

The prefectural government appealed the judgment; however, they set up a council to review the project by listening to the opinions of both supporters and the opposition party, and postponement of the proceedings after the appeal has continued. On June 25, 2012, the Hiroshima prefectural governor, in consideration of the details of the hearings of the council, decided to stop the reclamation project and study the construction of a tunnel on the mountain side as an alternative.

(on 28 August 2012)

5. Intermediate Omission Registration for the Purpose of Restoration of the True Registration Name

Supreme Court Judgment from 16 December 2010, MINSHU Vol. 64 No. 8, Item 2050

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I. Overview of the facts

Y is the oldest son of B(deceased) and C(deceased), and A is the younger brother of Y. A and X2 have two children, X1 and X3.

Initially, this land was registered for preservation of ownership in Y's name only. In addition to that, Y gave equity rights for ownership of this land to the four people A, X1, X2, and X3.

After that, A died and as a result of estate division discussions, X1 solely obtained A's equity rights from among the ownership rights for this land, and all of A's equity was transferred to and registered for X1.

Y then sought common property division of this land, and as a counterclaim, X1 sought equity transfer registration procedures from Y on the grounds of restoring the true registration name because three-tenths of the equity for this land was registered in Y's name, and X1 claimed that

X1 has the ownership rights to this land.

Both the first trial and the original trial dismissed Y's main suit claim and admitted the countersuit claim of X and the others. In response, Y objected to the judgment of the original trial and made a final appeal.

II. The judgment

Partially reversed and remanded, partially dismissed.

In light of the principle of the Real Property Registration Act, which is intended to faithfully reflect the process of changes of real rights in registration, it should be said that it is not allowed to make a claim for ownership rights transfer registration procedures on the grounds of restoring the true registration name from the original owner to the current owner in a case in which the registration name still remains under that of the original owner even though the ownership rights of the real property were sequentially transferred from the original owner to an intermediary and then from the intermediary to the current owner.

Considering this case from this perspective, the ownership rights of the land still remain as equity registration in Y's name, despite being sequentially transferred from Y to A as a gift and then from A to X1 as inheritance. Therefore, in a case such as this, in which X1 should have sought transfer registration procedures on the grounds that this was a gift from Y to A and then, after obtaining a judgment of approval, conducted equity transfer registration procedures on the grounds that this was an inheritance from A to X1, it should be said that it cannot be allowed to seek equity transfer registration procedures directly from Y to X1 on the grounds of restoring the true registration name.

III. Criticism

If real property ownership rights were transferred from Y to X via A but the registration name remained under Y, would it be possible for X to ask for Y to directly transfer them to X? Since quite a long time ago, arguments have been made in case law and theory about this issue of whether or not people have the right to seek so-called intermediate omission registration. There have also been discussions about how to evaluate the same

intermediate omission registration after it has already been done. However, in general there are many opinions that the two problems should be distinguished and discussed (for example, refer to page 141 and after in “The Newly Revised Law of Realty (Civil Code Lecture II),” written by Sakae Wagatsuma and revised by Toru Ariizumi (Iwanami Shoten, 1983).

Intermediate omission registration is often conducted in transactions and business in order to avoid registration and license taxes when going through an intermediary, and in many of those cases, the intermediary agrees. If that is the premise, none of the parties involved incur any particular disadvantage, and since the current situation of attributable rights under substantive laws and the content of registration are in agreement, it is conceivable that no particular problems will arise.

Going a step further, even if there was no agreement by the intermediary, it is possible to think that no particular problems will arise as long as none of the parties involved in the intermediate omission registration incurred any substantial disadvantages. For that reason, in relation to the validity of intermediate omission registration that has already been conducted, case law has reached the decision, as an after-the-fact evaluation, to not allow claims for elimination of intermediate omission registration that has already been conducted, even if there was no agreement by the intermediary, if there is no valid advantage for the intermediary in seeking elimination of the intermediate omission registration (refer to page 946 and after of the Supreme Court’s April 21, 1960 MINSHU, Vol. 14, No. 6).

However, if the current situation of attributable rights under substantive laws and the content of registration are in agreement, is it not appropriate to make a decision on the possibility of validity or elimination of intermediate omission registration simply by considering whether or not there is any advantage for the intermediary? Is not registration, which is a system for giving notice of real property, something in which it is sought to accurately reflect not only the current state of attribution of rights, but also the process of rights transfers that led to that state? If value is placed on this perspective, doubts arise that at least new claims for intermediate omission registration that have not yet been made may not be allowed.

This judgment discussed directly the possibility of new claims for intermediate omission registration, and in addition to making a clear

statement that faithfully giving notice of the process of changes of property rights is also an important purpose of the registration system, it denied the right to claim intermediate omission registration. This judgment followed previous case law (refer to page 1560 and after of the Supreme Court's September 21, 1965, MINSHU Vol. 19, No. 6), and in particular it is noteworthy because it is a Supreme Court judgment given after the Real Property Registration Act was completely revised in 2004 because inheritance is intervening as grounds for transfer of ownership rights of the object and because it refers particularly to whether or not there was agreement of the intermediary in relation to such things.

(on 15 November 2012)

6. Introduction of Important Case Law

Supreme Court judgment of September 7, 2012, Criminal Case Law Vol. 66, No. 9 (Code of Criminal Procedure)

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Matters of legal findings

1. Admissibility of evidence when evidence from a prior conviction is used to prove that a defendant and a perpetrator are the same person
2. Example of a case in which it was deemed that it is not permissible to use evidence from a prior conviction to prove that a defendant and a perpetrator are the same person

Explanation

1. The defendant was indicted for crimes, such as illegally entering an apartment by breaking a window, etc., stealing JPY 1,000 in cash and a cup of instant noodles, and then splashing kerosene from inside a kerosene heater around the room and setting the apartment on fire.
2. The defendant admitted to the theft, but contested the arson as not perpetrated by the defendant.