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

*This case law was adopted by the Judicial Council of the Supreme People’s Court on 17 October 2018 and promulgated under Decision No. 269/QD-CA dated 6 November 2018 of the Chief Justice of the Supreme People’s Court.*

**Source of the case law:**

Cassation Decision No. 27/2015/DS-GDT dated 16 October 2015 of the Judicial Council of the Supreme People’s Court on the civil case on *“Dispute on inheritance being land use rights”* in Hanoi between the plaintiffs being Ms. Pham Thi H, Ms. Pham Thi H1, Ms. Pham Thi H2 against the defendant being Mr. Pham Van H3. The persons with related rights and obligations consisted of 12 people.

**Location of contents of the case law:**

Paragraph 4 of the section *“Findings of the Court”.*

**Overview of the case law:**

* ***Background of the case law:***

Houses and land are common property of the spouses, where one spouse dies first. The other spouse and other heirs of the deceased have agreed on the division of the houses and land. The division agreement is not in violation of any rights and interests of any heirs.

The division of houses and land has been carried out in reality and recorded in the land documents and records.

* ***Legal resolution:***

In this case, it must be determined that the houses and land have been converted into assets under the lawful ownership and use of individuals. These individuals are only entitled to initiate a lawsuit to claim the houses and land that have been divided and under the unlawful possession and use by other persons who are not entitled to inheritance being houses and land.

**Applicable provisions of laws relating to the case law:**

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

**Key words of the case law:**

*“Inheritance”, “Common property of spouses”, “Actual division of houses and land”.*

### CONTENTS OF THE CASE

In the *“Statement of Claim for land”* dated 30 June 2004 and other applications and testimonies during the proceedings, the plaintiff being Ms. Pham Thi H, Ms. Pham Thi H1 and Ms. Pham Thi H2 presented that:

Their parents being Mr. Pham Van H (passed away in 1978) and Ms. Ngo Thi V (passed away on 21 August 1994) had seven children being Mr. Pham Van H3, Mr. Pham Van D (passed away in 1998), Mr. Pham Van T, Mr. Pham Van Q (passed away in 2000), Ms. Pham Thi H, Ms. Pham Thi H1, and Ms. Pham Thi H2. When they were alive, Mr. Pham Van H and Ms. Ngo Thi V had a house and kitchen on the land area of 464m2 in Q District, Ha Tay Province (former name; currently part of Hanoi).

In 1991, Ms. V divided the aforementioned land area between her seven children: each of the four sons was granted a part of the inheritance and the remaining part of the inheritance (width of 3 meters located next to the street, area of 44.4m2) was for the three daughters (who are the plaintiffs). Right after being given the land, Mr. D sold it to resettle in Song Be Province (former name). Mr. T and Mr. Q used the land to build houses to live. The land given to the plaintiffs was located next to the land area that Mr. V had given to Mr. H3 (width of 4 meters next to the street). Mr. H3 already had houses and land in another place, so he did not use the land that he received. At that time, the plaintiffs were in the South so Mr. H3 watched over his own and the plaintiffs’ land received from Mr. V, of which the total area was 110m2 (width of 7 meters). Many years later, Mr. H3 still acknowledged that he was watching over the land area given to the plaintiffs.

In 2002, at the time the plaintiffs returned to conduct reburial rites for their mother, Mr. H3 still agreed that whenever the plaintiffs were ready, they may take back the land to build their houses. However, in 2004, when the three sisters wished to build houses on the land, Mr. H3 refused to recognize that the land had been given to the plaintiffs and he had divided such land area among his children being Mr. Pham Van L and Ms. Pham Thi T. As such, he did not return the land to his sisters.

The plaintiffs requested the court to compel Mr. H3 to return the land area belonging to them, which was agreed by their mother and the siblings in 1991; in the past, they requested the court to settle the case such that the sisters shall be entitled to the inheritance in accordance with the law by way of the land area of 44.4m2. When the People’s Court of Hanoi accepted to settle the case under first-instance procedures in 2010, the plaintiffs requested the court to divide the estate of their parents being the land area of 115m2 (the actual area was110m2) which was under the management of Mr. H3.

