SPC Guiding Case No. 50: Li Mou and Guo Mouyang v. Guo Mouhe and Tong Moumou (Inheritance Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on April 15, 2015.

Keywords

Civil / inheritance / artificial insemination / children born in wedlock

Holding

1. Where, during the existence of the marital relationship, both spouses unanimously agree to carry out artificial insemination using another person's sperm and the wife becomes pregnant, and the husband subsequently repents while the wife insists on giving birth to the child, the child shall be regarded as the legitimate child of both spouses regardless of whether the child was born during the existence of the marital relationship.

2. Where a will made by one spouse fails to reserve a share of the estate for a fetus, that part of the will is invalid because it violates Article 19 of the Inheritance Law of the People's Republic of China. When dividing the estate, an inheritance share shall be reserved for the fetus in accordance with Article 28 of the Inheritance Law of the People's Republic of China.

Basic Facts

The plaintiff, Li Mou, alleged as follows. The dwelling in Room 306 of a residential compound in Nanjing City, Jiangsu Province was the community property of herself and the decedent Guo Moushun. After Guo Moushun died of illness, his son Guo Mouyang was born. The estate of Guo Moushun should be jointly inherited by the wife Li Mou, the son Guo Mouyang, and Guo Moushun's parents, namely the defendants Guo Mouhe and Tong Moumou, as the statutory heirs. She requested the court to give favorable treatment to Li Mou and Guo Mouyang when dividing the estate, considering that Guo Mouhe and Tong Moumou had their own housing and retirement wages, whereas Li Mou had no fixed income and had to support a young child.

The defendants, Guo Mouhe and Tong Moumou, argued as follows. Their son Guo Moushun left a will before his death expressly bequeathing Room 306 to the two defendants, so statutory inheritance did not apply to the dwelling. The child born to Li Mou had no blood relationship with Guo Moushun, and Guo Moushun declared in the will that he did not want the child conceived by artificial insemination; after learning that he had cancer, he had already told Li Mou that he did not want the child, and it was Li Mou who insisted on giving birth. Therefore, Li Mou should be responsible for the child, and the child could not be listed as an heir of Guo Moushun.

The court found upon trial as follows. On March 3, 1998, the plaintiff Li Mou registered her marriage with Guo Moushun. In 2002, Guo Moushun purchased in his own name the dwelling in Room 306, with a building area of 45.08 square meters, and completed the housing property registration. On January 30, 2004, Li Mou and Guo Moushun jointly signed an artificial insemination agreement with the Reproductive Genetics Center of Nanjing General Hospital of Nanjing Military Region, and artificial insemination was carried out on Li Mou, after which Li Mou became pregnant. In April 2004, Guo Moushun was hospitalized due to illness, and after learning that he had cancer, he told Li Mou that he did not want the child, but Li Mou disagreed with having an abortion and insisted on giving birth. On May 20, Guo Moushun made a holographic will in the hospital, declaring in the will that he did not want the child conceived by artificial insemination, and bequeathed the

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dwelling in Room 306 to his parents, Guo Mouhe and Tong Moumou. Guo Moushun died of illness on May 23. Li Mou gave birth to a son on October 22 of that year, naming him Guo Mouyang. The plaintiff Li Mou was unemployed, receiving a monthly minimum living allowance plus irregular part-time income, and held joint savings of RMB 18,705.4 accumulated during the marriage. The defendants Guo Mouhe and Tong Moumou were Guo Moushun's parents, living in Room 305 of the same residential compound, both with retirement wages. In March 2001, Guo Moushun borrowed RMB 8,500 from Tong Moumou to open a shop.

Nanjing Dalu Real Estate Appraisal Co., Ltd., entrusted by the court, appraised the dwelling in Room 306 in March 2006, and assessed its value at RMB 193,000.

