**CASE LAW NO. 05/2016/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 of the Chief Justice of the Supreme People’s Court.*

**Source of the case law:**

Cassation Decision No. 39/2014/DS-GDT dated 9 October 2014 of the Council of Adjudicators of the Supreme People’s Court on the case concerning “*Dispute on inheritance*” in Ho Chi Minh City between the plaintiff being Ms. Nguyen Thi Thuong, Ms. Nguyen Thi Xuan against the defendant being Mr. Nguyen Chi Trai (Cesar Trai Nguyen), Ms. Nguyen Thi Thuy Phuong and Ms. Nguyen Thi Bich Dao; the persons with related rights and obligations being Ms. Nguyen Thi Xe, Nguyen Chi Dat (Danforth Chi Nguyen), Nguyen Thuan Ly, Nguyen Thi Trinh, Nguyen Chi Duc, Nguyen Thi Thuy Loan, Pham Thi Lien, Pham Thi Vui, Tran Duc Thuan, Tran Thanh Khang.

**Overview of the case law:**

In the dispute over inheritance, there was a party being entitled to part of the estate and contributed to the management and preservation of the estate, but objecting to the division of the estate (because that party thought the statute of limitations on an inheritance lawsuit had run out), no request for considering her contribution in the management and preservation of the estate was made. In case of deciding on the division of the estate, the court was supposed to consider the contribution of the heirs because the objection to division of the estate prevailed over the request for consideration of contribution.

**Applicable provisions of laws relating to the case law:** Article 5.1 and Article 218 of the Civil Procedure Code 2004;

**Key words of the case law:**

*“Claims”, “Counter-claims”, “Contribution effort to the management and preservation of the estate”.*

**CONTENTS OF THE CASE**

According to the petition dated 18 July 2008 and during the dispute settlement, Ms. Nguyen Thi Thuong and Ms. Nguyen Thi Xuan presented as follows: their parents, Mr. Nguyen Van Hung (passed away in 1978) and Ms. Le Thi Ngu (passed away in 1992), had 06 children, namely Ms. Nguyen Thi Xe, Mr. Nguyen Chi Trai, Ms. Nguyen Thi Xuan, Ms. Nguyen Thi Thuong, Ms. Nguyen Thi Trinh and Mr. Nguyen Chi Trai. Mr. Nguyen Chi Trai was married to Ms. Ong Thi Manh and they had 05 children, namely Mr. Nguyen Thuan Ly, Mr. Nguyen Thuan Huy, Ms. Nguyen Thi Quoi Duong, Mr. Nguyen Chi Dat (born in 1966) and Mr. Nguyen Chi Dat (born in 1968). Under Decision No. 413/2008 dated 31 March 2008, the People’s Court of Ho Chi Minh City declared Mr. Trai, Ms. Manh, Mr. Thuan Huy, Ms. Quoi Duong, and Mr. Nguyen Chi Dat (born in 1968) deceased.

House No. 263 on Tran Binh Trong street, Ward 4, District 5, Ho Chi Minh City, of which Mr. Hung and Ms. Ngu received assignment of the land from Mr. Dao Thanh Phung in 1953, was built as the current residential house by the two in 1966. The real property had not yet been granted with the certificate of house ownership and land use rights and were only declared in 1999. Mr. Hung and Ms. Ngu passed away without any will and the house has been managed by Ms. Nguyen Thi Thuy Phuong, being the daughter of Mr. Nguyen Chi Trai. While managing the house, Ms. Phuong leased Ms. Nguyen Thi Bich Dao a part of the house for a bakery business. When Ms. Phuong was living there, she carried out some repair in the house, but it was not material. Mr. Trai and his wife did not contribute anything to the construction and repair of the house because Mr. Trai was sent to reeducation meanwhile his wife Ms. Tu was unemployed, their children were too young and did not have any income to contribute. If Ms. Phuong has evidence for her repair expenses and requested compensation for such expenses, Ms. Thuong and Ms. Xuan would pay such compensation.

The plaintiffs requested division of the estate over the aforesaid house pursuant to the regulations and receipt of the house in exchange for monetary reimbursement to the other heirs. Ms. Phuong is not an heir, and thus she is required to return the house. The plaintiffs did not agree to provide support Ms. Phuong in moving elsewhere.

