**CASE LAW NO. 26/2018/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. 06/2017/DS-GDT dated 27 March 2017 of the Judicial Council of the Supreme People’s Court regarding the case on *“Dispute on inheritance and division of common property”* in Hanoi between the plaintiffs being Mr. Can Xuan V, Ms. Can Thi N1, Ms. Can Thi T1, Ms. Can Thi H, Mr. Can Xuan T, Ms. Can Thi N2, Ms. Can Thi M1 whose representative was Ms. Can Thi N2 against the defendants being Ms. Nguyen Thi L, Mr. Can Anh C whose authorized representative was Ms. Le Hong L. Persons with related rights and obligations consisted of 7 people.

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

Paragraphs 5, 6 and 7 of section *“Findings of the Court”.*

**Overview of the case law:**

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

The owner of the estate being real estates had passed away before 30 August 1990 being the issuance date of the Ordinance on Inheritance. At the time of the firstinstance hearing, the Civil Code 2015 was effective.

* ***Legal resolution:***

In this case, the commencement of the statute of limitations for requesting for division of the estate must be determined as the issuance date of Ordinance on Inheritance, i.e. 30 August 1990. The determination of the statute of limitation for requesting for division of the estate is subject to the regulations of the Civil Code 2015.

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

* Article 623.1 of the Civil Code 2015;
* Article 36.4 of the Ordinance on Inheritance dated 30 August 1990.

**Key words of the case law:**

*“Divide estate”, “Statute of limitation for request for division of estate”, “Commencement of the statute of limitation”.*

### CONTENTS OF THE CASE

*According to the Statement of Claims dated 2 November 2010 and during the proceedings, the plaintiff’s representative being Ms. Can Thi N2 presented that*: Mr. Can Van K and Ms. Hoang Thi T had 8 children, namely: Can Xuan V, Can Thi N1, Can Thi N2, Can Thi M1, Can Thi T1, Can Thi H, Can Xuan T, Can Van S (passed away in 2008) whose wife was Nguyen Thi M and whose children were Can Thuy L and Can Hoang K.

In 1972, Ms. T passed away. In 1973, Mr. K married Ms. Nguyen Thi L and they had 4 children, namely: Can Thi C, Can Thi M2, Can Anh C and Can Thi T2.

While alive, Mr. K and Ms. T had a land area of 612m2, on which there were 2 three-room houses located in T Hamlet, P Commune, Th Town, Hanoi, under a certificate of land use rights granted in 2012 in the name of Mr. Can Van K. After Ms. T passed away, the aforementioned land and house were under the management of Mr. K and Ms. L. In 2002, Mr. K passed away and those assets were managed by Ms. L and Mr. Can Anh C.

Mr. K and Ms. T passed away without leaving any will. Then the co-heirs being Mr. K’s and Ms. T’s children submitted a request to divide the common property of Ms. T and the estate of Mr. K in accordance with the law. Ms. N1, Ms. N2, Ms. M1, Ms. T1, Ms. H, Mr. T, Ms. C and Ms. Nguyen Thi M (Mr. S’s wife) requested that their part of inheritance be transferred to Mr. V to use as a place for ancestor worship.

*The defendants being Ms. Nguyen Thi L and Mr. Can Anh C presented that*: the plaintiffs’ presentations as to the consanguinity and the estate are correct. Ms. L acknowledged that before getting married to Mr. K, Mr. K had assets being the 3-room Level 4 house and 3 kitchens on the land area of 612m2. During the use and management of these assets, she and Mr. K improved and rebuilt some ancillary construction works and walls. In 2002, the State authority granted the certificate on land use rights in the name of Mr. Can Van K. At that time, the household of Mr. K consisted of: Mr. K, Ms. L, Mr. T, Ms. M2, Ms. T2 and Mr. C. With respect to the claims of the plaintiffs, Ms. L and Mr. C requested that the dispute be settled in accordance with regulations of the law.

