**CASE LAW NO. 06/2016/AL**

*This case law was adopted by the Judicial Council of the Supreme People’s Court on 06 April 2016 and promulgated under Decision No. 220/QD-CA dated 06 April 2017 by the Chief Justice of the Supreme People’s Court.*

**Source of the case law:**

Cassation Decision No. 100/2013/GDT-DS dated 12 August 2013 of the Judicial Council of the Supreme People’s Court on case of *“Dispute on inheritance”* in Hanoi between the plaintiff being Mr. Vu Dinh Hung and the defendant being Ms. Vu Thi Tien (also known as Hien) and Ms. Vu Thi Hau; persons with related rights and obligations are Mr. Vu Dinh Duong, Ms. Vu Thi Cam, Ms. Vu Thi Thao, Ms. Nguyen Thi Kim Oanh, and Ms. Ha Thuy Linh.

**Overview of the case law:**

Regarding the dispute on estate, in the case where the heirs reside abroad, if the court has requested judicial entrustment and gathered evidence in accordance with law, but still cannot determine their residence, the court must still resolve the request of the plaintiff; if it is possible to determine the estate and the class in the line of succession, and there is no will, the resolution of the division of the estate for the plaintiff will be carried out in accordance with law; the parts of the inheritance belonging to the absent heirs shall be temporarily managed by the heirs residing in Vietnam and later handed over to the absent heirs.

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

* Article 93, Article 168.1(dd) of the Civil Procedure Code 2014;
* Articles 676 and 685 of the Civil Code 2005.

**Key words of the case law:**

*“Disputes on inheritance”, “Heirs residing abroad with unknown residence”, “Judicial entrustment”, “Division of estate”, “Management of estate”.*

**CONTENTS OF THE CASE**

In the Statement of Claims dated July 2007, Mr. Vu Dinh Hung as the plaintiff presented as follows:

His parents being Mr. Vu Dinh Quang and Ms. Nguyen Thi Thenh had 6 children, namely Mr. Vu Dinh Duong, Ms. Vu Thi Cam, Ms. Vu Thi Thao, Mr. Vu Dinh Hung, Ms. Vu Thi Tien (also known as Hien), and Ms. Vu Thi Hau. Mr. Quang and Ms. Thenh had a house of 123m2 at No. 66 Dong Xuan Street, Hoan Kiem District, Hanoi. In 1979, Mr. Quang passed away without leaving a will; Ms. Thenh and her three children being Mr. Hung, Ms. Hau, and Ms. Tien lived in the house; Mr. Duong, Ms. Thao, and Ms. Cam went abroad. In the minutes of the family meeting dated 28 October 1982, Ms. Thenh, himself (Mr. Hung), Ms. Tien, and Ms. Hau agreed to temporarily divide the house into 3 parts for himself, Ms. Hau and Ms. Tien to use. In 1987, Ms. Thenh passed away. In 1989, Ms. Tien secretly sold to Ms. Nguyen Thi Kim Oanh her part of the house that was temporarily divided. When he initiated a lawsuit requesting the court to divide the estate, on 31 October 1993, Ms. Hau continued to sell to Ms. Ha Thuy Linh her part of the house that was temporarily divided. The sale and purchase of the house was wrong. He confirmed that his 3 siblings residing abroad (Mr. Duong, Ms. Cam, and Ms. Thao) had written documents to gift to him their parts of the inheritance, so he requested the court to divide their parents’ estate in accordance with law.