The defendant being Mr. Pham Van H3 and by the testimony of his authorized representative being Ms. Pham Thi T presented that:

At first, Mr. H3 made statements that his parents had assets consisting of houses and land as presented by the plaintiffs. In 1972, he started a family and his parents permitted him to live on this land area of 162m2. After that, the defendant changed his testimony and asserted that the land area of 162m2 were land that he and his wife being Ms. Nguyen Thi N reclaimed from garbage dump and water spinach field, on which they built a house and used up to now. This land does not belong to Mr. V and Ms. H.

In 1983, Mr. H3’s family moved to another place to live, but he still managed the entire land and houses of his parents and his family because at that time Ms. V and his younger sisters went to the South to participate in the New Economic program. In 1987, he declared the land lot No. 210 with the area of 162m2 and was granted certificate of land use rights over the same. In 1988, Ms. V came back to her hometown and divided the land and houses among her four sons only and not her daughters as presented by the plaintiffs. Mr. H3 agreed with the plaintiffs’ presentations as to the location and areas of land divided among Mr. D, Mr. T, and Mr. Q and his receipt of the land for use. When Ms. V divided the land, Mr. H3 agreed to give a land area of 52m2 from his given land area of 162m2 to Mr. Q so his remaining land area was only 110m2. In 2004, he made a written document giving his children being Mr. L and Ms. T the land areas of 65m2 and 45m2 respectively and applied for 2 separate certificates of land use rights over them, which were not yet granted when Ms. H, Ms. H1 and Ms. H2 raised this dispute. Mr. H3 contended that Ms. V did not divide the land with respect to Ms. H, Ms. H1 and Ms. H2 in 1991 as presented by the plaintiffs. The statute of limitation for initiating a lawsuit on inheritance had expired. The land area of 110m2 belonged to him and he disagreed with the plaintiffs’ claims.

The persons with related rights and obligations presented:

Ms. Pham Thi T and Mr. Pham Van L had the same presentations as Mr. H3. Ms. T5 confirmed that in 2003 she built a house over the land area being claimed by the plaintiffs.

Mr. Pham Van T presented that: the origin of the land and house was as presented by the plaintiffs. Mr. T confirmed that in 1991, Ms. V organized a family meeting and reached consensus (verbally) to divide the land for her children, in which her three daughters were given a part and this part was under the management of Mr. H3 along with the part that Mr. H3 was given. He confirmed that he had received his given land area and transferred it to another person afterwards. He requested the court to compel Mr. H3 to return the land in dispute to his three younger sisters.

Ms. Nguyen Thi T and her children with Mr. Pham Van D; Ms. Phung Thi H4 and her children with Mr. Pham Van Q, confirmed that Ms. V had divided the land to her children but Ms. T and Ms. H4 were daughters-in-law and did not participate so they did not know the details of the division. Ms. T confirmed that Mr. D’s given land was sold by him for money to go to the South. Ms. H4 confirmed that her family has been using Mr. Q’s given land for their residence up to now. As Mr. D and Mr. Q had been given land, Ms. T and Ms. H4 and their children had no requests in this case.

After People’s Court of Hanoi accepted to settle the case under first-instance procedures in 2010, Mr. T and the heirs of Mr. D and Mr. Q had no requests in relation to the land area of 110m2 that the plaintiffs were requesting to divide the estate as well as agreed to give Mr. T’s, Mr. D’s, and Mr. Q’s parts of the inheritance in land area of 110m2 in dispute to the three plaintiffs and Mr. H3.

The case had been undergone first-instance and appellate procedures as follow:

* First-instance Civil Judgment No. 07/2005/DSST dated 7 July 2005 of the People’s Court of Quoc Oai District, Ha Tay Province (former name)
* Appellate Civil Judgment No. 126/2005/DSPT dated 30 November 2005 of the People’s Court of Ha Tay Province (former name)
* Cassation Decision No. 106/2007/DS-GDT dated 23 April 2007 of the Civil Court

(former name) of the Supreme People’s Court accepting Protest No. 23/2007/KNDS dated 2 March 2007 by the Chief Justice of the Supreme People’s Court and setting aside the first-instance and appellate judgments and transferring the case to the People’s Court of Quoc Oai District to re-conduct first-instance procedures.