*Persons with related rights and obligations*:

Ms. Can Thi C, Ms. Can Thi T2, Ms. Can Thi M2, Ms. Nguyen Thi M, Ms. Le Thi H acknowledged the consanguinity as presented by the plaintiffs and the defendants and proposed resolving the dispute in accordance with the law. If the plaintiffs’ request was accepted, Ms. Nguyen Thi C’s and Ms. C’s parts of the inheritance would be transferred to Mr. V; Ms. M2’s part of the inheritance would be given to Mr. C. Ms. T2 wished to receive her part of the inheritance.

In First-instance Judgment No. 30/2012/DS-ST dated 20 July 2012, the People’s Court of Hanoi ruled:

*To accept the requests of Mr. Can Xuan V, Ms. Can Thi N1, Ms. Can Thi T1, Ms. Can Thi H, Mr.*

*Can Xuan T, Ms. Can Thi N2, Ms. Can Thi M1.*

*Specifically, determining that the common property consisting of a Level 4 house, worship house, kitchen, brick courtyard, walls, cement shed, bath house, stainless steel water tank, and walls on the land area of 612m2 in T Hamlet, P Commune, Th Town, Hanoi had the value of VND1,565,504,366, in which the total value of the property of Mr. K and Ms. T was VND1,536,331,972, the value of the property of Mr. K and Ms. L was VND21,338,977. The value of the property developed by Mr. C and Ms. H VND7,833,417.*

*Ms. T passed away in 1972, the common property of Ms. T was divided among her children being Mr. V, Ms. N2, Ms. T1, Ms. H, Mr. T, Ms. N1, Ms. M1 and Mr. S; each of them was entitled to VND96,020,748. As Mr. S had passed away, his wife being Ms. Nguyen Thi M and his 2 children being L and K would be entitled to his part of the inheritance.*

*Mr. K passed away in 2002. The first class in the line of succession of Mr. K are Mr. V, Ms. N2, Ms. T, Ms. H, Mr. T, Ms. N1, Ms. M1 and Mr. S (who had already passed away so* *that his part of the inheritance would be given to his wife, Ms. Nguyen Thi M, and his two children, L and K), Ms. L, Mr. C, Ms. C, Ms. M2 and Ms. T2; each of them was entitled to VND30,365,575.*

*To accept the consent of Ms. N2, Ms. N1, Ms. T1, Ms. H, Mr. T, Ms. C, Ms. M1 and Ms. Nguyen Thi M being Mr. S’s wife for transfer of their parts of the inheritance to Mr. V.*

*To accept Ms. M2’s consent to give her part of the inheritance to Mr. C.*

*Division of particular assets:*

*Assign Mr. Can Xuan V the ownership of 03-room house with the area of 31.4m2 =*

*VND4,435,233, brick courtyard = VND1,456,475, walls surrounding the area of 27.63m2 = VND810,000, walls surrounding the bath house which are no longer usable, brick walls VND242,804, the flower wall in front of the worship house that is not usable, the well is no longer usable, the Level 4 house (worship house) and front porch = VND5,678,736, kitchen = VND3,696,503, bath house VND4,114,332; stainless steel water tank x 2m3 = VND2,000,000, 02 water tanks that are not usable, roof over the brick courtyard = VND1,719,085, livestock shelter that is not usable, gate that is not usable, trees: 01 sugar-apple tree, 01 mango tree, 01 grapefruit tree = VND470,000 attached to the land use right over the area of 367.1m2 = VND1,041,456,159. Mr. V is also entitled to receive the difference in the value of the assets from Ms. L, amounting to VND99,032,460. The part of assets that Mr. V is entitled to receive is VND1,041,456,000 (diagram attached).*