Mr. Hung presented copies of the powers of attorney dated 3 March 1992 of Mr. Vu Dinh Duong, dated 1 May 1993 of Ms. Vu Thi Cam, and dated 28 October 1991 of Ms. Vu Thi Thao with contents to authorize for Mr. Hung to manage and watch over their parts of the asset being 1/6 of the house located at No. 66 Dong Xuan. After submitting the Statement of Claims, Mr. Hung presented additional documents comprising *“Letter of assignment of the inheritance right”* dated 25 April 1995 of Mr. Vu Dinh Duong, *“Letter of assignment of the inheritance right”* dated 10 May 1995 of Ms. Vu Thi Cam, and *“Letter of gift of the inheritance right”* of Ms. Vu Thi Thao. The aforesaid documents stated that they were made in abroad and had the contents confirming that: the parents had left the house at No. 66 Dong Xuan for the 6 children, however, Ms. Tien (also known as Hien) and Ms. Hau had sold parts of the house that their parents left for them, which disobeyed their parents’ instructions (they must not sell and must not let outsiders reside)… Mr. Duong, Ms. Thao, and Ms. Cam had gifted to Mr. Hung their parts of the inheritance, each being to 1/6 of the house at No. 66 Dong Xuan, for him to maintain a place for ancestor worship and also for three families residing abroad to visit and worship the ancestors. Also, they are suggested that Mr. Hung be entitled to the asset (documents presented by Mr. Hung were just photocopies).

The defendants presented:

Ms. Vu Thi Tien presented: She confirmed the consanguinity and the origin of the house No. 66 Dong Xuan as presented by Mr. Hung. In 1989, Ms. Oanh sold her part of the inheritance, handed over the house and completed procedures for the sale and purchase of the house to the buyer at the Land and Housing Department in Hanoi. Upon moving into the house, Ms. Oanh agreed with Mr. Hung and Ms. Hau on exchange some construction works in the house for the convenient use by the parties. Afterward, Mr. Hung submitted a complaint, and thus the Land and Housing Department revoked the dossier for sale and purchase of the house between her and Ms. Oanh. Ms. Hau also sold her part of the house to another person. She asserted that Ms. Thenh had already given money to the 3 people who went abroad, so they had no request regarding the house. She had already sold her part of the house to Ms. Oanh, therefore, she had no responsibility with respect to the already sold part of the house.

Ms. Vu Thi Hau presented: She confirmed the consanguinity and the origin of the house No. 66 Dong Xuan as presented by Mr. Hung. She also confirmed the division of the house and the sale of Ms. Tien’s part of the house as presented by Ms. Tien. She asserted that she did notify her siblings abroad and obtained their consents when selling her part of the house.

She requested the court to divide the estate, allocating to her the part of the house that she sold to Ms. Linh and Mr. Khoi.

The persons with related rights and obligations presented:

The wife and husband Ms. Ha Thuy Linh and Mr. Hoang Manh Khoi presented: When they bought the house, Ms. Hau did show them the minutes of the family meeting, so they both agreed to buy. They paid in full, moved into the house, and have lived there since then. They request the court to legitimate the part of the house already bought from Ms. Hau.

Ms. Nguyen Thi Kim Oanh presented: On 18 October 1992, she bought the house that Ms. Tien was given, with the price of 30,000,000 Dong. The transaction was permitted by governmental authorities. Upon purchasing the house, she moved into the house and agreed with Mr. Hung to exchange certain areas of the house. She requested the court to recognize the sale and purchase agreement of the house between Ms. Tien and her.

In First-instance Civil Judgment No. 20/DSST dated 23 May 1995, the People’s Court of Hanoi ruled: to accept the request of Mr. Duong, Ms. Cam, Ms. Thao represented by Mr. Hung and Mr. Hung to divide the estate of Mr. Quang and Ms. Thenh; To accept a part of the will established on 28 October 1982, to determine the estate to be about

VND1,228,151,520, to divide the estate in kind being the house and land for 3 people being Mr. Hung, Ms. Hau, and Ms. Tien. The sales and purchases between Ms. Tien and Ms. Oanh and between Ms. Hau and Ms. Linh were carried out in accordance with government regulation.

Ms. Tien submitted an appeal and requested a review of the calculate method for the area of the estate. Mr. Hung also submitted appealed on the reason that the court was not objective*.*

In Appellate Civil Judgment No. 115 dated 10 October 1995, the Appellate Court of the Supreme People’s Court in Hanoi ruled: To set aside the first-instance Judgment and to transfer the case to the People’s Court in Hanoi to re-conduct first-instance procedures.