The defendant being Ms. Nguyen Thi Thuy Phuong presented that: She acknowledged the family relationships. Her father Mr. Nguyen Chi Trai and her mother Ms. Nguyen Thi Tu had three children consisting of herself, Mr. Nguyen Chi Duc and Ms. Nguyen Thi Thuy Loan (Mr. Duc and Ms. Loan are now living in Canada). House No. 263 on Tran Binh Trong Street was purchased by her paternal grandparents in 1953, which was then a house with roof tiles and board walls. In 1955, her father got married to her mother and lived in this house together. In 1978, her father emigrated to the USA and her mother died in 1980. She has lived in this house from her youth up to now. She repaired and renovated the house many times such the installing aluminum doors, building mezzanine walls, installing ceramic bricks on the roof terrace, and building the wall in the back of the house. She was entitled to her father’s part of the inheritance because in 2006, her father wrote a document completely assigning to her his inheritance in Vietnam, and thus, she should be entitled to the part of the inheritance which her father is entitled to receive from Mr. Hung and Ms. Ngu. She did not consent to the request of the plaintiffs because the statute of limitation for division of the estate had run out and now, she and her 02 children are living in this house. She had leased part of the house to Ms. Nguyen Thi Bich Dao for a bakery business and she and Ms. Dao would settle with each other with respect to the lease of the house.

The defendant being Mr. Nguyen Chi Trai presented that: Under the document dated 14 October 2009, Mr. Trai filed a petition stating that on 25 April 2006, he did write the document entitling Ms. Phuong to the inheritance which he enjoyed from his parents in Vietnam, and now by this petition, Mr. Trai requests to cancel the aforementioned document and proposes authorizing Ms. Thuong and Ms. Xuan to represent him in the court. After the court finishes the hearing, he wishes to assign all of his part of the inheritance to Mr. Duc who is currently residing in Canada.

After the first-instance hearing, on 22 April 2010, Mr. Trai submitted a statement setting out his disapproval of the division of the estate over House No. 263 Tran Binh Trong Street and delegated Ms. Phuong to continue maintaining and living, and he and his wife contributed money to the house. However, on 14 July 2010, Mr. Trai sent another document stating that he delegated his son being Nguyen Chi Duc his part of the inheritance received from his parents. On 11 March 2011, Mr. Trai submitted a statement setting out his agreement to the decisions in the first-instance judgment and he does not appeal.

Persons with related rights and obligations:

* Ms. Nguyen Thi Trinh (child of Mr. Hung and Ms. Ngu) presented that: She agreed on the family relationships and origin of the assets as presented by the plaintiffs. In 1966, the house had leaks, and her parents repaired the house with the contribution of their children including her but, she did not request the amount that she contributed. The contention of Ms. Phuong that her parents and she contributed to the repair of the house was incorrect; Ms. Nguyen Thi Trinh proposed that her part of the inheritance be assigned to Ms. Xuan and Ms. Thuong to manage and Ms. Dao and Ms. Phuong return the house.
* Mr. Nguyen Chi Dat (born in 1966) and Mr. Nguyen Thuan Ly presented that: Their parents, Mr. Nguyen Chi Trai and Ms. Ong Thi Manh, together with their 03 siblings were dead on the ocean upon the illegal border-cross in 1982. Mr. Dat and Mr. Ly agreed with the plaintiffs on the division of the estate. They also claimed for the entitlement of inheritance of Mr. Hung and Mr. Ngu and assigned such inheritance to Ms. Thuong and Ms. Xuan to manage.
* Ms. Nguyen Thi Xe (child of Mr. Hung and Ms. Ngu) agreed with the presentations of the plaintiffs on the family relationships and the requests by the plaintiffs, and she assigned the part of her inheritance to her 02 children being Ms. Pham Thi Vui and Ms. Pham Thi Lien.
* The testimonies of Ms. Nguyen Thi Thuy Loan and Mr. Nguyen Chi Duc pursuant to the Power of Attorney dated 21 May 2007 (with consular legalization) are as follows: Ms. Loan and Mr. Duc authorized Ms. Phuong to decide all matters concerning the dispute or asset distribution in Vietnam (this Power of Attorney was produced by Ms. Phuong in accordance with the petition submitted by Ms. Phuong on 25 March 2011 after the first-instance hearing).