*Assign Ms. Nguyen Thi L, Mr. Can Anh C and his wife, Ms. Can Thi M2, Ms. Can Thi T2 to own 01 bedroom of 13.3m2 = VND1,896,739, walls = VND1,934,843, brick walls = VND666,841, brick courtyard = VND400,000, cement shed = VND1,462,287, trees = VND4,470,000 attached to the land use rights of an area of 244.9m2 = VND612,250,000, the total value = VND623,080,710 in which the value of the assets belonging to them is VND524,048,196. Ms. L and Mr. C were obliged to pay Ms. T2 an amount of VND30,365,575 and to Mr. V the difference in value of the assets being VND99,032,503. Furthermore, Ms. L must build herself a door and a path on her land.*

*As the truss between the bedroom of Mr. V and the bedroom of Ms. L and her children was a common truss, whoever dismantled the house first must leave that truss to the other one.*

*In addition, the first-instance court ruled on the court fee.*

On 13 August 2012, Ms. L and Mr. C submitted an appeal.

In Appellate Civil Judgment No. 106/2013/DS-PT dated 17 June 2013, the appellate court of Supreme People’s Court in Hanoi ruled:

*To accept the appeal of the defendants and to amend the first-instance judgment.*

*Accept part of the requests by Mr. Can Xuan V, Ms. Can Thi N1, Ms. Can Thi T1, Ms. Can Thi H, Mr. Can Xuan T, Ms. Can Thi N2 and Ms. Can Thi M1.*

*Specifically: To determine that the common property consisting of a Level 4 house, worship house, kitchen, brick courtyard, walls, cement shed, bath house, stainless steel water tanks, walls on the land area of 612m2 in T Hamlet, P Commune, TH Town, Hanoi had value of VND1,565,504,366, in which Mr. K’s and Ms. T’s property had value of VND1,536,331,872, the property developed by Mr. K and Ms. L had value of VND21,338,977, the property developed by the couple Mr. C and Ms. H had value of VND7,883,417.*

*Ms. T passed away in 1972, the statute of limitation for initiating a lawsuit on inheritance had expired. The co-heirs could not reach a mutual agreement as to whether Ms. T’s estate was common property which had not been divided, they did not accept the plaintiffs’ request for dividing the estate of Ms. T as dividing the common property of Ms. T’s 8 children. Since the statute of limitation for requesting for the division of estate had expired, the co-heirs managing the estate being Ms. Nguyen Thi L and Mr. Can Anh C are entitled to continue managing and owning the assets.*

*Mr. K passed away in 2002, the first class in the line of succession consisted of 13 people, namely: Ms. L, Mr. V, Ms. N2, Ms. T1, Ms. H, Mr. T, Ms. N1, Ms. M1, Mr. S (who had already passed away so* *that his part of the inheritance would be given to his wife, Ms. Nguyen Thi M, and his two children, L and K), Mr. C, Ms. C, and Ms. M2; each of them was entitled to an equal part of the inheritance equivalent to VND30,365,575.*

*To accept the consent of Ms. N2, Ms. N1, Ms. T1, Ms. H, Mr. T, Ms. C, Ms. M1 and Ms. Nguyen Thi M (Mr. S’s wife) to transfer assets to Mr. V.*

*To accept the consent of Ms. M2 to give assets to Mr. C.*

*Particular assets are divided as follows:*

*Assign Mr. Can Xuan V the land area having the worship house split by a straight line crossing the land lot, this line coincided with the outer edge of the main house (diagram attached). The total land area that Mr. V was given (with the worship house) was 218.2m2 (in which the land area of 100m2 was residential land and 118.2m2 was garden land, with land use term of 50 years), valued at VND545,500,000 and other assets attached to the land include: the worship house and the area of the front porch valued at: VND5,300,888 + VND377,848 = VND5,678,736; kitchen valued at VND3,696,503; bath house valued at VND4,114,332; stainless steel tank with volume 2m3 valued at VND2,000,000; 02 water tanks that are not usable. The total value of the assets attached to the land was VND15,489,571. The total value of the assets attached to the land given to Mr. V was VND560,989,571.*

*Mr. Can Xuan V shall not be obliged to pay the difference in value of the assets being VND287,699,396 to Ms. L and Mr. C.*