* First-instance Civil Judgment No. 01/2009/DSST dated 7 April 2009 of the People’s Court of Quoc Oai District;
* Appellate Civil Judgment No. 87/2009/DSPT dated 2 April 2009 of the People’s Court of Hanoi setting aside the first-instance judgment for resettling. The People’s Court of Hanoi issued Decision to transfer the case the People’s Court of Hanoi to reconduct first-instance procedures.
* People’s Court of Hanoi issued Decision No. 41/2010/QDST-DS dated 20 July 2010 suspending settlement of the case;
* In Decision No. 183/2010/QD-PT dated 19 November 2010, the Appellate Court of the Supreme People’s Court in Hanoi (former name) set aside the aforesaid firstinstance judgment and transferred the case to the People’s Court of Hanoi to reconduct first-instance procedures.
* In First-instance Civil Judgment No. 24/2013/DSST dated 30 and 31 May 2013 of the People’s Court of Hanoi, it was ruled:
	1. To accept Ms. Pham Thi H’s, Ms. Pham Thi H1’s, and Ms. Pham Thi H2’s request to divide the estate was accepted;

* 1. To determine that the land use rights over the land lot No. 252 in cadastral map No. 2 with the area of 110m2 in Q District, Hanoi belonged to Ms. Ngo Thi V and Mr. Pham Van H with value of VND1,321,200,000.
* To divide the common property of Ms. V and Mr. H, where each spouse had asset value of VND660,600,000.
* Mr. H’s part of the asset was the land use rights over the land area of 55m2 being valued at VND660,600,000. The statute of limitation for dividing the estate had expired.
* Ms. V’s part of the asset was the land use rights over the land area of 55m2 being valued at VND660,600,000.
* Each of Mr. H3, Ms. H, Ms. H2 and Ms. H1 was entitled a part being valued at VND120,120,000.
* Mr. H3 was entitled to own the assets being valued at VND240,240,000.
* Each of Ms. H, Ms. H2 and Ms. H1 was entitled to the assets being valued at VND120,120,000.
* Ms. H, Ms. H1 and Ms. H2 were entitled to use the Level 4 house over the land lot No. 252 in cadastral map No. 2, Q District, Hanoi with the land area of 44.4m2 being valued at VND532,800,000, with a map enclosed.
* Mr. Pham Van H3 was entitled to use a land area of 10.7m2; Mr. H3, Ms. T and Mr. H would continue to manage the land area of 55m2 being the asset of Mr. H as recorded in the land lot No. 252 of cadastral map No. 2, Q District (with a map enclosed) because the statute of limitation had expired until the competent authorities decide otherwise. Mr. H3, Ms. T and Mr. H were entitled to the amount of VND300,000,000 being equivalent to a two-floor house and one attic over the land area of 65.7m2 in land lot No. 2, Q District, Hanoi (with a map enclosed). Mr. H3 would receive the amount of VND172,440,000; Ms. T and Mr. H would receive VND20,000,000 as the repair costs to be paid by Ms. H, Ms. H1 and Ms. H2.
* Ms. H, Ms. H1 and Ms. H2 shall pay Mr. H3 the amount of VND172,440,000 and pay Ms. T and Mr. H the amount of VND20,000,000 as the repair costs.
* To invalidate the certificate of land use rights over the land area of 162m2 in land lot No. 210 of cadastral map No. 2 in the name of Mr. Pham Van H3 issued by People’s Committee of Quoc Oai District on 10 September 1987.
* To recognize the consent of Mr. Pham Van T, Ms. Nguyen Thi T and their children being Pham Thi Thu T2, Pham Thi Thu T3, Pham Thi Thanh T4; Ms. Phung Thi H4, her children being Pham Thi H5, Pham Duc H, Pham Duc M all waived their right to receive the inheritance and had no requests in relation to the land area of 110m2 of Ms. V and Mr. H in land lot No. 252, cadastral map No. 2, Q District, Hanoi.
* To recognize the consent of Mr. Pham Van H3, Ms. Pham Thi H, Ms. Pham Thi H2, Ms. Pham Thi H1, Mr. Pham Van T, Ms. Nguyen Thi T and their children being Pham Thi Thu T2, Pham Thi Thu T3, Pham Thi Thanh T4; Ms. Phung Thi H4, her children being Pham Thi H5, Pham Duc H, Pham Duc M:

+ No request for the court to settle the assets attached to the land of Ms. V and Mr. H, which are four thatched cottages.