In First-instance Civil Judgment No. 50/DSST dated 11 September 1996, the People’s Court of Hanoi ruled to accept the request of Mr. Hung, Mr. Duong, Ms. Cam, and Ms. Thao who was represented by Mr. Hung for the division of the estate of Mr. Quang and Ms. Thenh; To recognize the voluntary gifts of the parts of the estate from Mr. Duong, Ms. Cam and Ms. Thao residing abroad to Mr. Hung and to divide the estate in kind for Mr. Hung, Ms. Hau and Ms. Tien (each person is entitled to 1/3 of the store and a part of the back of the house). Ms. Hau and Ms. Tien must pay the difference to Mr. Hung (Ms. Hau’s payment of VND156,824,381; Ms. Tien’s payment of VND140,774,106). Transactions of the house between Ms. Tien and Ms. Oanh and between Ms. Hau and Ms. Linh were unlawful.

Mr. Hung submitted an appeal.

InDecision No. 82/TDC dated 15 July 1997, the Appellate Court of the Supreme People’s Court in Hanoi ruled to temporarily suspend the resolution of the case*.*

Upon Resolution No. 1037/2006/NQ-UBTVQH11 dated 27 July 2006 of the Standing Committee of the National Assembly on civil transactions established before 1 July 1991 on houses, in which there is a party being an overseas Vietnamese, the Appellate Court of the Supreme People’s Court in Hanoi resumed resolution of the case.

In Appellate Civil Judgment No. 142/2007/DSPT dated 03 July 2007, the Appellate Court of the Supreme People’s Court in Hanoi set aside and transferred the case to the People’s Court in Hanoi to re-conduct the first-instance procedures with the finding that: The Statement of Claims was written and signed by only Mr. Hung, the powers of attorney of Mr. Duong, Ms. Thao, and Ms. Cam also do not express the authorization to initiate a lawsuit for division of the estate (except for Ms. Thao’s power of attorney); At the present, the involved parties acknowledge that Mr. Duong and Ms. Thao have passed away, therefore, it is necessary to verify these facts and involve their heirs in the litigation; To re-evaluate the land and home accordingly.

After re-accepting jurisdiction over the case, the involved parties presented: Mr. Duong and Ms. Thao passed away around 2002. The first-instance court requested Mr. Hung to provide death certificates of Mr. Duong and Ms. Thao, to supplement the Statement of Claims in accordance with Article 164.2 of the Civil Procedure Code (full name, address, nationality of Mr. Duong’s and Ms. Thao’s children; name, address of the person living on the land attached to a house in dispute), but Mr. Hung could not provide.

In Decision No. 04/2008/QDST-DS dated on 17 January 2008, the People’s Court of Hanoi suspended the resolution of the case and returned advance cost fees to Mr. Hung.

On 29 January 2008, Mr. Hung submitted an appeal on the grounds that the court’s suspension of the resolution of the case was incorrect.

In Decision No. 168/2008/DS-QDPT dated 4 September 2008, the Appellate Court of the Supreme People’s Court in Hanoi accepted the appeal of Mr. Hung and set aside the firstinstance decision on the grounds that: the first-instance court applying Article 192.2 to suspend the resolution of the case was incorrect, which deprived the involved parties the right to litigate.

After re-accepting jurisdiction over the case, the People’s Court of Hanoi requested Mr. Hung to provide documents being name, age, address of the heirs of Mr. Duong and Mr. Thao; written authorization or waivers of inheritance of such people; name and address of people residing on the Ms. Oanh’s property. However, Mr. Hung could not provide the aforementioned documents.

In Decision No. 54/DS-ST dated 30 September 2009, the People’s Court of Hanoi ruled: To suspend the resolution of the case on the division of the estate, to return the petition, attached documents and evidence to Mr. Hung.

Mr. Hung submitted an appeal.

