**CASE LAW NO. 02/2016/AL ON CASE OF “DISPUTE ON RECLAIMING PROPERTY”**

*This case law was adopted by the Judicial Council of the Supreme People’s Court on 6 April 2016 and promulgated under Decision No. 220/QD-CA dated 6 April 2016 by the Chief Justice of the Supreme People’s Court.*

**Source of the case law:**

Cassation Decision No. 27/2010/DS-GDT dated 8 July 2010 by the Judicial Council of the Supreme People’s Court on “*Dispute on reclaiming property*” in Soc Trang Province between the plaintiff, Ms. Nguyen Thi Thanh, and the defendant, Mr. Nguyen Van Tam, and the person with related rights and obligations, Ms. Nguyen Thi Yem.

**Overview of the case law:**

When an overseas Vietnamese purchases land use right and asks another person, residing in Vietnam, to receive transfer of such land use right on behalf of him, if there arises a dispute, the Court shall review and consider any contributions of the person receiving transfer of the land use rights in preserving, managing, and enhancing the value of the land use right. In case such contributions cannot be determined exactly, the Court rules that the person actually making payment for the land use right and the person receiving transfer of the land use right shall have the equal shares in the increased value of the land use right.

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

Articles 137 and 235 of the Civil Code 2005.

**Key words of the case law:**

*“Invalid civil transaction”, “reclaiming property”, “bases for establishing ownership rights”, “establishing ownership rights over profits”, “Vietnamese residing abroad”.*

**CONTENTS OF THE CASE**

In the Statement of Claims dated 24 January 2005, Written Testimony dated 7 February 2005 and the resolution process of the case, the plaintiff Ms. Nguyen Thi Thanh presented:

Ms. Thanh is an overseas Vietnamese in the Netherlands, who was visiting her relatives in Vietnam and she intended to transfer land use rights. Thus, on 10 August 1993, she received transfer of the land use rights from the couple Heng Tinh and Ly Thi Sa Quenh for the area of 7,597.7m2 of farmland at Ward 7, Soc Trang Town for the price of 2.199 taels of gold. Ms. Thanh was the person directly transacting and agreeing to the transfer and payment of money and gold to the couple Heng Tinh. Ms. Thanh intended to transfer the land to her younger brother Mr. Nguyen Van Tam and Ms. Nguyen Thi Chinh Em to cultivate crops and support her and Mr. Tam’s parents. Since Ms. Thanh is a Vietnamese living abroad, she let Mr. Tam to be the transferee in documents. In addition, Ms. Thanh submitted the “*Record on Transfer of Farmland*” established on 10 August 1993 with the confirmation of the People’s Committee of An Hiep Commune. After receiving transfer, she let Mr. Tam and his wife cultivate the land. However, in 2004, without Ms. Thanh’s consent, Mr. Tam transferred the entire area of farmland, being 7,595.7m2, to Minh Chau Company Limited with the value of the land use rights being VND1,260,000,000. For this reason, Ms. Thanh requested Mr. Tam to pay her all the money from the transfer of her land.

The defendant, Mr. Nguyen Van Tam, presented:

The land area of 7,595.7m2 that is being disputed by Ms. Thanh is land that he and his wife spent money and gold to obtain transfer from Heng Tinh, and he was the transferee on the “*Record on Transfer of Farmland*” established on 10 August 1993. This record had no confirmation of the local authority. However, afterwards, he, Heng Tinh and his wife also signed a Transfer Agreement and an Application for Transfer of Land Use Right on 11 August 1993. These documents had confirmation by the People’s Committee of An Hiep Commune and the People’s Committee of My Tu Town agreeing to the transfer. After the transfer, he registered, declared, and was granted a Certificate of Land Use Right on 28 May 1994 over such area of farmland. Therefore, he transferred the entire area of land to Minh

Chau Company Limited with the value of VND1,260,000,000. He opined that the “*Record on Transfer of Farmland*” established on 10 August 1993 with the confirmation of the People’s Committee of An Hiep Commune submitted by Ms. Thanh was fake, and based on the Conclusion of Assessment Report No. 2784/C21 (P7) dated 25 October 2005 of the Criminal Science Institute – General Police Department, it was not his signature in the farmland transfer documents that Ms. Thanh submitted. Therefore, he did not agree to Ms. Thanh’s claim.

Ms. Nguyen Thi Yem (Mr. Tam’s wife) as a person with related rights and obligations presented: In 1993, she and her husband received the transfer of land use right from Mr. Heng Tinh. During the transfer procedures, she did not participate, however, she did give money and gold to Mr. Tam to pay Mr. Heng Tinh and his wife. For this reason, she also did not agree to Ms. Thanh’s claim.