Ms. Loan submitted a petition (enclosed with the Power of Attorney) requesting to be absent at the hearing dated 13 August 2009. With regard to the assets in dispute, her parents made contributions in cash, while her aunts and uncles had contributed nothing. After 1975, everyone left and there was only Ms. Phuong and grandparents left behind. Therefore, Ms. Loan requested the Court to permit Ms. Phuong to stay at the house in dispute.

In First-instance Judgment No. 3363/2009/DSST dated 18 November 2009, the People’s Court of Ho Chi Minh City ruled:

* To determine that the house at No. 263 Tran Binh Trong Street is inheritance property of Mr. Nguyen Van Hung and Ms. Le Thi Ngu; each part of the inheritance is VND10,655,687,000: 6 = VND1,775,947,800.
* To compel Ms. Phuong and her child as well as Ms. Dao to return the house in dispute to Ms. Thuong and Ms. Xuan. Ms. Thuong and Ms. Xuan are responsible for paying the other heirs the amount of money to which they are entitled;
* To record that Mr. Nguyen Chi Trai assigned to his son Mr. Nguyen Chi Duc to receive his part of the inheritance.

On 30 November 2009, Ms. Nguyen Thi Thuy Phuong submitted an appeal arguing that given that Mr. Hung and Ms. Ngu passed away over 10 years ago, the statute of limitation for initiating an inheritance lawsuit had run out.

On 15 March 2011, Ms. Phuong supplemented the appeal with the following amendments:

* Her father being Mr. Trai was not agreeable to the division of the estate and allowed her to manage this house. The co-heirs did not provide any documents proving that the house in dispute was a common property that has not yet been divided. Her parents and their children, including herself, have stably lived for over 50 years in the house, and preserved and conserved the house. Therefore, compelling them to move out of the house is unreasonable and irrational.

In Appellate Civil Judgment No. 116/2011/DS-PT dated 10 May 2011, the Appellate Court of the Supreme People’s Court in Ho Chi Minh City ruled to uphold the first-instance Judgment.

On 16 June 2011, Ms. Nguyen Thi Thuy Phuong submitted the application for cassation against the aforesaid appellate civil judgment.

In Decision No. 158/2014/KN-DS dated 6 May 2014, the Chief Justice of the Supreme People’s Court protested against the aforementioned Appellate Civil Judgment and Firstinstance Civil Judgment No. 3363/2009/DSST dated 18 November 2009 of the People’s Court of Ho Chi Minh City; transferred the case to the People’s Court of Ho Chi Minh City to re-conduct the court procedures in accordance with the law.

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

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

The couple Mr. Nguyen Van Hung (died in 1978) and Ms. Le Thi Ngu (died in 1992) had 06 children, namely Ms. Nguyen Thi Xe, Mr. Nguyen Chi Trai, Ms. Nguyen Thi Xuan, Ms. Nguyen Thi Thuong, Ms. Nguyen Thi Trinh and Mr. Nguyen Chi Trai. The couple Mr. Nguyen Chi Tranh and Ms. Ong Thi Manh had 05 children, namely Mr. Nguyen Thuan Ly, Mr. Nguyen Thuan Huy, Ms. Nguyen Thi Quoi Duong and Mr. Nguyen Chi Dat (born in 1966) and Mr.

Nguyen Chi Dat (born in 1968). Mr. Trai, Ms. Manh, Mr. Huy, Ms. Duong and Mr. Nguyen Chi Dat (born in 1968) were declared dead on 31 March 2008 under Decision No. 413/2008 dated 31 March 2008 of the People’ Court of Ho Chi Minh City.

Mr. Hung and Ms. Ngu left no will upon their death. Their descendants and Ms. Phuong

(child of Mr. Trai) acknowledged that Mr. Hung and Ms. Ngu purchased House No. 263 Tran Binh Trong Street, Ward 4, District 5, Ho Chi Minh City from Mr. Dao Thanh Phung in 1953. The house is the asset created by Mr. Hung and Ms. Ngu and currently being managed and used by Ms. Phuong.

In 2008, Ms. Xuan and Ms. Thuong initiated a lawsuit to request the distribution of the inheritance left behind by Mr. Hung and Ms. Ngu.