+ No request for the court to settle the funeral expenses.

+ No requests in relation to land lot No. 253 in the name of Pham Van Q; land lot No. 261 in the name of Pham Van T (land area of 189m2 including land lot

No. 261b); land lot No. 260 with the area of 94m2 in the name of Nguyen Thi

P.

+ No request for the court to settle the transfer of the land use rights by Mr. T and Mr. D to other people.

+ No request for the court to settle the amount of VND8,733,000.

The judgment also dealt with court fees, right to appeal and interest amount on late enforcement of the judgment.

On 14 June 2013, Ms. T, Mr. H and Mr. L submitted an appeal.

* In appellate Civil Judgment No. 53/2014/DSPT dated 4 April 2014, the Appellate Court of the Supreme People’s Court in Hanoi upheld the first-instance judgment.

On 19 August 2014, Mr. Pham Van H3 presented an application for cassation.

* In Protest No. 152/2015/KN-DS dated 28 May 2015, the Chief Justice of the Supreme People’s Court protested against Appellate Civil Judgment No. 53/2014/DSPT dated 4 April 2014 of the Appellate Court of the Supreme People’s Court in Hanoi and requested the Judicial Council of the Supreme People’s Court to conduct cassation procedures to set aside Appellate Civil Judgment No. 53/2014/DSPT dated 4 April 2014 of the Appellate Court of the Supreme People’s Court in Hanoi and First-instance Civil Judgment No. 24/2013/DSST dated 30 and 31 May 2013 of the People’s Court of Hanoi, transfer the case to People’s Court of Hanoi to re-conduct first-instance procedures.

At the cassation hearing, the representative of the Supreme People’s Procuracy agreed with the protest by the Chief Justice of the Supreme People’s Court.