The couple Mr. Heng Tinh and Ms. Ly Thi Sa Quenh (the other name is Le Thi Sa Venh) being the transferors in the transaction both confirmed that Ms. Thanh directly transacted the transfer and directly paid 2.199 taels of gold to them. Ms. Quenh and Ms. Thanh agreed to let Mr. Tam be the transferee on the “*Record on Transfer of Farmland*” established on 10 August 1993. The signatures on the Record on Transfer of Farmland submitted by Ms. Thanh were hers and her husband’s.

In First-instance Civil Judgment No. 04/2006/DS-ST dated 28 April 2006, the People’s Court of Soc Trang Province ruled that:

* Accept a part of Ms. Thanh’s claim on reclaiming the money on the transfer of the land use right.

* Compel Mr. Tam and his wife to pay Ms. Thanh the amount of VND630,000,000.

Besides, the first-instance judgment ruled on the court fees, assessment fees and granted the involved parties the appellate rights in accordance with the laws.

On 10 May 2006, Nguyen Van Tam submitted an appeal against the first-instance judgment. He argued that Ms. Thanh was not the one to have the right to use the area of land which was transferred to Minh Chau Company Limited. Therefore, the first-instance court’s decision to compel him to pay Ms. Thanh the amount of VND630,000,000 is not correct.

On 12 May 2006, Mr. Nguyen Huu Phong (representative of Ms. Thanh) submitted an appeal proposing that the appellate court to consider compelling Mr. Tam to pay the entire amount for the land transfer being VND1,260,000,000 to Ms. Thanh.

In Appellate Civil Judgment No. 334/2006/DS-PT dated 25 August 2006, the Appellate Court of the Supreme People’s Court in Ho Chi Minh City ruled: it rejected the appeals of both the plaintiff and the defendant. Moreover, the first-instance judgment was amended as follows:

* Accept a part of Ms. Thanh’s claim on reclaiming the money on the transfer of the land use right.

* Compel Mr. Nguyen Van Tam and Ms. Nguyen Thi Yem to pay Ms. Thanh the amount of VND27,047,000, equivalent to 2.199 taels of gold.

* Compel Mr. Nguyen Van Tam and Nguyen Thi Yem to submit the amount of

VND1,232,266,860 to the State Budget.

Besides, the appellate court also ruled on the court fees.

After the appellate hearing, Nguyen Van Tam submitted a complaint against the above appellate civil judgment.

In Decision No. 449/2009/KN-DS on 21 August 2009, the Chief Justice of the Supreme

People’s Court protested Appellate Civil Judgment No. 334/2006/DS-PT dated 25 August 2006 of the Appellate Court of the Supreme People’s Court in Ho Chi Minh City, proposing that the Judicial Council of the Supreme People’s Court conduct cassation procedures, set aside the appellate judgment and First-instance Civil Judgment No. 04/2006/DS-ST dated 28 April 2006 of the People’s Court of Soc Trang Province, assigned the case to the People’s Court of Soc Trang Province to conduct first-instance procedures in accordance with the laws. The Chief Justice finds:

“*Ms. Nguyen Thi Thanh initiated a lawsuit to reclaim property from Mr. Nguyen Van Tam and opined that since she is a Vietnamese living abroad, she had asked Mr. Tam (her younger brother) receive transfer of the land use right from Mr. Heng Tinh and his wife. However, afterwards, Mr. Tam transferred such land use right to another person.*

*The first-instance court and the appellate court determined that Mr. Tam was the transferee for the transfer of land use rights from Mr. Heng Tinh and his wife on behalf of Ms. Thanh, which there is basis.*

*Since Ms. Thanh was a Vietnamese living abroad, she was not entitled to receive transfer of the land use right but is only entitled to part of the investment value of for the land transfer.*

*Concerning the difference in value of the land, the time when the first-instance hearing and the appellate hearing were conducted was subject to the regulations of the Civil Code 2005 and there were no provisions to compel parties to submit to the budget, and thus, this difference in value belongs to Ms. Thanh and Mr. Tam. The first-instance court did not compel Mr. Tam to submit the value of the difference to the budget, which there is basis. However, it did not compel him to pay the initial investment value to Ms. Thanh. The appellate court did not have a legal basis but compelled Mr. Tam to submit the entire difference in value (VND1,232,226,860) to the State Budget, which is not in accordance with law”.*

At the cassation hearing, the representative of the Supreme People’s Procuracy suggested the Judicial Council of the Supreme People’s Court to accept the protest of the Chief Justice of the Supreme People’s Court to set aside the above appellate judgment and First-instance Civil Judgment No. 04/2006/DS-ST dated 28 April 2006 of the People’s Court of Soc Trang Province; transfer the case to the People’s Court of Soc Trang Province to conduct the firstinstance procedures in accordance with laws.