The parties in dispute unanimously determined that Mr. Trai had resided in the USA before 1 July 1991. The first-instance and appellate courts based on Resolution No. 1037/2006/NQ-UBTVQH dated 27 July 2006 of the Standing Committee of National Assembly to determine that the statute of limitation to initiate a lawsuit on inheritance against the estate of Mr. Hung had expired has sufficient basis. The statute of limitation to divide the estate of Ms. Ngu had already run out. However, Mr. Trai and the co-heirs of the two acknowledged that the estate of Ms. Ngu is the common property of the heirs that has not yet been divided and agreed to divide equally the estate to the heirs. Accordingly, the first-instance and appellate courts based on part a, point 2.4, section 2 of chapter I of Resolution No 02/2004/NQ-HDTP dated 10 August 2004 of the Judicial Council of the Supreme People’s Court, guiding the application of law in settling civil, marital and familyrelated disputes to divide the estate of Ms. Ngu to the heirs.

Mr. Hung passed away in 1978. Pursuant to the provisions of the Law on Marriage and Family 1959, Mr. Trai shall be entitled to 1/7 of the estate of Mr. Hung. Mr. Trai’s inheritance from Mr. Hung is the common property of Mr. Trai and Ms. Tu. Ms. Tu passed away in 1980, the heirs of Ms. Tu consisted of Mr. Trai and 03 children of Mr. Trai and Ms. Tu, including Ms. Phuong. Accordingly, Ms. Phuong shall be entitled to a part of the estate of Ms. Tu. However, it was unreasonable and incorrect for Mr. Trai to assign Mr. Duc the entire part of his inheritance from Mr. Hung.

Ms. Phuong was born in 1953 and the parties in dispute confirmed Ms. Phuong has lived in the house of her grandparents from her youth up to now. Since 1982, Ms. Phuong became the owner of household registration over this house. Ms. Ngu lived in another place. Ms. Thuong changed her household registration to this house from 1979 but she did not live there, thus Ms. Phuong has directly managed and used the house in dispute since the death of Ms. Ngu. The other parties in dispute have stable residence at other places. Upon the division of the estate of the common property, the first-instance and appellate courts did not consider facilitating for Ms. Phuong to have residence but compelled her to return the house to the plaintiffs even though part of the house was her inheritance from her mother being Ms. Tu. This is not appropriate

Although Ms. Phuong is not in the first class in the line of succession of Mr. Hung and Ms. Ngu, she is the grandchild of Mr. Hung and Ms. Ngu and spent much effort and money managing and repairing the house. However, during the dispute settlement, Ms. Phuong made no request for consideration of her contribution because she thought that the statute of limitation for division of the estate had already run out. Therefore, she did not agree to return the house to the other heirs. Consequently, the request of Ms. Phuong to determine the rights prevailed over the request for consideration of her contribution. However, by not considering Ms. Phuong’s contribution, the first-instance and appellate courts failed to fully settle the claims of the parties in dispute.

In light of the aforementioned reasons, pursuant to Article 297.3, Article 299.1, and Article

299.2 of the Civil Procedure Code, amended and supplemented in 2011;

**RULES**

1. To set aside Appellate Civil Judgement No. 116/2011/DS-PT dated 10 May 2011 of the Appellate Court of the Supreme People’s Court in Ho Chi Minh City in its entirety and First-instance Civil Judgment No. 3363/2009/DSST dated 18 November 2009 of the People’s Court of Ho Chi Minh City in its entirety over the dispute on inheritance between the plaintiffs, Ms. Nguyen Thi Thuong and Ms. Nguyen Thi Xuan and the defendants, Ms. Nguyen Thi Thuy Phuong and other persons with related rights and obligations.
2. To transfer the case to the People’s Court of Ho Chi Minh City to re-conduct the firstinstance procedures in accordance with the law.

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“*Although Ms. Phuong is not in the first class in the line of succession of Mr. Hung and Ms. Ngu, she is the grandchild of Mr. Hung and Ms. Ngu and spent much effort and money managing and repairing the house. However, during the dispute settlement, Ms. Phuong made no request for consideration of her contribution because she thought that the statute of limitation for division of the estate had already run out. Therefore, she did not agree to return the house to the other heirs. Consequently, the request of Ms. Phuong to determine the* rights prevailed over *the request for consideration of her contribution. However, by not considering Ms. Phuong’s contribution, the first-instance and appellate courts failed to fully settle the claims of the parties in dispute*”.