**CASELAW NO. 16/2017/AL**

*This case law was adopted by the Judicial Council of the Supreme People’s Court on 14 December 2017 and promulgated under Decision No. 299/QD-CA dated 28 December 2017 of the Chief Justice of the Supreme People’s Court.*

## Source of the case law:

Cassation Decision No. 573/2013/DS-GDT dated 16 December 2013 of the Civil Court of the Supreme People’s Court on the civil case on *“Dispute on inheritance”* in Vinh Phuc Province between the plaintiffs being Ms. Phung Thi H1, Ms. Phung Thi N1, Ms. Phung Thi H2, and Ms. Phung Thi P against the defendant being Mr. Phung Van T. The persons with related rights and obligations were Ms. Phung Thi N2 and Ms. Phung Thi H3.

## Location of contents of the case law:

Paragraph 2 of section *“Findings of the Court”*

## Overview of the case law:

### Background of the case law:

The inheritance being immovable property was transferred by one of the co-heirs. The other co-heirs had been aware of the transfer but had no objection thereto. The money received from the transfer was used to provide a living for the co-heirs. The transferee was granted the certificate of land use rights.

### Legal resolution:

In this case, the Court shall recognize the validity of the contract for transfer of land use rights. The land area is no longer the inheritance for distribution but subject to the right to use of the transferee.

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

Article 170.2, Article 234, Article 634 and Article 697 of the Civil Code 2005 (corresponding

to Article 221.2, Article 223, Article 612, Article 500 of the Civil Code 2014).

## Key words of the case law:

*“Establishing ownership rights pursuant to agreement”, “Estate”, “Estate being immovable property”, “Co-heirs”, “transfer of land use rights”.*

**CONTENTS OF THE CASE**

According to the Statement of Claims dated 2 April 2011 and the following testimonies, the plaintiffs being Ms. Phung Thi H1, Ms. Phung Thi N1, Ms. Phung Thi P, Ms. Phung Thi H2 presented:

The plaintiffs’ parents being Mr. Phung Van N and Phung Thi G had 06 children, namely: Phung Thi N1, Phung Thi N2, Phung Thi H2, Phung Van T, Phung Thi P and Phung Th H1.

The common property of Mr. Phung Van N and Ms. Phung Thi G was 01 Level 4 house with the additional construction works over the land area of 398m2 transferred from his father in L Quarter, M District, N City, Vinh Phuc Province. On 7 July 1984, as Mr. Phung Van N passed away (leaving no will upon his death), Ms. Phung Thi G and Mr. Phung Van T managed and used the aforementioned land and house. In 1991, Mr. Phung Thi G transferred a land area of 131m2 to Mr. Phung Van K, leaving the remaining land area of 267m2 for which Ms. Phung Thi G was granted the certificate of land use rights in 1999. Ms. Phung Thi G wished to give a part of the land area to build a house to her daughter being Ms. Phung Thi H1, who had married far away from home. As Ms. Phung Thi H1’s husband had passed away, Ms. Phung Thi G wanted her daughter to return home and live with her. However, Ms. Phung Thi G could not divide the land area because Mr. Phung Van T was holding the certificate of land use rights of Ms. Phung Thi G. Consequently, Ms. Phung Thi H1 initiated a lawsuit against Mr. Phung Van T to the Court to compel Mr. Phung Van T to return the certificate of land use right to Ms. Phung Thi G. The Court reviewed and ruled to compel Mr. Phung Van T to return the certificate of land use rights to Ms. Phu Thi G. However, Mr. Phung Van T did not return it. In March 2010, Ms. Phung Thi G had made a will with contents as follows: To give Ms. Phung Thi H1 a land area of 90m2 and all the trees on the land with the dimensions of: the east side facing Ms. Phung Thi G’s land area, the west side facing Mr. N’s house, the South side facing T road, the North side facing Mr. C’s house. When making the will, Ms. Phung Thi G was completely of sound mind and healthy with the presence of the witnesses and the will was certified by the People’s Committee of M District. The total land area of 398m2 belonged to Ms. Phung Thi G because she had the entire right to use land when the Mr. Phung Van N passed away.

On 19 December 2010, Mr. Phung Thi G passed away and the entire assets as mentioned above were then managed and used by Mr. Phung Van T and his wife. Now, the plaintiffs requested the Court to divide the estate pursuant to Ms. Phung Thi G’s will, giving Ms. Phung Thi H1 a land area of 90m2. They proposed that the remaining area of 177m2 be divided in accordance with the law. The parts of the inheritance belonging to Ms. Phung Thi N1, Ms. Phung Thi P, and Ms. Phung Thi H2 would be assigned to Ms. Phung Thi H1 to use. In addition, the plaintiffs did not propose that the Court resolve the issues related to the trees on the land and the agricultural land area of Ms. Phung Thi G.

