both the father and son could not but mentally feel some burden on the continuous legal fiction that they are a father and child. In order to maintain the premise that legal parents shall be those who have the liability to pay the child support, the father, at least, needs to accept to continue being the legal father of the child. In addition, the child, especially in fully matured age, should require his or her acceptance of it, too. I think that the clauses in the Civil Law should be properly interpreted and applied, in balancing between the parents and child, for the sake of a reasonable outcome, for which the acceptability of action for a declaratory judgment needs to be wider than now.

Of course, child welfare is an important consideration, but, some regard for the father who learned the truth is also required, in the present condition that parental testing by DNA is prevalent. In this meaning, in this case where Y can afford to bring A up, the conclusion for only Y to bear A's child support after divorce to A's becoming an adult is well balanced between X, Y and A. However, this balance should not be struck in the stage of sharing child support, but, of establishing the father-child relationship. It is unreasonable that the father refusing to be the legal father of the child not having blood ties with him would be forced to bear the long-term child support under a system; actually, the father would be unlikely to continue paying it. A future drastic revision would be expected with regard to the system establishing especially the father-child relationship.

4. Law of Civil Procedure and Bankruptcy

X v. Y
Supreme Court 3rd P.B., March 9, 2011
Case No. (Ku) 1027 of 2009
1345 HANREI TAIMUZU 126;
1527 SAIBANSYO JIHO 3;
2111 HANREI JIHO 31

Summary:

Where two parties in an appeal case have reached an out-of-court settlement, which states that they have agreed to terminate the appeal case, it is no longer open to the appellant to continue with the appeal.

Reference:

Article 695 of the Civil Code
Article 336 of the Code of Civil Procedure

Facts:

After the death of A in 2002, an apportionment of A's estate was commenced. Before this apportionment was completed, C,(who was one of the children of A and her husband B, who also had died before A), passed away in 2007. X, another child of A and B, pleaded that there should be an apportionment of A and C's estate in favour of Y, who was an illegitimate child of A.

During the first and second actions, Y insisted that Art.900(4) of the Civil Code was in breach of Art.14 under Constitutional Law. However, the courts decided that both A's and C's estate belonged to X and that Art.900 (4) of the Civil Code had not violated the Constitutional Law.

Y's attorney entered an appeal against the last judgment on behalf of Y. This appeal was solely about the constitutionality of Art.900(4) of the Civil Code.

However, Y sought to make an out-of-court settlement with X without any discussion with his attorney as Y believed that it would be better to settle rather than litigate for a long period. As a result, in 2010, X and Y reached a settlement, which stated that the amount of the compensation payable from X to Y was raised from 8,670,499 yen to 10,500,000 yen. X fulfilled his duty by paying the amount agreed by the settlement. As Y made no mention that he would continue proceedings, X believed that the complaint would be terminated with this settlement.

At the time that Y's attorney informed Y that his complaint had been referred to Grand Bench, Y told his attorney that he and X had reached a settlement. However, the complaint was not withdrawn, although there was no sufficient reason for Y to continue.

X argued that the appeal must have been terminated on settlement and thus the complaint no longer had any legal basis.

Opinion:

Dismissed without prejudice.

'According to the above, it is obvious that the Settlement, with regard to the dispute relating to the inheritance of X's estate and the inheritance of Z's estate, was predicated on the decision in the prior instance and was intended for agreeing on matters such as the increase in the amount of compensation money to be paid by the appellee, so as to totally solve the dispute, and in the Settlement, the appellant intended to agree to terminate the appeal case. Even supposing that the appellant mistakenly estimated the possibility that his/her claim would be upheld as a result of the appeal, there is no room for the Settlement to be declared invalid due to a mistake.

Where the appellant and the appellee, after the filing of the appeal, have reached an out-of-court settlement in which they agree to terminate the appeal case, the appellant has lost the interest to maintain the appeal. Accordingly, in this case, the appellant has lost such interest due to the Settlement having been reached, and the appeal should inevitably be dismissed as unlawful without prejudice.

Therefore, having received the case as referred from the Grand Bench, we render the decision in the form of the main text by the unanimous consent of the Justices.'[1]

Editorial Note:

This is the first case in which the Supreme Court shows its position of approving the effect of an out-of-court settlement which was reached after the appeal was lodged.

This case attracted attention as it was believed that the issue of illegitimacy would be examined by the Supreme Court. In Japan, an illegitimate child is only allowed to receive half of his 'share' of his father's estate under Art.900 of Civil Code. However, an out-of-court settlement, which was reached between X and Y while the appeal was pending switched the focus from a question of discriminatory treatment of an illegitimate child to one of whether or not an out-of-court settlement made after an appeal has been lodged is legal binding.

An out-of-court settlement reached in such a case is what is called *soshoukeiyaku* in Japan. *Soshoukeiyaku* is a contract between two parties to a dispute, which settles a pending action at some points. In bygone days such a contract was essentially unlawful, but nowadays, many academics have come to accept them as legal. When discussing the issue of whether an agreement to discontinue an action, which is another type of *Soshoukeiyaku*, is legally binding or not, there were some academics who took the view that the effects of an agreement to conclude an action were limited to private law but not to procedural proceedings (*shihoukeiyaku-setsu*). Other academics took an opposing view, claiming that such an agreement is binding both in private law and procedural proceedings (*soshoukeiyaku-setsu*). With regard to the former theory, a party to the dispute has an obligation to withdraw his/her action, and thus the court can dismiss the claim without prejudice. However, with respect to the latter theory, a party is required to prove the existence of the agreement. When the claim is accepted by the court, the court gives a judgment terminating the proceeding. The court supported the first theory, *shihoukeiyaku-setsu*, in a judgment made by Supreme Court 2nd P.B., October 17, 1969 Case No. (O) 770 of 1969, 241 HANREI TAIMUZU 71.

Moving on to the topic which is discussed in this case, whether or not an out-of-court settlement made after the appeal has been lodged is legally binding, the court decided to apply the same doctrine as in the judgment of 1969. Therefore, having established the existence of the agreement, the court dismissed the claim without prejudice. Additionally, an out-of-court settlement by which two parties aim to confirm a former adjudication is final and binding. An agreement to withdraw a claim might damage a right to submit a case to the court; however, in this case, the parties have already been given a decision by the court and thus no right to bring a dispute to the court would be harmed.

5. Criminal Law and Procedure

Ex parte *X*
Supreme Court 1st P.B., December 19, 2011