

incestuous marriage. What underlies in part the decision seems to be the fact that the insured deceased had actually paid considerable premium, so there should be enough reason to deny the eligibility for a survivor pension in terms of public interest. The decision added that in determining whether an incestuous *de facto* marriage is eligible for a survivor pension, elements such as the details of the relationship, the circumstances, and how their relationship had been accepted without reluctance by their community or common sense should be considered.

3. As mentioned above, an incestuous *de facto* marriage has been excluded from legal protection such as the award of a survivor pension without exception on the ground that it is contrary to ethics. It is remarkable that the decision distinguishes the concept of a spouse in EPIA from that in Civil Code from the point of the purpose of each legislation. The decision has much significance in respect of admitting the possibility that a *de facto* spouse of an incestuous marriage could be awarded a survivor pension according to the individual circumstances of the marriage.

PS: It was reported that on *koso* appeal, Tokyo High Court reversed this decision and dismissed X's claim on May 31, 2005.

5. Law of Civil Procedure and Bankruptcy

X v. Y

Supreme Court 3rd P.B., July 6, 2004

Case No. (*jyu*) 1153 of 2003

58 (5) MINSHU 185

Summary:

When co-heirs sue for confirmation that another co-heir does not have the position of heir with regard to the inheritance, they must sue in the form of inherent necessary joint litigation (*Koyuhitsuyoteki-kyodososho*).

Reference:

Code of Civil Procedure, Articles 40 and 134; Civil Code, Articles 891 and 898.

Facts:

The legal heirs of the ancestor (A) were his wife (B) and his issue (X, Y, C and D). It was assumed that, because Y concealed or destroyed A's will, there was an inheritance disqualification reason (*Souzoku-kekkakujiyu*) of Civil Code, Article 891, Item 5 against Y. This was the point in the inheritance division proceeding (*Isanbunkatsu-tetsuzuki*) between the heirs.

Therefore, X sued for confirmation that Y did not have the position of heir with regard to A's inheritance.

Opinion:

Jokoku-appeal dismissed.

It is the fundamental factor, when you deal with the inheritance relationship, such as who participates in the inheritance division (*Isanbunkatsu*) and the calculation of the share of the inheritance and the secured equity on the inheritance of each heir (*Iryubun*), whether a specific co-heir has the position of heir with regard to the inheritance of the ancestor. And, the suit filed by co-heirs for confirmation that another co-heir does not have the position of heir with regard to the inheritance has the intention that, by determining whether the co-heir has an inheritance disqualification reason (*Souzoku-kekkakujiyu*) and, with the effect of *res judicata* (*Kihanryoku*), whether he has the position of heir with regard to the inheritance, it will prevent argument on this point in the inheritance division proceeding (*Isanbunkatsu-tetsuzuki*), and then contribute to the resolution of the dispute among the heirs. Considering the meaning and purpose of this suit, we must decide that this suit be determined jointly and considered the so-called inherent necessary joint litigation (*Koyuhitsuyoteki-kyodososho*).

Editorial Note:

This decision has an important significance in the respect that the Supreme Court has made the decision for the first time that the suit for confirmation that one co-heir does not have the position of heir must be sued in the form of the so-called inherent necessary joint litigation (*Koyuhitsuyouteki-kyodososho*).

According to this decision, when co-heirs sue for confirmation in the litigation proceeding that another co-heir does not have the position of heir, all the co-heirs, except for him, must file the suit as joint plaintiffs.

About the suit for confirmation of the inheritance, this suit has been decided to be legitimate by the Supreme Court 1st P.B., March 13, 1986 (40(2) MINSHU 389), and to be the inherent necessary joint litigation by the Supreme Court 3rd P.B., March 28, 1989 (40(2) MINSHU 389).

Although this decision doesn't judge directly whether the suit is legitimate, it can be estimated that the Supreme Court decided this suit to be the inherent necessary joint litigation on the assumption of its legitimacy.

6. Criminal Law and Procedure

X and Y v. Japan

Supreme Court 1st P.B., March 22, 2004

Case No. (a) 1625 of 2004

58 (3) KEISHU 187; 1856 HANREI JIHO 158; 1148 HANREI TAIMUZU 185

Summary:

The defendant X and Y, intending to murder X's husband (hereinafter Z) by executing two actions, actually murdered Z as a result of the two actions. The court recognized that the commencement of the commission of the crime and the intention had existed at the time of the first act.