In Decision No. 44/2010/QD-PT dated 9 March 2010, the Appellate Court of the Supreme People’s Court in Hanoi ruled: To upheld the first-instance decision.

Mr. Hung submitted a request for cassation procedure.

In Decision No. 35/2013/KN-DS dated 22 January 2013, the Chief Justice of the Supreme People’s Court protested against Decision No. 44/2010/QD-PT dated 9 March 2010 of the Appellate Court of the Supreme People’s Court in Hanoi; requested the Judicial Council of the Supreme People’s Court to review the case under the cassation procedure; set aside the above-mentioned appellate civil decision and set aside the first-instance decision on the suspension of resolution of Civil Case No. 54/2009/DS-ST dated 30 September 2009 of the People’s Court of Hanoi; transferred the case to the People’s Court of Hanoi to re-conduct first-instance procedure in accordance with law.

In the cassation hearing, the representative of the Supreme People’s Procuracy unanimously agreed with the Protest of the Chief Justice of the Supreme People’s Court.

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

House No. 66 Dong Xuan Street, Hoan Kien District, Hanoi was built by Mr. Vu Dinh Quang (passed away in 1979) and Ms. Nguyen Thi Thenh (passed away in 1987). They had 6 children consisting of 3 children being Mr. Vu Dinh Duong, Ms. Vu Thi Cam, Ms. Vu Thi Thao residing abroad since 1979 and 3 other children being Mr. Vu Dinh Hung, Ms. Vu Thi Tien (also known as Hien), and Ms. Vu Thi Hau residing in Vietnam. After Mr. Quang had passed away, only Ms. Thenh, Mr. Hung, Ms. Tien, and Ms. Hau managed the house. Upon Ms. Thenh passing away, Mr. Hung, Ms. Tien, and Ms. Hau divided the house into three parts for their residence. Since 18 October 1992, Ms. Tien sold her part of the house to Ms. Nguyen Thi Kim Oanh and on 31 October 1993, Ms. Hau sold her part of the house to Ms. Ha Thuy Linh.

In 1993, Mr. Hung initiated a lawsuit requesting the division of the above-mentioned estate including the land and house of his parents in accordance with law. The resolution of the case lasted from 1993 to 1996 and was suspended in the appellate hearing in 1997. In 2007, the jurisdiction over the case was re-accepted.

When resolving the case, before the period of temporary suspension (1997), Mr. Hung had provided petitions and powers of attorney established in 1991, 1992, 1993, and 1994 of Mr. Duong, Ms. Cam, and Ms. Thao with the content of assigning to Mr. Hung to watch over their parts of the estate being the land and House No. 66 Dong Xuan Street; later on, Mr. Hung again provided documents established in 1995 of Mr. Duong, Ms. Thao, and Ms. Cam with the content of gifting Mr. Hung their parts of the estate in dispute. Documents stamped and sealed in their home countries (Mr. Duong residing in England, Ms. Cam residing in France, and Ms. Thao residing in the United States) were just photocopies. Nevertheless, the involved parties clearly stated the house number and addresses of drafter. In the process of re-accepting jurisdiction over the case after its temporary suspension, Mr. Hung, Ms. Tien, and Ms. Hau stated that Mr. Duong and Ms. Thao passed away around 2002. Mr. Hung also asserted that addresses of Ms. Cam and Ms. Thao were unchanged and he also contacted Mr. Duong’s children but did not receive any reply (Records No. 376, 377, 382). The first-instance court requested Mr. Hung to provide death certificates of Mr. Duong and Ms. Thao; name and address of the children of Mr. Duong and Ms. Thao. Mr. Hung presented that he could not provide (the above-mentioned documents) and requested the court to gather evidence to resolve the case in accordance with law (Record No. 390). Therefore, the dossier contained the addresses of people who resided abroad, and the court’s request for Mr. Hung to provide death certificates of Mr. Duong and Ms. Thao was unnecessary because three people in Vietnam confirmed that Ms. Thao and Mr. Duong had passed away. The first-instance court should have requested judicial entrustment in accordance with law, collected evidence with respect to Mr. Duong and Ms. Thao to clarify the time of their deaths, and in the case where they have heirs, obtained the heirs’ opinions on the resolution of the case. Depend on each situation on the collection of evidence, the case will be resolved in accordance with law. In the case where the court cannot collect any further evidence, the Mr. Hung’s request to be entitled to inherit under the law must still be settled. Parts of the estate belonging to Mr. Duong and Ms. Thao shall temporarily be handed over to people residing in Vietnam to manage so that later on their heirs can receive such parts in accordance with the law; by doing so, the case will be entirely resolved. As for the people who are residing in the part of the house purchased from Ms. Tien, Mr. Tien is obliged to provide their names and ages. The first-instance court requesting Mr. Hung to provide the names and ages of the aforementioned people was incorrect. The first-instance Court ruled to suspend the resolution of the case on the ground that Mr. Hung could not provide the names and the addresses of the people who bought the house from Ms. Oanh and of the children of Mr. Duong and Ms. Thao was incorrect. The appellate court should have set aside the first-instance decision and transferred the case to the first-instance court for re-settlement as opposed to upholding the first-instance judgment is incorrect.

