

4. Law of Civil Procedure and Bankruptcy

In the past year, as usual, in the field of laws of civil procedure, civil execution, and insolvency many important decisions were made. From these, the Supreme Court decision on necessary joinder *per se* or compulsory joinder of parties is described.

An action for confirmation of decedent estate among co-successors and necessary joinder *per se*.

Decision by the Third Petty Bench of the Supreme Court on March 28, 1989. Case No. 727 (o) of 1985.

A case requesting surrender of land with removal of building, confirmation of decedent estate, and registration of transfer of share of co-ownership. 43 *Minshū* 167; 1313 *Hanrei Jihō* 129; 698 *Hanrei Taimuzu* 202.

[Reference: Code of Civil Procedure Article 62.]

[Facts]

Only the facts connected with the Supreme Court's opinion are described.

Upon the death of A, his wife Y (defendant, *koso* respondent, *jokoku* respondent) and children B, C, D, and E inherited the estate of A. Thereafter, B also died, and his wife X₁ and children X₂ ~ X₉ (plaintiffs, *koso* appellants, *jokoku* appellants) succeeded to his property including his shares in succession to the estate of A.

On the other hand, after the death of A, Y got the sale and delivery of the land concerned and made the registration for keeping the ownership in the name of Y.

However, X₁ *et al.* brought an action against Y requesting the confirmation of ownership of the land concerned from the estate of A and the procedure of registration of the transfer of respective shares of co-ownership in proportion to statutory shares in succession to the land concerned, insisting as follows;

The land concerned was sold to A, not to Y. The registration for keeping ownership in the name of Y was made for the sake of convenience because A had already been dead at that time. Accordingly, the land concerned belonged to the estate of A, so that X₁ *et al.* had rights of shares of co-ownership respectively in proportion to statutory shares in succession.

In this action X₁ *et al.* did not make other successors of A, that is, C, D, and E, co-litigants.

The court of first instance dismissed both of the claims of X₁ *et al.*, stating that the land concerned was sold to Y. Thus, X₁ *et al.* filed a *koso* appeal.

The *koso* appellate court, setting aside the part of the judgment of the first instance concerning the claim for the confirmation of the decedent estate, rejected it, stating as follows;

An action requesting confirmation of ownership of property of a decedent estate should be interpreted as an action of necessary joinder *per se* in which all of the decedent's successors need be joined as co-litigants. However, in this action necessary parties had not properly joined. Accordingly, the action concerned must be rejected for a procedural reason.

With respect to the other part of the judgment of the first instance, the *koso* appellate court supported it and accordingly dismissed the *koso* appeal of X₁ *et al.* on this part.

Thus, X₁ *et al.* made a *jokoku* appeal.

[Opinions of the Court]

Jokoku appeal dismissed.

An action for confirmation of the decedent estate is a declaratory claim seeking the confirmation that the property concerned is held jointly among the decedent's successors in the state before partition of the decedent estate. The irrevocable judgment of such an action, if the plaintiff wins the suit, makes it irrevocable through the effect of *res judicata* that the property concerned is the subject of the partition of the decedent estate. And, this is able to contribute to the settlement of conflicts among co-successors by means of excluding the dispute concerning possession of the property concerned of the

decedent estate following adjustment of the partition of the decedent estate and after its irrevocable adjudgment. And, just in this point there exists substantial ground to recognize the legitimacy of such an action (*see* Case No. 184 (o) of 1982, Decision of the Supreme Court of March 13, 1986. 40 *Minshū* 389). Therefore, it is reasonable to interpret that an action for confirmation of decedent estate is an action of so-called necessary joinder *per se* or compulsory joinder of parties in which all of the co-successors are required to join as indispensable parties and adjudged jointly, not separately.

[Comment]

The issue of the current case is whether an action for confirmation of a decedent estate is an action of compulsory joinder of parties or not. In practice such an action is very desirable in order to prevent conflict among the decedent's successors concerning whether certain property belongs to the decedent estate or to one of the co-successors as a question to be settled prior to the adjustment of partition of the decedent estate among the co-successors.

In an action for confirmation, a claim seeking a declaratory judgment with respect to a past right or legal relationship is not cognizable in principle. But on this issue, a recent Supreme Court decision (March 13, 1986. 40 *Minshū* 389) recognized the legitimacy of an action for confirmation of a decedent estate because it was not a mere confirmation of the past legal relationship but would resolve a present dispute among the co-successors. But, in practice, other problems with respect to an action for confirmation of a decedent estate — for example, in what case standing to litigate or a party has sufficient interest in the action may be recognized or granted, whether such an action comes under an action of compulsory joinder of parties or not, and so on — have remained to be solved.

The current decision, with respect to a party's joinder, declared clearly that an action seeking confirmation of a decedent estate is an action of necessary joinder *per se* or compulsory joinder of the parties. This is the first decision of the Supreme Court on this issue. Accordingly, in the future in such actions, plaintiffs must sue all of the decedent's successors as co-litigants.

In cases of compulsory joinder of parties, procedural acts of any co-litigant may benefit all of the co-litigants, but may not prejudice any co-litigant. Also, the acts of an adverse party affect all opposing co-litigants. When necessary parties are not properly joined in an action, the court must refuse the case.

On the other hand, in cases of ordinary joinder of parties which are allowed, as a matter of practical convenience, mainly in order to avoid a multiplicity of suits, each co-litigant is treated as independent of the other co-litigants. Neither procedural acts of a co-litigant nor acts of an adverse party against one of the co-litigants will affect the other co-litigants.

In practice, however, with respect to an action of joinder parties, it is often difficult to distinguish compulsory joinder from ordinary joinder because the necessity for being resolved jointly in one action is frequently found.

In precedents, an action for confirmation of co-ownership of which the subject matter is almost the same as that of an action for confirmation of decedent estate has been interpreted as an action of compulsory joinder (Supreme Court, October 7, 1971. 25 *Minshū* 885). Furthermore, it is generally considered that the above-mentioned recent Supreme Court decision (March 13, 1986. 40 *Minshū* 389) made a conclusion premising that an action for confirmation of decedent estate is an action of compulsory joinder of parties.

From such current precedents the conclusion of the current case is in general accepted.

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