



NEWSLETTER



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Dear Clients,

Lac Duy & Associates would like to send you the legal newsletter of December 2023 with some notable updates and articles as follows:

- Case law No. 67/2023/AL about the person receiving in kind in case of division of multiple ownership property
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CASE LAW NO. 67/2023/AL ABOUT THE PERSON RECEIVING IN KIND IN CASE OF DIVISION OF MULTIPLE OWNERSHIP PROPERTY

1. Sources of case law

Cassation decision No. 40/2021/DS-GDT dated on Jun 23rd, 2021 issued by the High People's Court at Ha Noi City on civil case "Dispute on division of multiple ownership property" between the Claimant Ms. Nguyen Thi Đ (having authorized representative Ms. Pham Thi Hai Y) and the Respondent Mr. Pham Ngoc H; and six persons with related interests and obligations.



2. Position of case law content

The second, third and fourth sections of Part "Comments of the Court".

3. Summarizing case law

- *Background*

This is a case regarding division of multiple ownership property, including home ownership and land use rights. In particular, the claimant is an elderly person who has been constructing, managing and using residential house and land in a stable and long-term manner with her husband. The respondent is the beneficiary of the entire inherited property left by the claimant's husband and has not established any new assets on land. Both are co-owners of the real estate. However, real estate has known as property which cannot be divided. The claimant wishes to receive the real estate and pay the respondent the amount of money equivalent to his share.

- *Legal solution*

In this case, Ms. D and her husband built and lived together on the land for long term. When her



husband passed away, he left all the inherited property to Mr. H. Accordingly, Mr. H owned half of the multiple ownership property and the remaining property belongs to Ms. D. From that, the Court determined that both Ms. D and Mr. H are co-owners of home ownership and land use rights in accordance with Article 209 of the 2015 Civil Code. Before making decisions, the Court assessed the origin, formation and development process of land and land-attached assets. Considering that Ms. D made efforts to build the house and manage, live and worship even when her husband passed away while Mr. H just moved to live with Ms. D and has not established any new assets on the land, the Court decides to grant her the home ownership and land use rights and requests Ms. D to pay Mr. H in money with the amount equivalent to $\frac{1}{2}$ of the common property as prescribed in Article 219 of the 2015 Civil Code.

4. Legal ground

Article 209 and 219 of the 2015 Civil Code.

5. Key words

“Elderly”; “Division of multiple ownership property”; “Payment of the remaining property value”.

6. Comments

In this case, the multiple ownership property rights are clearly divided into two equal parts. It means each person owns half of the multiple ownership property. This situation is understood as a case on ownership in common as stipulated in Article 209 of the 2015 Civil Code “*Ownership in common is multiple ownership whereby each owner's share of the ownership rights with respect to the multiple ownership property is specified.*” Ms. D filed a lawsuit to request the Court to share out multiple ownership property of co-owners as Ms. D and Mr. H. She requested to receive home ownership and land use rights and pay the remaining property value to Mr. H. This real estate is common property that cannot be divided into in kind. According to Article 219.2 of the 2015 Civil Code about handling measures in case of a request to share out multiple ownership property that cannot be divided into in kind as follows:

- (i) *When multiple ownership property cannot be divided into in kind, the owner having request for division has the right to sell his or her ownership rights, unless otherwise agreed. (Article 219.1).*
- (ii) *If the ownership rights cannot be divided into in kind [...] then the oblige has the right to*



request the obligor to sell his or her ownership rights to fulfill the payment obligation. (Article 219.2).

It can be seen, Ms. D's requests includes receiving home ownership and land use rights and paying the remaining property value to Mr. H do not fall into any cases as mentioned above. Furthermore, current laws do not have any specific regulations guiding the forcing of a party to receive money or the land use rights when resolving a dispute on division of multiple ownership property. In practice, the Court makes a decision based on evaluating records, documents, evidence, and facts. In this case, the Court assessed the origin, formation and development process of the multiple ownership property and considered the actual situation of related persons. Considering that Ms. D is elderly, which is difficult to set up a new residence. Therefore, the Court issued a Cassation decision that accepted Ms. D's request for receiving home ownership and land use rights and paying the remaining value of multiple ownership property. It is highly appreciated that the Cassation decision was made carefully, thoughtfully and practically.