### FINDINGS OF THE COURT

1. Mr. Pham Van H (passed away in 1978) and his wife being Ms. Ngo Thi V had 7 children being Mr. Pham Van H3, Mr. Pham Van D (passed away in 1998), Mr. Pham Van T, Mr. Pham Van Q (passed away in 2000), Ms. Pham Thi H, Ms. Pham Thi H1 and Ms. Pham Thi H2. When alive, Mr. Pham Van H and his wife had thatched cottages on the land area of 464m2 in H Street, Q District, Ha Tay Province (currently Hanoi). The land had been given to them in the land reform period.
2. After Mr. H passed away, Mr. H3 and his wife being Ms. N watched over the land and houses. Ms. V and other children went to the South to participate in the New Economic program. In 1983, Mr. H3 and his wife moved to another place to live but continued managing the land and houses. The People’s Committee of Q District confirmed that the cadastral books stored at the People’s Committee showed that the land of Mr. H and Ms. V was divided into two lots in which one was coded 210 with the area of 162m2 in the name of Mr. H3 and the other was coded 213 with the area of 300m2 in the name of Mr. T. After that, Ms. V returned to the land and house and stayed there until she passed away in 1994. After her return, Ms. V organized a family meeting to divide the land area into four separate parts for her children, who had no objections and agreed to carry out the said division. Therefore, Mr. T’s and Mr. H3’s agreement with Ms. V in the division of the land area of 464m2 indicated that Mr. T’s and Mr. H3’s names were just recorded on the cadastral documents, and the land and houses belonged to Ms. V and Mr. H, but not yet divided. Mr. H3 failed to provide evidence to prove that the land area of 162m2 was of his separate asset.
3. The land areas given to Mr. D (94m2), Mr. Q (78m2), and Mr. T (189m2) had been received by them, who then were granted certificates of land use rights or transferred their land to other people who had carried out registration procedures for amendment, up to now no one has brought any dispute on these land areas. The remaining land area of 110m2 (width of 7 meters next to the street) had been managed by Mr. H3. In 2004, it was not until when he divided the said land area among his children that Ms. H, Ms. H1 and Ms. H2 raised a dispute to claim the land area of 44.4m2. In fact, at the time that Ms. V divided the land, her children were grown up and some of them had their own families who had the need for land to build houses. Mr. H3 already had had land and houses while Ms. H, Ms. H1 and Ms. H2 were in Binh Phuoc so that these four people had no need to build houses at that time. Mr. T acknowledged that Ms. V divided the land and her children all agreed and Mr. T confirmed that Mr. H3 managed the land area that Ms. V had divided among Mr. H3, Ms. H, Ms. H1 and Ms. H2. Mr. T recommended that the court rule that Ms. H, Ms. H1 and Ms. H2 shall be entitled to their assets. Mr. D’s and Mr. Q’s wives being Ms. T and Ms. H4 respectively and their children, despite being unaware of the division, agreed that Ms. V had divided the land among her children and they had no further requests, the land area of 110m2 was therefore for Mr. H3, Ms. H, Ms. H1 and Ms. H2. As such, there is sufficient basis to determine that Ms. V had divided the land among Ms. H, Ms. H1 and Ms. H2 and this part of the land was managed by Mr. H3.
4. Based on the aforementioned evidence, there is sufficient basis to determine that Ms. V and Mr. H’s heirs agreed on the division of the common property the land and houses of Ms. V and Mr. H in 1991 and there is sufficient basis to determine that Ms. H, Ms. H1 and Ms. H2 were entitled to the land area of 44.4m2 within the land area of 110m2. The division had been in fact carried out and registered in the cadastral documents. The division agreement does not violate any heir’s rights and interests, and no one is disputing it so that there is basis to determine the houses and land are no longer the estate of Ms. V and Mr. H but the assets of individuals. Therefore, Ms. H, Ms. H1 and Ms. H2 are only entitled to initiate a lawsuit to claim the land area of 44.4m2 which they lawfully own due to the division in 1991; there is no basis to accept the request for dividing the estate of Mr. H and Ms. V because the inheritance from the parents no longer existed.
5. According to the first Statement of Claim and testimony before the first-instance court accepted to settle the case in 2010, the plaintiffs had claimed only the land area of 44.4m2. After the acceptance of the case for first-instance procedures, the plaintiffs changed their testimonies and requested division of the estate of the land area of 110m2 being the assets of their parents that Mr. H3 managed, which had no basis. The first-instance court failed to clarify the involved parties’ testimonies on the changes to their claims and ruled to accept the request for division of the estate of the land area of 110m2 and the appellate court upheld the first-instance court’s decisions in the first-instance judgment, which had no basis.

In light of the aforesaid reasons, pursuant to Article 291.3, Article 297.3 and Article 299.2 of the Civil Procedure Code (amended and supplemented in 2011);

### RULES

1. To set aside Appellate Civil Judgment No. 53/2014/DSPT dated 4 April 2014 of the Appellate Court of the Supreme People’s Court in Hanoi and First-instance Civil Judgment No. 24/2013/DS-PT dated 31 May 2013 of the People’s Court of Hanoi regarding the case on *“Dispute on inheritance being land use rights”* between the plaintiffs being Ms. Pham Thi H, Ms. Pham Thi H2, Ms. Pham Thi H1 against the defendant being Mr. Pham Van H3.

1. To transfer the case to People’s Court of Hanoi to conduct first-instance procedures in accordance with the law.

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*“[4].. there is sufficient basis to determine that Ms. V and Mr. H’s heirs agreed on the division of the common property the land and houses of Ms. V and Mr. H in 1991 and there is sufficient basis to determine that Ms. H, Ms. H1 and Ms. H2 were entitled to the land area of 44.4m2 within the land area of 110m2. The division had been in fact carried out and registered in the cadastral documents. The division agreement does not violate any heir’s rights and interests, and no one is disputing it so that there is basis to determine the houses and land are no longer the estate of Ms. V and Mr. H but the assets of individuals. Therefore, Ms. H, Ms. H1 and Ms. H2 are only entitled to initiate a lawsuit to claim the land area of 44.4m2 which they lawfully own due to the division in 1991; there is no basis to accept the request for dividing the estate of Mr. H and Ms. V because the inheritance from the parents no longer existed”.*