*Assign the entire land area of 393.8m2 (in which the land area of 200m2 was residential land with long-term land use term and the land area of 193.8m2 was garden land with land use term of 50 years), and the entire remaining assets attached to the land to Ms. Nguyen Thi L and Mr. Can Anh C to own and use. Ms. L and Mr. C shall pay Ms. Can Thi T2 the value of her part of the inheritance being VND30,365,575. Ms. Nguyen Thi L and Mr. Can Anh C had to open a new path to the common lane of the village.*

*In addition, the court ruled on the court fee.*

After the appellate hearing, on 5 April 2014, Ms. Can Thi N2 representing the plaintiffs requested that cassation procedures be conducted as to the aforementioned appellate civil judgment.

In [Protest] Decision No. 73/2016/KN-DS dated 15 June 2016, the Chief Justice of the Supreme People’s Court protested against Appellate Civil Judgment No. 106/2013/DS-PT dated 17 June 2013 of the Appellate Court of the Supreme People’s Court in Hanoi; requested the Judicial Council of the Supreme People’s Court to conduct the cassation procedures to set aside the aforesaid appellate civil judgment in its entirety and set aside First-instance Judgment No. 30/2012/DS-ST dated 20 July 2012 of the People’s Court of Hanoi; transfer the case to the People’s Court of Hanoi to conduct the first-instance procedures in accordance with the law.

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. Can Van K and Ms. Hoang Thi T had 8 children, namely: Can Xuan V, Can Thi N1, Can Thi T1, Can Thi H, Can Xuan T, Can Thi N2, Can Thi M1 and Can Van S (passed away in 2008, Mr. S’s wife is Ms. Nguyen Thi M and children are Can Thuy L and Can Hoang K).
2. Mr. K and Ms. T had assets consisting of a Level 4 house, kitchen, bath house and other works and trees on the land area of 612m2, lot No. 120, cadastral map No. 11, T Hamlet, P Commune, Th Town, Hanoi. Ms. T passed away in 1972. In 1973, Mr. K married Ms. Nguyen Thi L and they had 4 children, namely: Can Thi C, Can Thi M2, Can Thi T2 and Can Anh C. In 2002, the aforesaid land area was registered in the certificate of land use rights in the name of Mr. Can Van K. Mr. K passed away at the end of 2002 and his assets were then managed and used by Ms. L and Mr. Can Anh C. The plaintiffs being Mr. K’s and Ms. T’s children requested division of the common property of their mother being Ms. T and division of Mr. K’s estate in accordance with the law. As such, the first class in the line of succession of Ms. T consisted of 9 people including 8 children of Mr. K. In 2002, Mr. K passed away, the part of the inheritance which Mr. K was entitled from Ms. T was transferred to Ms. L and the children of Mr. K and Ms. L.
3. At the time the plaintiffs initiated the lawsuit (November 2010), Mr. K and Mr. Can Van S had died, the heirs of Mr. K and Mr. S were entitled to the parts of the inheritance to which Mr. K and Mr. S were entitled. The first-instance court determined that at the time of the initiation of the lawsuit (November 2010), the statute of limitation for division of the estate of Ms. T had expired, however, the first-instance court determined that Ms. T’s estate was the common property that was not yet divided and ruled to divide it among the 8 children of Ms. T, which was incorrect pursuant to point a, subsection 2.4 of section 2, part I of Resolution No. 02/2004/NQ-HDTP dated 10 August 2004 of the Judicial Council of the Supreme People’s Court because Ms. L and Mr. C (Mr. K’s son) had not accepted that the assets in dispute were Ms. T’s estate that was not yet divided.
4. It was correct when the appellate court determined that the statute of limitation for initiating a lawsuit on inheritance from Ms. T and rejected the plaintiffs’ requests for division of Ms. T’s estate (pursuant to regulations provided for in point a, subsection 2.4, section 2, part I of Resolution No. 02/2004/NQ-HDTP dated 10 August 2004 of the Judicial Council of the Supreme People’s Court), it was however wrong when the appellate court ruled that the co-heirs currently managing the estate being Ms. L and Mr. C can continue managing, using and owning it.
5. However, pursuant to Article 623.1 of the Civil Code 2015 (effective as from 1 January 2017), the statute of limitation for heir(s) to request division of the estate is 30 years as from the commencement of inheritance with respect to immovable property.
6. According to Article 688.1(d) of the Civil Code 2015, with respect to civil transactions established before the effective date of this Civil Code, the statute of limitation shall be subject to regulations of this Code.
7. Therefore, as from the effective date of the Civil Code 2015, courts apply Article 623 of the Civil Code 2015 to determine the statute of limitation with respect to cases of commencement of inheritance before 1 January 2017. Pursuant to Article 36.4 of the Ordinance on Inheritance dated 30 August 1990 and the Civil Code 2015, in this case, the statute of limitation for initiating a lawsuit for division of the estate of Ms. T to the co-heirs had not expired.
8. On the other hand, as per the wish of the plaintiffs as shown in the testimonies dated 22 December of Ms. Can Thi N2 (record 63), Ms. Can Thi N1 (record 69), Ms. Can Thi T1 (record 75), Ms. Can Thi H (record 78), and Ms. Can Thi M1 (record 61), they all requested the court to divide their parents’ estate in accordance with the law, because they were women who were married, and therefore, they are willing to assign their parts of the inheritance to which they are entitled from their parents to Mr. V to use a place for ancestor worship. Mr. Can Xuan T, in his testimony dated 22 October 2010 (record 73), requested the court to divide his parents’ estate in accordance with the law so that he and his siblings would use their inheritance for ancestor worship. Ms. Nguyen Thi M (record 65) requested that she and her children would assign to Mr. V for ancestor worship the part of the inheritance to which her husband and their father was entitled. However, during the dispute settlement process, the first-instance and appellate courts accepted the consent of the plaintiffs in assigning the property to Mr. V was incorrect with the intentions to the involved parties.

