**CASE LAW NO. 04 /2016/AL**

*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. 04/2010/QD-HDTP dated 3 March 2013 of the Judicial Council of the Supreme People's Court in Hanoi on “*Dispute on the contract on transfer of land use rights*” between Ms. Kieu Thi Ty and Mr. Chu Van Tien as the plaintiffs and Mr. Le Van Ngu as the defendant. The parties with related rights and obligations include Ms. Le Thi Quy, Ms. Tran Thi Phan, Mr. Le Van Tam, Ms. Le Thi Tuong, Mr. Le Duc Loi, Ms. Le Thi Duong, Mr. Le Manh Hai, Ms. Le Thi Nham.

**Overview of the case law:**

Where the real property is common property of husband and wife but only one of them signs the contract on transfer of real property to other parties, the other does not signs the contract; as long as there are sufficient grounds to determine that the transferor has received the agreed amount of money in full, the person who did not sign the contract is aware of the receipt of money and also spends the money for transfer of the real property; the transferee has received, managed, and used that real property publicly, the person who did not sign the contract is aware of that fact without any objection, then that person shall be deemed to agree with the transfer of the real property.

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

* Article 176.2 of the Civil Code 1995;
* Article 15 of the Law on Marriage and Family 1986.

**Key words of the case law:**

*“Dispute on contract on transfer of land use rights”, “Determination of common property of husband and wife”, “Ownership establishment under an agreement”.*

**CONTENTS OF THE CASE**

In the Statement of Claims dated 5 November 2007 and during the settlement of the dispute, Ms. Kieu Thi Ty (the plaintiff) stated as follows:

In 1996, she and her husband bought two level 4 houses on an area of about 160m2 of residential land from Mr. Le Van Ngu’s family in Xuan La Commune, Tu Liem District, Hanoi (now Group 11, Residential Cluster 2, Xuan La Ward, Tay Ho District, Hanoi). The two parties entered into a contract for sale and purchase and it clearly recorded the assets, the house on the premises, the boundaries of the land lot. Because the wife and husband did not yet have permanent resident household registration in Hanoi, the local authority did not certify the sale and purchase between her family and Mr. Ngu’s family. The purchase price was 110 taels of gold. Ms. Ty paid in full the same to Mr. Ngu and his wife, and Mr. Ngu’s family handed over the real property for Ms. Ty to manage and use.

After the sale and purchase of the real property, Mr. Ngu’s family was building a new house and borrowed Ms. Ty’s and her husband’s house (the inner one) for use and storage of materials. Ms. Ty allowed her nephew to reside in the other area of the house facing Xuan La Street during his study. When Mr. Ngu’s family finished building the house, they returned the borrowed real property to Ms. Ty. She demolished the old houses and built a new one (as the current status) so that her nieces and nephews can reside. In 2001, she had the house leased to a wood factory. She later stopped leasing and closed the house, leaving it unused.

In 2006 (after Ms. Ty registered permanent residence in Hanoi), upon proceeding with relevant procedures to apply for the documents for house ownership and land use right, Mr. Ngu and his wife caused trouble for her because they alleged that Ms. Ty still owed his family more than three taels of gold under their deal and that Mr. Ngu’s family only sold the inner part of the real property and that the other real property facing Xuan La Street still belonged to his family. In late 2006, Mr. Ngu on his own broke down the door of the house on Xuan La Street to live in and built a wall between the awning of the level 4 house on Xuan La street (that house is currently being leased to a hair salon). Ms. Ty proposed that the Court to compel Mr. Ngu’s family to strictly comply with the signed contract and to return the real property (the area facing Xuan La Street).

Mr. Le Van Ngu (the defendant) presented as follows:

In 1996, his family sold part of the real property to Ms. Ty and her husband (Mr. Tien). Both sides agreed that his family sold the house and transferred the part of the real property where that borders on Xuan La Street to Ms. Ty’s family, the width of 07m and the length running all the way to the end of his land lot. Both parties agreed to deduct 21m2 due to the State’s plan to widen the road, thus the subject matter of the transfer is the level 4 house over the area of 140m2 only.