**THE JUDICIAL COUNCIL OF THE SUPREME PEOPLE’S COURT FINDS:**

Ms. Nguyen Thi Thanh initiated a lawsuit against Mr. Nguyen Van Tam to claim the amount of VND1,260,000,000, because she was the person directly transacting and paying for the transfer of the area of 7,595.7m2 from Mr. Heng Tinh and his wife. However, since she is a Vietnamese living abroad, she asked Mr. Tam (her younger brother) to be the transferee. Without Ms. Thanh’s consent, Mr. Tam transferred the land use right to Minh Chau Company Limited for the amount of VND1,260,000,000.

Mr. Tam stated that he was the person agreeing with and paying Mr. Heng Tinh, thus, he is recorded as the transferee. After he received the transfer, he directly managed and used, registered and declared, and was granted the certificate of land use right. Moreover, when he transferred to Minh Chau Company Limited, the transfer was approved by the local authorities. For this reason, he did not accept Ms. Thanh’s claim.

However, during the resolution process of the case, Mr. Tam and his wife had conflicting testimonies concerning the amount of money and gold paid to Mr. Heng Tinh. Furthermore, Mr. Tam also could not prove the origin of the money and gold that he paid to Mr. Heng Tinh.

On the other hand, Mr. Heng Tinh and his wife, as the transferors, confirmed that they agreed on the transfer with and received gold from Ms. Thanh only. Writing the land transfer documents with Mr. Tam’s name was due to Ms. Thanh’s request because Ms. Thanh was living abroad at that time.

In the testimonies of Ms. Thai Thi Ba, Mr. Nguyen Phuoc Hoang, and Ms. Nguyen Thi Chinh Em (the mother and siblings of Mr. Tam and Ms. Thanh), Ms. Thanh was the person transacting and paying Mr. Heng Tinh and his wife. Mr. Tam was just the transferee on behalf of Ms. Thanh.

In the light of all evidences above, there is a basis to conclude that the first-instance court and the appellate court were correct to determine that Ms. Thanh was the one who paid the amount being 2.199 taels of gold to receive transfer of the above land area. Mr. Tam is only the transferee on behalf of Ms. Thanh. Since Mr. Tam had already transferred the land use right to Minh Chau Company Limited and Ms. Thanh only requested that he pay the transfer price, *i.e.* VND1,260,000,000, the first-instance court’s and appellate court’s acceptance to resolve the case is in accordance with law.

Although Ms. Thanh was the person who paid 2.199 taels of gold for the land transfer (equivalent to VND27,047,700), the transfer documents recorded the name of Mr. Tam and after receiving transfer, Mr. Tam managed the land, and then transferred it to another party. Therefore, the court should have determined that Mr. Tam contributed to the preservation, management and enhancement of the value of the area of farmland so that the above-mentioned amount of money (after deducting Ms. Thanh’s initial amount equivalent to 2.199 taels of gold) is the joint profits of both Mr. Tam and Ms. Thanh. Moreover, Mr. Tam’s contributions must be taken into account when determining the lawful rights and interests of the involved parties (In case it is impossible to exactly determine Mr. Tam’s contributions, it should be determined that Mr. Tam and Ms. Thanh have the equal shares).

The first-instance court recognized that Mr. Tam and Ms. Thanh each has ownership over 1/2 of such above-mentioned amount of money without paying Ms. Thanh the amount of 2.199 taels of gold, which is not correct.

The appellate court only recognized that Ms. Thanh was only entitled to the amount of money equivalent to 2.199 taels of gold and the remaining amount is subject to submission to the budget, which is not in accordance with provisions of the Civil Code 2005 and thus, it did not protect the lawful rights and interests of the involved parties.

Besides, Ms. Thanh initiated a lawsuit against Mr. Tam to pay her VND1,260,000,000, which was amount that Mr. Tam received for transfer of the land area of 7,595.7m2, but she did not claim for the land use right, meanwhile Mr. Tam asserted that such amount of money belonged to him. Therefore, such amount of money was in dispute between the involved parties. As a result, it was not accurate for the first-instance court and the appellate court to determine that the legal relationship was a “*dispute on reclaiming property*”.

In the light of the above-mentioned reasons and application of Article 297.3 and Article 299 of the Civil Procedure Code:

### RULES

1. To set aside Appellate Civil Judgment No. 334/2006/DSPT dated 25 August 2006 of the Appellate Court of the Supreme People’s Court in Ho Chi Minh City and Firstinstance Civil Judgment No. 04/2006/DS-ST dated 28 April 2006 of the People’s Court of Soc Trang Province on the dispute on reclaiming property between the plaintiff, Ms. Nguyen Thi Thanh and the defendant, Mr. Nguyen Van Tam and Ms. Nguyen Thi Yen as the interested person.
2. To transfer the case to the People’s Court of Soc Trang Province to re-conduct the first-instance procedures.

**CONTENTS OF THE CASE LAW**

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