The defendant being Mr. Phung Van T through Ms. Phung Thi H3 (his wife), who is also a person with related rights and obligations presented that: she confirmed that the details of the family relationships, the assets of the parents on the land being 398m2 at L Quarter, M District, N City, and the time of the deaths of their parents as presented by the plaintiffs were correct, but the entire constructions works on the land were built by her husband and her in 1997. In 1991, Ms. Phung Thi G arbitrarily sold the land area of 131m2 to Mr. Phung Van K without having discussing with Mr. Phung Van T. Mr. Phung Van T did not know how much money Ms. Phung Thi G received and on what she used it. In 1999, Ms. Phung Thi G was granted the certificate of land use rights over the land area of 267.4m2 and Mr. Phung Van K was also granted the certificate of land use rights over the land area purchased from Ms. Phung Thi G. He and his wife were not aware whether or not Ms. Phung Thi G had made a will when she was alive. Now, the siblings initiated a lawsuit requesting to divide the

estate pursuant to the will and in accordance with the law, with which he disagreed because he was the only male child of his parents and he was using the property as a residence and place to worship the ancestors. Mr. Phung Van T did not request division of the estate. Furthermore, Ms. Phung Thi G still had some agricultural land but Mr. Phung Van T did not request to divide it.

The person with related rights and obligations being Ms. Phung Thi N2 presented that: she confirmed that the details of the family relationships, the assets of the parents on the land being 398m2 at L Quarter, M District, N City, and the time of the deaths of their parents as presented by the plaintiffs were correct. In 1991, her mother transferred the land area of 131m2 to Mr. Phung Van K, of which she and her siblings were all aware. However, she was not aware of how much money was received but she knew that her mother had used the money to repay debts and care for the children. As to the remaining land area of 267.4m2, her mother was granted the certificate of land use rights in the name of Phung Thi G in 1999 and Mr. Phung Van T was managing and using the land. She was not aware whether or not her mother had made any will. Now, Ms. Phung Thi N1, Ms. Phung Thi H1, Ms. Phung Thi H2, and Ms. Phung Thi P initiated a lawsuit requesting to divide the estate, with which she disagreed because her parents had only one male child. Therefore, Mr. Phung Van T had to live there and conduct ancestor worship. If the Court was divided the estate in accordance with the law for her part of the inheritance, she will not receive and will assign her part of the inheritance to Mr. Phung Van T.

With the aforementioned facts of the case,

In First-instance Civil Judgment No. 11/2011/DSST dated 4 October 2011, the People’s Court of Vinh Yen City ruled to:

* Accept part of Ms. Phung Thi H1’s request to compel Mr. Phung Van T to pay Mr. Phung Thi H1 the total amount of VND340,000,000 (for the land area of 68m2). To assign Mr. Phung Van T the land area of 68m2 in cadastral map No. 32, lot No. 81 in L Quarter, M District, N City, Vinh Phuc Province (with four corners).
* Not accept Ms. Phung Thi N1’s, Ms. Phung Thi H2’s, and Ms. Phung Thi P’s request to divide Ms. Phung Thi G’s estate in accordance with the law.

In addition, the first-instance court ruled on the court fee and the right to appeal of the parties.

After the first-instance hearing, on 18 January 2011, the plaintiffs being Ms. Phung Thi N1, Ms. Phung Thi H2, Ms. Phung Thi P and Ms. Phung Thi H1 submitted an appeal to object to the first-instance judgment and to request the Court to divide the estate pursuant to the will and in accordance with the law.

In Appellate Civil Judgment No. 06/2012/DSPT dated 23 February 2012 of the People’s Court of Vinh Phuc Province, the court ruled to:

* Accept the request by Ms. Phung Thi N1, Ms. Phung Thi H2, Ms. Phung Thi H1, and Ms. Phung Thi P to divide the estate.
* Assign Mr. Phung Van T and his representative being Ms. Phung Thi H3 the land area of 267.4m2 valued at VND1,337,000,000 in lot No. 81, cadastral map No. 32, in L Quarter, M District, N City.
* Mr. Phung Van T and his representative being Ms. Phung Thi H3 were responsible for paying the value of his part of the inheritance equivalent to VND982,200,000 to Ms. Phung Thi H1.

