**CASE LAW NO. 15/2017/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. 394/2012/DS-GDT dated 23 August 2012 of the Civil Court of the Supreme People’s Court on the case concerning *“Dispute on agreement on exchange of land”* in Hanoi between the plaintiff being Ms. Trinh Thi C and the defendant being Mr. Nguyen Minh T. The persons with related rights and obligations consist of Ms. Vu Thi P, Mr. Nguyen Minh Tr, Ms. Bui Thanh H, Ms. Truong Thi X, Mr. Truong Sy K, Ms. Truong Hong T, Ms. Truong Thi H1, Mr. Truong Anh T, Ms. Truong Thuy N, Mr. Truong Quang K and Ms. Truong Thi H2.

## Location of contents of the case law:

Paragraphs 1 and 2 of the section *“Findings of the Court”*.

## Overview of the case law:

### Background of the case law:

The involved parties voluntarily made an oral agreement on exchange of agricultural land use rights before 15 October 1993 (being the date on which the Land Law 1993 came into force); registered and declared the exchanged land areas which were recorded in the cadastral book; directly cultivated and used the land in a stable, continuous and long-term manner.

### Legal resolution:

In this case, the Court must acknowledge the oral agreement of the involved parties on the exchange of the agricultural land use rights in order to determine the parties that are entitled to the exchanged land areas.

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

* Article 16.2 of the Land Law 1987;
* Article 170.2 of the Civil Code 2005;

## Key words of the case law:

*“Exchange of the agricultural land use rights”, “Exchange of the actual land use rights”, “Recognition of the land use rights”.*

## CONTENTS OF THE CASE

Based on the statement of claims dated 2 May 2006 and other testimonies given during the settlement of the case, the plaintiff being Ms. Trinh Thi C presented that:

In 1962, Ms. Trinh Thi C’s family received assignment of an area of 517m2 of the land parcel no. 28 of cadastral map no. 4 section K, being land area of type 5% cultivation. This land lot was next to the house of Mr. Nguyen Minh T. (the defendant). According to the cadastral map of 1987, this land lot was located in the two land parcels no. 158 and 159. In early 1992, Mr. Nguyen Minh T’s family proposed that Ms. Trinh Thi C temporarily exchange the land area of type 5% for Mr. Nguyen Minh T’s land lot which was divided pursuant to *“allocation 10”* policy with the area of 540m2 in land field B for convenient cultivation. Both parties orally agreed and did not make written records for the purpose of temporary exchange; the re-exchange would be made upon a notice at least one week prior thereto. Until 1994, due to the need for production, Ms. Trinh Thi C’s family requested to exchange the land but Mr. Nguyen Minh T’s family did not accept that request. Ms. Trinh Thi C made a complaint to the authorities of commune and district levels but the dispute had not been definitively settled. As a consequence, Ms. Trinh Thi C requested the Court to compel Mr. Nguyen Minh T’s family to return the land lot to her family in accordance with the law.

The defendant being Mr. Nguyen Van T presented that:

According to allocation 10 policy, Cooperative D allocated land to families in early 1991. During the implementation of this policy, the Cooperative guided the families to exchange their land areas between themselves. Around February 1992, Mr. Nguyen Van T’s family and Ms. Trinh Thi C’ orally agreed to exchange their lands as the plaintiff presented. After the exchange, Mr. Nguyen Minh T turned the land into ponds and moved more than 10 graves to the village cemetery. In May 1994, there were policies issued to declare the land for cultivation of each family in accordance with the Land Law 1993 for the purpose of local cadastral and tax books for each family. At that time, Ms. Trinh Thi C had declared the exchanged land in section B, Mr. Nguyen Minh T had declared the exchanged land of Ms. Trinh Thi C together with the land area being used by his family. At the end of 1994, Cooperative D issued papers recognizing land for families of which the land papers recorded that the families of Mr. Nguyen Minh T and Ms. Trinh Thi C had exchanged the land. Mr. Nguyen Minh T’s family has directly cultivated the land since 1992 until now. Therefore, Mr. Nguyen Minh T did not accept the plaintiff’s request for re-exchange of the land.

The person with related rights and obligations being Ms. Truong Thi H2 presented: The land area in section K was granted to her parents since 1962. After her father passed away, this land was recorded under her older brother Mr. A. In 1990 and 1991, she was given a portion of 100m2. It was unlawful for Ms. Trinh Thi C to exchange the entire land area with Mr. Nguyen Minh T so that she now requests to exchange back the land area.