CASE LAW NO. 68/2023/AL ON THE RIGHT TO RECEIVE IN-KIND LEGACY AS A HOUSE OF HEIRS WHO ARE OVERSEAS VIETNAMESE



1. Source of case law:

Cassation Decision No. 06/2019/DS-GDT dated March 18, 2019 of the

Council of Judges of the Supreme People's Court on civil case " *Inheritance disputes, demanding contributions to raise, care for, and preserve houses and land, and claiming houses and land*" between the plaintiff, Ms. Nguyen Tuy H, and the defendant, Ms. Ly Lan H1; People with related rights and obligations include 06 people.

2. Location of case law content:

Paragraph 5, section "Comments of the Court".

3. Overview of the content of the case law:

- *Case law situation:*

The person leaving behind the legacy of housing ownership and land use rights died before the Land Law 2013 and Law on Housing 2014 took effect. Disputes over property inheritance division were resolved by the Court at the time the Land Law 2013 and Law on Housing 2014 took legal effect.

- *Legal solutions:*

In this case, the Court applied the Land Law 2013 and the Law on Housing 2014 to resolve. In case there is an heir who is a Overseas Vietnamese, the heir may receive the inheritance in kind, which is a house, when he/she is eligible to receive housing according to the Law on Housing 2014 and the



inheritance can be divided in kind.

4. Legal provisions related to case law:

- Point d, Clause 1, Article 169; Article 186 of the Land Law 2013;
- Clause 1, Point b, Clause 2, Article 8 of the Law on Housing 2014.

5. Keywords: case law:

“Overseas Vietnamese”; “Conditions for receiving housing”; “Applicable law”.

6. Comment on case law:

According to Case law No. 68/2023/AL, based on Clause 3, Article 186 of the Land Law 2013, although Ms. H1 is an Overseas Vietnamese and is not eligible to buy houses attached to land use rights in Vietnam, the law allows Ms. H1 to transfer or donate inherited land use rights according to the law. At the same time, at the time of the appeal hearing, the Law on Housing 2014 took legal effect, accordingly, based on Clause 1 and Point b, Clause 2, Article 8 of the Law on Housing 2014, Overseas Vietnamese are allowed to own real estate through many forms, including inheritance legally. Therefore, it is reasonable for Mrs. H1 to receive all the artefacts, including real estate, for the inheritance left by Mr. H2. Thereby, the case law also shows that current Vietnamese law is developing in the direction of attaching importance to protecting the legal rights and interests of Overseas Vietnamese, such as property rights, disposing of inherited property which is real estate in Vietnam.



LEGAL DOCUMENTS IN 12/2023

NO.	EFFECTIVE DATE	NAME
MONEY AND BANKING		
1.	01/12/2023	Decision No. 11/2023/QD-TTg regulating the level of large value transactions that must be reported issued by the Prime Minister
INSURANCE		
1.	03/12/2023	Decree No. 75/2023/ND-CP amending and supplementing a number of articles of Decree No. 146/2018/ND-CP dated October 17, 2018 of the Government detailing and guiding measures to implement a number of articles of the Health Insurance Law issued by the Government
INVESTMENT		
1.	22/12/2023	Decree No. 78/2023/ND-CP dated November 7, 2023 amending and supplementing a number of articles of Decree No. 32/2017/ND-CP dated March 31, 2017 of the Government on investment credit of Government
PUBLIC SERVICE		
1.	01/12/2023	Circular 63/2023/TT-BTC amending and supplementing a number of articles of a number of circulars regulating fees and charges to encourage the use of online public services
STATE OFFICER		
1.	22/12/2023	Circular 19/2023/TT-BYT on Professional Health Officials
2.	05/12/2023	Circular 11/2023/TT-BLDTBXH on Leadership, management and professional titles specialized in labor, people with meritorious services and social affairs issued by the Ministry of Labour, Invalids and Social Affairs
LABOUR - SALARY		
1.	16/12/2023	Circular 21/2023/TT-BGDDT on Regulations on codes, professional title standards and salary rankings for officials supporting the education of people with disabilities in public educational establishments issued by the Ministry of Education and Training



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