In light of the aforementioned reasons,

### RULES

Pursuant to Article 337.2, Article 343.3, Article 345 of the Civil Procedure Code 2015;

To accept Protest No. 73/2016/KN-DS dated 15 June 2016 of the Chief Justice of the Supreme People’s Court against Appellate Civil Judgment No. 106/2013/DS-PT dated 17 June 2013 of the Appellate Court of the Supreme People’s Court in Hanoi.

To set aside the aforesaid appellate civil judgment and First-instance Judgment No. 30/2012/DS-ST dated 20 July 2012 of the People’s Court of Hanoi in their entirety regarding the case on dispute on division of estate and division of common property between the plaintiffs being Mr. Can Xuan V, Ms. Can Thi N1, Ms. Can Thi T1, Ms. Can Thi H, Mr. Can Xuan T, Ms. Can Thi N2, Ms. Can Thi M1 against the defendants being Ms. Nguyen Thi L and Mr. Can Anh C and persons with related rights and obligations (7 people).

To transfer the case to the People’s Court of Hanoi to for first-instance hearing in accordance with the law.

**CONTENTS OF THE CASE LAW**

*“[5] However, pursuant to Article 623.1 of the Civil Code 2015 (effective as from 1 January 2017), the statute of limitation for heir(s) to request division of the estate is 30 years as from the commencement of inheritance with respect to immovable property.*

1. *According to Article 688.1(d) of the Civil Code 2015, with respect to civil transactions established before the effective date of this Civil Code, the statute of limitation shall be subject to regulations of this Code.*
2. *Therefore, as from the effective date of the Civil Code 2015, courts apply Article 623 of the Civil Code 2015 to determine the statute of limitation with respect to cases of commencement of inheritance before 1 January 2017. Pursuant to Article 36.4 of the Ordinance on Inheritance dated 30 August 1990 and the Civil Code 2015, in this case, the statute of limitation for initiating a lawsuit for division of the estate of Ms. T to the co-heirs had not expired. “*