As from the date on which Ms. Phung Thi H1 submitted a petition for enforcement of the judgment and since Mr. Phung Van T and his representative at law being Ms. Phung Thi H3 failed to pay the aforesaid amount, Mr. Phung Van T and Ms. Phung Thi H3 must also pay the interest based on the basic interest rate specified by the State Bank of Vietnam corresponding to the period of delay for enforcement of judgment.

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

After the appellate hearing, Ms. Phung Thi H3 and Mr. Phung Van T submitted a request to reconsider the aforementioned appellate judgment by the People’s Court of Vinh Phuc Province.

In Decision No. 131/QD-KNGDT-V5 dated 12 November 2013 of the Chief Prosecutor of the Supreme People’s Procuracy as to Appellate Civil Judgment No. 06/2012/DSPT dated 23 February 2012 by the People’s Court of Vinh Phuc Province, it was recognized that:

The appellate court did not account the land area which Ms. Phung Thi G had sold to Mr. Phung Van K in the assets to be divided, which had basis. The first-instance court determined that the inheritance being the total land area of 398m2 (including the land area transferred to Mr. Phung Van K) was to be divided, which was incorrect.

However, the land area of 267m2 in the name of Ms. Phung Thi G should have been determined as the common property of Mr. Phung Van N and Ms. Phung Thi G that was not yet divided. Ms. Phung Thi G was entitled to dispose only 1/2 of the land area of the total land area of 267m2 of the common property, being the land area of 133.5m2 – 90m2 (as given to Ms. Phung Thi H1) and the remaining 43.5m2 is to be divided between the 5 heirs.

As to the 1/2 of the land area of the total area of 267m2 of the common property being the estate of Mr. Phung Van N, the statute of limitation for dividing the estate had run out. As Mr. Phung Van T had been managing the land area, he is entitled to continue doing so. The appellate court determined that the total land area of 267m2 was Ms. Phung Thi G’s estate to be divided pursuant to her will, giving an area of 90m2 to Ms. Phung Thi H1 and dividing the remaining area of 177.4m2 into 5 parts of inheritance, which were incorrect.

At the cassation hearing, the representative of the Supreme People’s Procuracy upheld the contents of the protest by the Chief Prosecutor and requested that the Council of Adjudicators to accept the protest of the Chief Prosecutor.

## FINDINGS OF THE COURT

1. According to the case documents, the land area of 398m2 located in L Quarter, M District, N city, Vinh Phuc Province was the common property of Mr. Phung Van N and his wife being Ms. Phung Thi G. Mr. Phung Van N and Ms. Phung Thi G had 6 children being Ms. Phung Thi H1, Ms. Phung Thi N1, Ms. Phung Thi H2, Mr. Phung Van T, Ms. Phung Thi P, and Ms. Phung Thi N2. On 7 July 1984, Mr. Phung Van N passed away without leaving a will. Then the land and the house were under the management and use of Mr. Phung Thi G and Mr. Phung Van T.
2. In 1991, Ms. Phung Thi G transferred the land area of 131m2 of the total land area of 398m2 of the said lot to Mr. Phung Van K, with the remaining land area being 267.4m2. In 1999, Ms. Phung Thi G was granted the certificate of land use rights over the area of 267.4m2 wherein she and Mr. Phung Van T and his wife were managing and using the land and the house over it. Ms. Phung Thi G’s children were all aware of the fact that Ms. Phung Thi G transferred the land area to Mr. Phung Van K but they had no objection thereto. Ms. Phung Thi G’s children said that Mr. Phung Thi G used the money received from such transfer of the land for herself and her children. Mr. Phung Van K was also granted the certificate of land use rights. Therefore, there is basis to find that Ms. Phung Thi G’s children consented to the transfer of the land use rights over the aforesaid land area of 131m2 to Mr. Phung Van K. There is basis for the appellate court to exclude the land area which Ms. Phung Thi G transferred to Mr. Phung Van K from the common property. However, the first-instance court determined that the total land area of 398m2 (including the land area transferred to Mr. Phung Van K) as the estate to be divided was not correct.
3. On 19 December 2010, Ms. Phung Thi G passed away. Before her death, she left a will made on 5 March 2009 with contents indicating that Ms. Phung Thi H1 (Ms. Phung Thi G’s daughter) was given the land area of 90m2 within the aforesaid total area of 267m2. The will was certified by the People’s Committee of M District on 7 March 2009. Although the will was made and certified on different dates, the opinions and testimonies of the witnesses in the will confirmed that Mr. Phung Thi G made the will of sound mind. As the contents of the will reflected Ms. Phung Thi G’s intention, it was lawful and reasonable for the two Courts to accept the validity of the will.
4. However, as the land area of 267m2 in the name of Ms. Phung Thi G was formed during the marriage, it should have been determined to be common property of Mr. Phung Van N and Ms. Phung Thi G not yet divided. Ms. Phung Thi G was only entitled to 1/2 the land area within the total area of 267m2 as the common property of her and her husband. Therefore, Ms. Phung Thi G’s estate being 1/2 of the total property (133.5m2) of which an area of 90m2 was given to Ms. Phung Thi H1 (Ms. Phung Thi G’s daughter) pursuant the will, and the remaining area of 43.5m2 was for the 5 remaining parts of inheritance (wherein Ms. N2 assigned her part of inheritance to Mr. Phung Van T; Ms. Phung Thi H2, Ms. Phung Thi N1 and Ms. Phung Thi P assigned their parts of inheritance to Ms. Phung Thi H1). As to the land area equivalent to 1/2 of the total land area of 267m2 as the common property, the statute of limitation for dividing the estate of Mr. Phung Van N had run out. Mr. Phung Van T, as one of the co-heirs, did not agree to divide the estate. As such, pursuant to regulations in 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, the conditions for division of estate of