In First-instance Judgment No. 17/2008/DSST dated 20 August 2008, the People’s Court of Hoang Mai District ruled:

*“1. To declare the civil transaction regarding exchange of agricultural land area of type 5% and land area pursuant to allocation 10 policy made between the families of Ms. Trinh Thi C and Mr. Nguyen Minh T in February 1992 invalid.*

*Compel Mr. Nguyen Minh T’s family to return Ms. Trinh Thi C’s family the land of type 5% having the area of 517m2 of the land parcel no. 28 of cadastral map no. 4 of 1990, section K, currently group 33 L Ward, M District, Hanoi.*

*Compel Ms. Trinh Thi C’s family to return Mr. Nguyen Minh T’s family the land pursuant to policy 10 with the area of 540m2 being a part of land parcel no. 90 of cadastral map no. 42-A2 (referred to as map no. 2) in cadastral map issued in 1994 in section B, L Ward, M District, Hanoi.*

1. *Compel Ms. Trinh Thi C to pay the value of land reclamation including pond excavation, foundation, trees planted on the land, expenses for removing graves, amounting to VND112,817,000 (one hundred and twelve million eight hundred and seventeen thousand Dong).*
2. *Compel Mr. Nguyen Minh Tr, Ms. Bui Thanh H to remove the entire raw Level 4 house on the land area of 75.28m2 within the area of 517m2 of the land parcel no. 28 of cadastral map no. 4 of 1990 to return the entire land area to Ms. Trinh Thi C’s family. Mr. Nguyen Minh Tr and Ms. Bui Thi Thanh are not entitled to any compensation over the area of the removed house”.*

Mr. Nguyen Minh T appealed against the first-instance judgment in its entirety.

In appellate Judgment No. 111/2008/DSPT dated 27 November 2008, the People’s Court of Hanoi ruled to uphold the first-instance judgment in its entirety.

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

After the appellate court hearing, Mr. Nguyen Minh T lodged a complaint against the aforementioned appellate civil judgment.

In Decision No. 482/2011/KN-DS dated 2 August 2011, the Chief Justice of the Supreme People’s Court protested against the aforesaid appellate civil judgment; requested the Civil Court of the Supreme People’s Court to conduct the cassation procedures to set aside the appellate civil judgment and first-instance civil judgment; transfer the case to the People’s Court of Hoang Mai District for re-settlement in accordance with the law.

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

## FINDINGS OF THE COURT

1. After reviewing the case and discussion, the Council of Adjudicators of the Civil Court agreed with the contents of the aforementioned protest that: there is basis to determine that the exchange of the lands between the parties was made on a voluntary basis and arise from their cultivation needs. After the land exchange, the parties registered, declared, and recorded in the cadastral book the exchanged land area. The parties have directly

cultivated and used the land in a stable and continuous manner since 1992 up to now. During the land use, Mr. Nguyen Minh T removed graves on the land and turned a part of the land into fish ponds.

1. In fact, the land exchange was made around February 1992 but the evidence of the case shows that the parties conducted the registration and declaration procedures of the exchanged land at the local authorities in 1994, other procedures concerning handover of the land papers and declaration for tax calculation were also made as from 1994. In this case, it should have been acknowledged that the exchange of land was real in order to acknowledge that the parties had rights to the exchanged land, so as to be correct and reflect reality. It was incorrect for the first-instance Court and the appellate Court to rely on the testimony of Ms. Trinh Thi C to rule that the parties temporarily exchanged the land, and thus determined that the land exchange was unlawful to cancel the agreement on exchange of land and compel the parties to remove houses and return the land to each other, which caused unnecessary confusion on the land use of the involved parties.

In light of the above reasons:

Pursuant to Article 291.2, Article 297.3 and Article 299 of the Civil Procedure Code;

## RULES

Set aside Appellate Civil Judgment No. 111/2008/DSPT dated 27 November 2008 of the People’s Court of Hanoi in its entirety and First-instance judgment No. 17/2008/DSST dated 20 August 2008 of the People’s Court of Hoang Mai District, Hanoi on the case concerning *“Dispute on agreement on exchange of land use”* between the plaintiff being Ms. Trinh Thi C against the defendant being Mr. Nguyen Minh T.

Transfer the case to the People’s Court of Hoang Mai District, Hanoi to conduct the first- instance procedures again in accordance with the law.

## CONTENTS OF THE CASE LAW

1. *After reviewing the case and discussion, the Council of Adjudicators of the Civil Court agreed with the contents of the aforementioned protest that: there is basis to determine that the exchange of the lands between the parties was made on a voluntary basis and arise from their cultivation needs. After the land exchange, the parties registered, declared, and recorded in the cadastral book the exchanged land area. The parties have directly cultivated and used the land in a stable and continuous manner since 1992 up to now. During the land use, Mr. Nguyen Minh T removed graves on the land and turned a part of the land into fish ponds.*
2. *In fact, the land exchange was made around February 1992 but the evidence of the case shows that the parties conducted the registration and declaration procedures of the exchanged land at the local authorities in 1994, other procedures concerning handover of the land papers and declaration for tax calculation were also made as from 1994. In this case, it should have been acknowledged that the exchange of land was real in order to acknowledge that the parties had rights to the exchanged land, so as to be correct and reflect reality. It was incorrect for the first-instance Court and the appellate Court to rely on the testimony of Ms. Trinh Thi C to rule that the parties temporarily exchanged the land, and thus determined that*

*the land exchange was unlawful to cancel the agreement on exchange of land and compel the parties to remove houses and return the land to each other, which caused unnecessary confusion on the land use of the involved parties.*