In addition, subject to documents contained in the dossier and the testimony of Mr. Hoang Manh Khoi on 17 October 2007 (Record No. 373) and the “*Agreement for sale of a house*” dated 31 October 1993 (Record No. 18), Ms. Hau sold the part of the house under her management to Ms. Ha Thuy Linh (Ms. Linh’s husband is Mr. Hoang Manh Khoi), therefore, the name “*Nguyen Thi Thuy Linh*” stated in first-instance and appellate decisions was inaccurate and needed to be amended properly.

For the above reasons, pursuant to Article 297.3 and Article 299 of the Civil Procedure Code;

**RULES**

1. To set aside Decision No. 44/2010/QD-PT dated 9 March 2010 of the Appellate Court of the Supreme People’s Court in Hanoi and Decision on Suspension of Resolution of the Case No. 54/2009/DS-ST dated 30 September 2009 of the People’s Court of Hanoi in connection regarding a dispute on inheritance between the plaintiff being Mr. Vu Dinh Hung and the defendants being Ms. Vu Thi Tien and Ms. Vu Thi Hau; persons with related rights and obligations are Mr. Vu Dinh Duong, Ms. Vu Thi Cam, Ms. Vu Thi Thao, Ms. Nguyen Thi Kim Oanh, and Ms. Ha Thuy Linh.
2. To transfer the case to the People’s Court of Hanoi to re-conduct first-instance procedures in accordance with law.

**CONTENTS OF THE CASE LAW**

*“The first-instance court should have requested judicial entrustment in accordance with law, collected evidence with respect to Mr. Duong and Ms. Thao to clarify the time of their deaths, and in the case where they have heirs, obtained the heirs’ opinions on the resolution of the case. Depend on each situation on the collection of evidence, the case will be resolved in accordance with law. In the case where the court cannot collect any further evidence, the Mr. Hung’s request to be entitled to inherit under the law must still be settled. Parts of the estate belonging to Mr. Duong and Ms. Thao shall temporarily be handed over to people residing in Vietnam to manage so that later on their heirs can receive such parts in accordance with the law; by doing so, the case will be entirely resolved. As for the people who are residing in the part of the house purchased from Ms. Tien, Mr. Tien is obliged to provide their names and ages. The first-instance court requesting Mr. Hung to provide the names and ages of the aforementioned people was incorrect. The first-instance Court ruled to suspend the resolution of the case on the ground that Mr. Hung could not provide the names and the addresses of the people who bought the house from Ms. Oanh and of the children of Mr. Duong and Ms. Thao was incorrect. The appellate court should have set aside the first-instance decision and transferred the case to the first-instance court for re-settlement as opposed to upholding the first-instance judgment is incorrect”.*