Judgment

On April 20, 2006, the People's Court of Qinhuai District, Nanjing City, Jiangsu Province rendered a first-instance judgment: the dwelling in Room 306 was adjudged to belong to the plaintiff Li Mou; Li Mou shall, within 30 days from the effective date of this judgment, pay the plaintiff Guo Mouyang RMB 33,442.4, which amount shall be kept by Guo Mouyang's statutory agent Li Mou; and Li Mou shall, within 30 days from the effective date of this judgment, pay the defendant Guo Mouhe RMB 33,442.4 and the defendant Tong Moumou RMB 41,942.4. After the first-instance judgment, neither party appealed, and the judgment became legally effective.

Reasoning

The effective judgment held as follows. There were two main focal points of dispute in this case: first, whether Guo Mouyang was the legitimate child of Guo Moushun and Li Mou; and second, given that Guo Moushun left a will, how the dwelling in Room 306 should be divided and inherited.

As to the first focal point of dispute. The Reply of the Supreme People's Court on the Determination of the Legal Status of Children Born of Artificial Insemination After Divorce points out: "Where, during the existence of the marital relationship, both parties unanimously agree to carry out artificial insemination, the child born shall be regarded as the legitimate child of both spouses, and the rights and obligations between parents and children shall be governed by the relevant provisions of the Marriage Law of the People's Republic of China." Because Guo Moushun was infertile, he signed his consent for the hospital to perform artificial insemination on his wife, the plaintiff Li Mou. This act indicated that Guo Moushun had the manifestation of intention to obtain a child jointly with Li Mou through artificial insemination. As long as, during the existence of the marital relationship, both spouses agreed to bear a child through artificial insemination, the child born shall be regarded as the legitimate child of both spouses. Article 57 of the General Principles of the Civil Law of the People's Republic of China provides: "A civil juristic act shall be legally binding from the time it is established. The actor may not change or rescind it without authorization, except in accordance with the law or with the consent of the other party." Therefore, Guo Moushun's denial in the will of the parent-child relationship with the fetus conceived by Li Mou was an invalid civil act, and Guo Mouyang should be found to be the legitimate child of Guo Moushun and Li Mou.

As to the second focal point of dispute. Article 5 of the Inheritance Law of the People's Republic of China (the "Inheritance Law") provides: "After succession opens, it shall be handled as statutory succession; where there is a will, it shall be handled as testamentary succession or legacy; and where there is a legacy-support agreement, it shall be handled in accordance with the agreement." After the death of the decedent Guo Moushun, succession opened. Given that Guo Moushun left a will, this case should be handled as testamentary succession. Article 26 of the Inheritance Law provides: "Where the jointly-owned property acquired by husband and wife during the existence of the marriage is divided, unless otherwise agreed, half of the jointly-owned property shall first be set aside as belonging to the spouse, and the remainder shall be the estate of the decedent." Article 38 of the Opinions of the Supreme People's Court on Several Issues Concerning the Implementation of the Inheritance Law of the People's Republic of China provides: "Where a testator disposes by will of property belonging to the state, a collective or another person, that part of the will

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shall be found invalid." The dwelling in Room 306 registered under the name of the decedent Guo Moushun was found to be community property acquired during the existence of the marital relationship between Guo Moushun and the plaintiff Li Mou. After Guo Moushun's death, half of the dwelling should belong to Li Mou, and the other half could serve as Guo Moushun's estate. In the will, Guo Moushun disposed of the entire dwelling in Room 306 to his parents, infringing Li Mou's housing property right, and that part of the will should be invalid. In addition, Article 19 of the Inheritance Law provides: "A will shall reserve a necessary share of the estate for an heir who lacks the capacity to work and has no source of livelihood." When making the will, Guo Moushun knew of the fetus in his wife's womb but failed to reserve a necessary share of the estate for the fetus in the will, and that part of the will was invalid. Article 28 of the Inheritance Law provides: "When the estate is divided, the inheritance share of a fetus shall be reserved." Therefore, when dividing the estate, an inheritance share should be reserved for the fetus. In conclusion, after deducting the property that should belong to Li Mou and the inheritance share that should be reserved for the fetus, the remaining part of Guo Moushun's estate could be handled in accordance with the distribution principle determined in the will.

Relevant Legal Provisions

Article 57 of the General Principles of the Civil Law of the People's Republic of China.

Articles 19 and 28 of the Inheritance Law of the People's Republic of China.

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