The price for the real property is: 0.6 taels of gold per square meter with respect to 42m2 of the land area facing the street which is 25.2 taels in total; 0.9 taels of gold per square meter with respect to 98m2 of the inner land area which is 88.2 taels in total. The total price is 113.4 taels of gold of which Mr. Tien and Ms. Ty just paid Mr. Ngu’s family 110 taels of gold, with 3.4 taels outstanding.

Mr. Ngu’s family did hand over the house and land use rights to Ms. Ty’s family, excluding the area of 21m2 facing the street which is designated for road expansion. This area of 21m2 was still under Mr. Ngu’s family’s use and management. The State, however, now amended the master plan which does not include road expansion toward the land area of Mr. Ngu’s family, thus this area belongs to his family’s use and management. Consequently, the land area of Mr. Tien and Ms. Ty has no entrance.

Now Ms. Ty claimed for the area of 21m2 of land bordering on Xuan La Street. Mr. Ngu rejected her request. If Mr. Tien and Ms. Ty want to have manage and use the land area facing the street and have an entrance to the inner real property, then they must return to his family the area facing the street with the width of two (2) meters and the length of the land area, they also have to pay to Mr. Ngu’s family an extra amount of VND160,000,000 (one hundred and sixty million dongs).

Persons with related rights and obligations:

Ms. Tran Thi Phan’s testimony is consistent with the one of Mr. Ngu.

Mr. Le Duc Loi, Mr. Le Van Tam, Mr. Le Manh Hai, Ms. Le Thi Duong, Ms. Le Thi Tuong and Ms. Le Thi Nham all have the same testimonies with Mr. Ngu’s.

People's Court of Hanoi under First-instance Civil Judgment No. 27/2008/DS-ST dated 25 April 2008 ruled as follows:

The claim of Ms. Kieu Thi Ty and her husband, Mr. Chu Van Tien over the real property with area of 23.4m2 on 39, Xuan La Street was accepted, whereby:

Mr. Ngu’s family, Ms. Tran Thi Phan, Ms. Le Thi Quy (lessee) and children of Mr. Ngu were compelled to return an area of 23.4m2 at No. 39 Xuan La Street, Xuan La Ward, Tay Ho District to Ms. Ty’s family (represented by Ms. Ty).

Ms. Ty’s family was compelled to pay to Mr. Ngu’s family an amount of VND13,759,000 (thirteen million seven hundred and fifty nine thousand Dong) as the expense that Mr. Ngu’s family spent for the renovation and maintenance of the area of 23.4m2. Ms. Ty is entitled to own materials at this area.

Ms. Ty is entitled to actively open an entrance to the inner land area and block the rear walkway to the house of Mr. Ngu’s family.

Mr. Ngu, Ms. Phan and Ms. Ty have the responsibility to go to the competent authority to complete the procedures to transfer the real property already transferred. If Mr. Ngu’s family causes difficulty, then Ms. Ty can actively go to the competent authority to declare to carry out the procedures for transfer and registration of building ownership and land use rights.

In addition, the first-instance court in its judgment also ruled the court fees and the right to appeal of involved parties.

On 8 May 2008, Mr. Le Van Ngu and Ms. Tran Thi Phan filed an appeal requesting the appellate court to declare the contract on the transfer of land use rights signed with Ms. Kieu Thi Ty and Mr. Chu Van Tien invalid. The ground for their claim was that the signing of the contract and receiving purchase price were done by Mr. Ngu only and Ms. Phan was not aware of such fact.

In Decision No. 02/QD-VKSNDTC-VPT1 dated 28 May 2008, the Chief Prosecutor of the Supreme People's Procuracy protested by requesting the appellate Council of Adjudicators of the Supreme People’s Court to compel Mr. Ngu’s family to dismantle the house illegally built on the property of Ms. Ty and to return the same to original status. Ms. Ty had no responsibility to pay to Mr. Ngu’s family the amount of VND13,759,000 (thirteen million seven hundred and fifty nine thousand Dong). The court fees of the first-instance hearing were required to be reconsidered.

