instance Court determined that at the time the parties filed the lawsuit (November 2010), the statute of limitations for dividing Mrs. T's inheritance had expired. However, the First-instance Court determined that Mrs. T's estate was undivided common property and ordered its division among her eight children, which was not in accordance with the provisions of point a, sub-section 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, as Mrs. L and Mr. C (Mr. K's child) did not acknowledge the disputed property as Mrs. T's undivided estate.

[4] The Appellate Court determined that the statute of limitations for inheritance claims regarding Mrs. T's estate had expired and did not accept the plaintiffs' request for the division of common property with respect to Mrs. T's estate, which was correct (as guided by point a, sub-section 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). However, the Appellate Court's decision that the co-heirs currently managing Mrs. T's estate, Mrs. L and Mr. C, could continue to manage, use, and own it was incorrect.

[5] Notwithstanding the foregoing, Article 623, Clause 1 of the 2015 Civil Code (effective January 1st, 2017) establishes a 30-year statute of limitations for heirs to seek division of real estate, commencing from the date of the inheritance's opening.

[6] Pursuant to Article 688, Clause 1(d) of the 2015 Civil Code, the statute of limitations prescribed in the 2015 Civil Code shall apply to civil transactions established prior to its effective date.

[7] Consequently, upon the 2015 Civil Code's entry into force, this Court applied Article 623 to determine the statute of limitations in cases where inheritance proceedings commenced before January 1st, 2017. In accordance with Clause 4, Article 36 of the Inheritance Ordinance dated August 30th, 1990,

and the 2015 Civil Code, the statute of limitations for co-heirs to file a lawsuit for the division of Mrs. T's estate remains valid under the applicable law.

[8] On the other hand, the wishes of the plaintiffs, as showed in the statements on December 22nd, 2010, of Mrs. Cấn Thị N2 (Exhibit 63), Mrs. Cấn Thị N1 (Exhibit 69), Mrs. Cấn Thị T1 (Exhibit 75), Mrs. Cấn Thị H (Exhibit 78), and Mrs. Cấn Thị M1 (Exhibit 61), requested the Court to divide their parents' estate according to the law. As daughters who were married, they would transfer their share of the inheritance to Mr. V for ancestral worship. Mr. Cấn Xuân T, in the statement on October 22, 2010 (Exhibit 73), requested the Court to divide his parents' estate according to the law so that his siblings could have a place to worship their parents and ancestors. Ms. Nguyễn Thị M (Exhibit 65) requested that her husband's share of the inheritance be transferred to Mr. V for ancestral worship. However, during the case proceedings, the First-instance Court and the Appellate Court acknowledged the plaintiffs' voluntary relinquishment of property to Mr. V, which was not in accordance with the parties' wishes.

In light of the foregoing, pursuant to Clause 2, Article 337, Clause 3, Article 343, and Article 345 of the 2015 Civil Procedure Code;

IT IS DECIDED:

1. To accept Appeal No. 73/2016/KN-DS dated June 15th, 2016, of the Chief Justice of the Supreme People's Court against Appellate Civil Judgment No. 106/2013/DS-PT dated June 17th, 2013, of the Appellate Court of the Supreme People's Court in Hà Nội.

2. To vacate the entire aforementioned Appellate Civil Judgment and the entire First-instance Civil Judgment No. 30/2012/DS-ST dated July 20th, 2012, of the Hà Nội People's Court regarding the dispute over inheritance and division of common property between the plaintiffs (Mr. Cấn Xuân V, Mrs. Cấn Thị N1, Mrs. Cấn Thị T1, Mrs. Cấn Thị H, Mr. Cấn Xuân T, Mrs. Cấn Thị N2,

Mrs. Cấn Thị M1) and the defendants (Mrs. Nguyễn Thị L, Mr. Cấn Anh C) and interested parties (7 people).

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

CONTENT OF THE CASE LAW:

“[5] Notwithstanding the foregoing, Article 623, Clause 1 of the 2015 Civil Code (effective January 1st, 2017) establishes a 30-year statute of limitations for heirs to seek division of real estate, commencing from the date of the inheritance's opening.

[6] Pursuant to Article 688, Clause 1(d) of the 2015 Civil Code, the statute of limitations prescribed in the 2015 Civil Code shall apply to civil transactions established prior to its effective date.

[7] Consequently, upon the 2015 Civil Code's entry into force, this Court applied Article 623 to determine the statute of limitations in cases where inheritance proceedings commenced before January 1st, 2017. In accordance with Clause 4, Article 36 of the Inheritance Ordinance dated August 30th, 1990, and the 2015 Civil Code, the statute of limitations for co-heirs to file a lawsuit for the division of Mrs. T's estate remains valid under the applicable law.”