the aforesaid case were not satisfied. Therefore, those who had been managing and using the land area would be entitled to continue doing so.

1. It was incorrect for the appellate court to determine that the total land area of 267m2 was the estate of Ms. Phung Thi G to be divided pursuant to the will, giving Ms. Phung Thi H1 a land area of 90m2 and the remaining land area of 177.4m2 to be divided into 5 parts of inheritance in accordance with the law.
2. In addition, Mr. Phung Van T did not submit an appeal but the Court ruled that Mr. Phung Van T shall be obliged to pay the amount of VND200,000 as the appellate court fee. Ms. Phung Thi N1, Ms. Phung Thi H2, and Ms. Phung Thi P voluntarily assigned their parts of inheritance to Ms. Phung Thi H1, which was accepted by the Court. Ms. Phung Thi H1, being of a poor household, was exempt from paying the entire court fees, however, the appellate court did not rule to return the advance first-instance court fee to Mr. Phung Thi N1, Ms. Phung Thi H2, and Ms. Phung Thi P, which was incorrect. Therefore, the protest by the Chief Procurator of the Supreme People’s Court had basis for acceptance.

In light of the aforementioned reasons, pursuant to Article 291.2, Article 297.3, and Article 299 of the Civil Procedure Code;

## RULES

To set aside Appellate Civil Judgment No. 06/2012/DSPT dated 23 February 2012 of the People’s Court of Vinh Phuc Province and First-instance Civil Judgment No. 11/2011/DS-ST dated 4 October 2011 of the People’s Court of Vinh Yen City, Vinh Phuc Province in their entirety regarding the case on *“Dispute on inheritance”* between the plaintiffs being Ms. Phung Thi H1, Ms. Phung Thi N1, Ms. Phung Thi H2, Ms. Phung Thi P against the defendant being Mr. Phung Van T and persons with related rights and obligations being Ms. Phung Thi N2 and Ms. Phung Thi N3.

To transfer the case to the People’s Court of Vinh Yen City, Vinh Phuc Province for first- instance hearing again in accordance with the law.

## CONTENTS OF THE CASE LAW

*“In 1991, Ms. Phung Thi G transferred the land area of 131m2 of the total land area of 398m2 of the said lot to Mr. Phung Van K, with the remaining land area being 267.4m2. In 1999, Ms. Phung Thi G was granted the certificate of land use rights over the area of 267.4m2 wherein she and Mr. Phung Van T and his wife were managing and using the land and the house over it. Ms. Phung Thi G’s children were all aware of the fact that Ms. Phung Thi G transferred the land area to Mr. Phung Van K but they had no objection thereto. Ms. Phung Thi G’s children said that Mr. Phung Thi G used the money received from such transfer of the land for herself and her children. Mr. Phung Van K was also granted the certificate of land use rights. Therefore, there is basis to find that Ms. Phung Thi G’s children consented to the transfer of the land use rights over the aforesaid land area of 131m2 to Mr. Phung Van K. There is basis for the appellate court to exclude the land area which Ms. Phung Thi G transferred to Mr. Phung Van K from the common property. However, the first-instance court determined that the total land area of 398m2 (including the land area transferred to Mr. Phung Van K) as the estate to be divided was not correct”.*