The Appellate Court of the Supreme People's Court under Appellate Civil Judgment No. 162/2008/DS-PT dated 4 September 2008 ruled as follows:

The appeal of Mr. Le Van Ngu and Ms. Tran Thi Phan was not accepted.

In Decision No. 02/QD-VKSNDTC-VPT1 dated 28 May 2008 of the Supreme People’s Procuracy was accepted.

A part of the first-instance judgment was amended as follow:

The claim of Ms. Ty’s family against Mr. Ngu’s family over the area of 23.4m2 and the house attached to that land at No. 39 Xuan La was accepted.

Mr. Ngu’s family (Mr. Ngu, Ms. Phan and their children including Mr. Le Duc Loi, Mr. Le Van Tam, Mr. Le Manh Hai, Ms. Le Thi Duong, Ms. Le Thi Tuong, Ms. Le Thi Nham) and Ms. Le Thi Quy (the tenant of Mr. Ngu’s house) were compelled to return the whole land area of 23.4m2 and the house attached to it at 39 Xuan La Street, Xuan La Ward, Tay Ho District, Hanoi to Ms. Kieu Thi Ty’s family (represented by Ms. Ty).

Regarding the amount of VND13,759,000 (thirteen million seven hundred and fifty nine thousand Dong) for the renovation and maintenance of the area of 23.4m2 which Mr. Ngu’s family must bear themselves. Mr. Ngu’s family was compelled to dismantle the house illegally built on the mentioned land to return the original status of the land to Ms. Ty. Mr. Ngu’s family must bear the cost for such dismantling and demolition.

Ms. Ty was entitled to actively open an entrance to the inner land area and block the backside walkway to the house of Mr. Ngu’s family.

Mr. Ngu, Ms. Phan and Ms. Ty have the responsibility to go to the competent authority to complete the procedures to transfer the real property already transferred. If Mr. Ngu’s family causes difficulty, Ms. Ty go to the competent authority to declare to carry out the procedures for transfer and registration of building ownership and land use rights.

In addition, the appellate court in its judgment also ruled the court fees.

After re-conducting the appellate hearing with Mr. Ngu’s complaint dated 21 October 2008 and 22 October 2008, whereby Mr. Le Van Ngu and Ms. Tran Thi Phan asserted that the real property at 39, Xuan La street was their common asset. The arbitrary sale by Mr. Ngu to Ms. Ty and Mr. Tien without consent of Ms. Phan is not proper, thus requested the Court to declare this contract invalid.

In Decision No. 63/QD-KNGDT-V5 dated 14 May 2009, the Chief Prosecutor of the Supreme People's Procuracy protested the above appellate judgment and requested the Judicial Council of the Supreme People’s Court for hearing the dispute under cassation procedure and to set aside the aforementioned appellate judgment and First-instance Civil Judgment No. 27/2008/DS-ST dated 25 April 2008 rendered by People's Court of Hanoi. The the case was transferred to People's Court of Hanoi for conduct a first-instance hearing with a finding that:

In 1996, Ms. Ty and her husband bought two level 4 houses attached to the residential land from Mr. Le Van Ngu’s family. The width of that land area is seven meters and the length is along the entire land area under Mr. Ngu’s land use rights in Xuan La Commune, Tu Liem District (nowadays Xuan La Ward, Tay Ho District). The transfer was conducted under a handwritten agreement between the two parties. However, they afterward did not carry out necessary formalities as prescribed by the law. After purchasing the houses, Ms. Ty demolished the two houses to rebuild the foundation, walls, and roof as the current status.

In late 2005, when Ms. Ty applied for a certificate of land use rights and ownership of the house, Mr. Ngu’s family disputed and alleged that Ms. Ty still owed 3.4 taels of gold and that Mr. Ngu’s family only sold the inner land area, and the land facing Xuan La Street still belonged his family.

In late 2006, there was an incident due to the dispute between the two parties concerning the land area of 21m2 facing Xuan La Street, Tay Ho District, Hanoi.

On 29 October 2007, Ms. Kieu Thi Ty and Mr. Chu Van Tien initiated a lawsuit claiming the land use right and ownership of house under the contract on transfer of land use rights dated 26 April 1996 between Mr. Le Van Ngu and Ms. Tran Thi Phan as one party and Ms. Kieu Thi Ty and Mr. Chu Van Tien as the other party. This contract did not comply with the law in both formality and content. Mr. Ngu’s family alleged that Ms. Ty still owed 3.4 taels of gold and that the land area facing Xuan La Street was not included in the content of the contract. Therefore, Mr. Ngu’s family refused to carry out the necessary procedures for the transfer of land use rights and ownership of the house to Ms. Ty’s family as prescribed by law. Currently, the whole land use rights over the whole land area under the mentioned contract still records the names of Mr. Ngu and Ms. Phan as the owners.

The first–instance court and the appellate court both determined that the nature of dispute in this case is “*dispute on house ownership and land use right*” and applied Article 255 and Article 256 of the Civil Code to accept the claim for returning the land by Ms. Kieu Thi Ty and Mr. Chu Van Tien, which was not correct because it automatically recognized the land use rights and ownership of Ms. Ty’s family to the whole land area and the house while the effect of the mentioned transfer contract was still in dispute and therefore it was impossible for Ms. Ty and Mr. Tien to apply for certificate of land use rights and house ownership. For those reasons, the first-instance civil judgment and the appellate civil judgment must be set aside. The case dossier must be returned for reorganizing a firstinstance hearing to determine correctly the nature of dispute and to ensure the rights of the parties and the interest of the State.

In the cassation hearing, the representative of the Supreme People’s Procuracy requested the Judicial Council of the Supreme People’s Court to accept the protest of the Chief Prosecutor of the Supreme People's Procuracy.

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

Based on the petition dated 5 November 2007 and the testimonies of Ms. Ty and Mr. Tien during the process of dispute settlement, Ms. Ty and Mr. Tien requested Mr. Ngu and Ms. Phan to return the whole land area and the house that they had been transferred but still occupied by Mr. and Ms. Ngu at the same time to request this couple to remove the illegitimate construction on such land area. To sum up, the plaintiff has the right to claim for the land use right and house ownership as agreed under the contract on house and land use right transfer dated 26 April 1996. Meanwhile, Mr. Ngu and Ms. Phan assumed that the disputed land still belongs to them because it has never been transferred yet. Therefore, there is sufficient basis to determine that there is a dispute over the ownership of assets and dispute on the contract on the transfer of house and land use rights, but the first– instance court and the appellate court determined only the legal relations needed to be settled being the dispute on ownership of house and land use rights, which was not exhaustive. However, in fact the two courts did settle the dispute covering the two relationships. Hence, it was incorrect and unnecessary when the Chief Prosecutor of the Supreme People's Procuracy under Protest No. 63/QD-KNGDT-V5 dated 14 May 2009 assumed that the first-instance court and the appellate court determined wrongfully the nature of the dispute and requested to set aside the judgments of both the first – instance court and the appellate court for reorganizing a first-instance hearing.

Regarding the contract on the transfer of land use rights and ownership of house dated 26 April 1996: The transfer of land use rights and ownership of house happened in 1996, after purchasing the real property, Ms. Ty and Mr. Tien paid fully the purchase price, and received the real property and remodeled the house and had their nieces and nephew come to live. Meanwhile, Mr. Ngu’s family kept living on the remaining area of the land adjourning to the house of Ms. Ty’s family. According to the testimony of Mr. Ngu’s and Ms. Phan’s children, after Mr. Ngu and Ms. Phan had transferred and delivered the real property to Mr. Tien and Ms. Ty, Mr. Ngu and Ms. Phan distributed the gold to their children. In addition, on 26 April 1996, Mr. Ngu wrote a “*commitment*” indicating that they wished to borrow the house that they had transferred to Ms. Ty to live while constructing their new house on the remaining part of the land and in actuality, they did use the land and house of Ms. Ty and Mr. Tien while constructing their house. Thus, there is sufficient basis to determine that Ms. Phan was aware of the transfer of land use rights and ownership of house between Mr. Ngu and Ms. Tien’s family, did consent to that transfer and jointly carried out it. Therefore, Ms. Phan’s complaint that she did not know of the transfer has no basis.

During the process of the dispute settlement, Mr. Ngu and Ms. Phan also stated that the transfer price under the contract was 113.4 taels of gold. However, they failed to submit any evidence to prove such statement. Under the transfer contract dated 26 April 1996, the agreed price was 110 taels of gold. In the receipt dated 9 May 2000, Mr. Ngu signed for confirmation that “*I received the entire remaining amount of money that Mr. Tien and Ms. Ty paid for the transfer of land use rights and ownership of the house”.* The note further added that Mr. Ngu had received so far in total 110 taels of gold. Therefore, there is sufficient basis to determine that the transfer price under the contract was 110 taels of gold and that Mr. Ngu and Ms. Phan were paid that amount of money in full.

Though parties did not specify in their contract the area of transferred land but they agreed in detail the four boundaries as follows “*the width of land parcel is seven meters (7m) calculated from the edge of the wall separating from Mr. Tay’s house, the northeastern side borders on Xuan La-Xuan Dinh Street; the southeastern side borders on the land of Mr. Le Van Tay; the southwestern side borders on the land of Ms. Le Thi Soat and Mr. Vinh, the northwestern borders on the remaining land area of Mr. Ngu’s family. The length of the land area bordering Xuan La-Xuan Dinh Street is along the whole land area…*”.

In addition, the parties also agreed that Mr. Tien would receive all the compensation from the State when the front land area was used for road construction. Hence, the land area which the two parties agreed to be transferred is calculated from the edge of Xuan La-Xuan Dinh Street to the entire land area including the disputed land area.

Therefore, the court determined that the area of 23.4m2 facing Xuan La-Xuan Dinh Street was included in the land area that Mr. Ngu agreed to transfer to Ms. Ty’s family and that Ms. Ty’s family paid an amount of 110 taels of gold in full and received house and land already. Thus, there is sufficient basis to determine that Mr. Ngu’s family is compelled to return the area of 23.4m2 at No. 39 Xuan La Street, Xuan La Ward, Tay Ho District, Hanoi to wife and husband Ms. Kieu Thi Ty and Mr. Chu Van Tien.

For the above reasons, pursuant to Article 291(3) and Article 297(1) of the Civil Procedure Code.

**RULES**

To reject Protest No. 63/QD-KNGGDT-V5 dated 14 May 2009 of the Chief Prosecutor of the Supreme People's Procuracy; to uphold Appellate Judgment No. 162/2008/DS-PT dated 4 September 2008 of the Supreme People's Court in Hanoi.

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*“Regarding the contract on the transfer of land use rights and ownership of house dated 26 April 1996: The transfer of land use rights and ownership of house happened in 1996, after purchasing the real property, Ms. Ty and Mr. Tien paid fully the purchase price, and received the real property and remodeled the house and had their nieces and nephew come to live. Meanwhile, Mr. Ngu’s family kept living on the remaining area of the land adjourning to the house of Ms. Ty’s family. According to the testimony of Mr. Ngu’s and Ms. Phan’s children, after Mr. Ngu and Ms. Phan had transferred and delivered the real property to Mr. Tien and Ms. Ty, Mr. Ngu and Ms. Phan distributed the gold to their children. In addition, on 26 April 1996, Mr. Ngu wrote a “commitment” indicating that they wished to borrow the house that they had transferred to Ms. Ty to live while constructing their new house on the remaining part of the land and in actuality, they did use the land and house of Ms. Ty and Mr. Tien while constructing their house. Thus, there is sufficient basis to determine that Ms. Phan was aware of the transfer of land use rights and ownership of house between Mr. Ngu and Ms. Tien’s family, did consent to that transfer and jointly carried out it. Therefore, Ms. Phan’s complaint that she did not know of the transfer has no basis”.*