SPC Guiding Case No. 66: Lei Moumou v. Song Moumou (Divorce Dispute)

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Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on September 19, 2016.

Keywords

Civil / divorce / at the time of divorce / unauthorized disposal of jointly owned property

Holding

Where one party, during divorce proceedings or before the divorce lawsuit, conceals, transfers, sells, or damages jointly owned property of the spouses, or fabricates debts in an attempt to encroach upon the other party's property, then when dividing the jointly owned property of the spouses upon divorce, that party may receive a smaller share or no share of the property in accordance with Article 47 of the Marriage Law of the People's Republic of China.

Basic Facts

The plaintiff, Lei Moumou (female), and the defendant, Song Moumou, registered their marriage on May 19, 2003. Both were remarried, and no children were born after the marriage. After the marriage, the two became estranged over trivial matters, developed conflicts in the first half of 2013, and separated in February 2014. Lei Moumou had filed a lawsuit in March 2014 requesting divorce from Song Moumou; after the court dismissed it, the parties' relationship did not improve. In January 2015, Lei Moumou again brought a lawsuit requesting divorce and division of the jointly owned property of the spouses in accordance with the law. Song Moumou believed that the marital relationship had not broken down and did not agree to divorce.

Lei Moumou claimed that there was a joint deposit of RMB 370,000 in an account under Song Moumou's name at the Postal Savings Bank of China, and submitted deposit and withdrawal slips and transfer slips as evidence. Song Moumou claimed that the RMB 370,000 came from pre-marital house demolition compensation and pension funds, and that about RMB 200,000 remained (including pension funds of RMB 14,322.48), and submitted account records, judgments, and case payment receipts as evidence.

Song Moumou claimed that there was a joint deposit of RMB 250,000 under Lei Moumou's name and requested its division in accordance with the law. Lei Moumou did not acknowledge this. In the first-instance trial, she submitted the transaction details of her account ending in 4179 at the Industrial and Commercial Bank of China from January 26, 2014, showing that the balance of the account as of December 21, 2014 was RMB 262.37. During the second-instance trial, upon Song Moumou's application, the court retrieved the bank flow details of Lei Moumou's above-mentioned Industrial and Commercial Bank of China account since its opening on November 26, 2012, showing that, on April 30, 2013, Lei Moumou transferred RMB 195,000 from the account to a non-party named Lei Mouqi by ATM transfer and card withdrawal. Song Moumou believed that the deposit was the income from the rental of her pre-marital house and should belong to both parties jointly, and that Lei Moumou had transferred the jointly owned deposit of the spouses before the divorce. Lei Moumou stated that the deposit was the income earned from operating a restaurant; she first stated that the money had been used for joint household expenses, and later stated that it had been used to repay a loan to her niece, but Lei Moumou did not provide corresponding evidence to prove her assertions. In addition, Lei Moumou had agreed at trial that the deposits under each party's name would belong to each party, and that she would pay Song Moumou an additional RMB 100,000 deposit, but Lei Moumou later reneged and refused to pay.

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Judgment

On April 16, 2015, the Chaoyang District People's Court of Beijing rendered the civil judgment (2015) Chao Min Chu Zi No. 04854: The divorce of Lei Moumou and Song Moumou was granted; the deposit in the account ending in 4179 at the Industrial and Commercial Bank of China under Lei Moumou's name belonged to Lei Moumou, and the deposits in the accounts ending in 7101, 9389, and 1156 at the Postal Savings Bank of China under Song Moumou's name belonged to Song Moumou, and other property and debt issues were also handled. After the judgment was pronounced, Song Moumou appealed, raising requests such as the division of the deposit under Lei Moumou's name, which was jointly owned property of the spouses. On October 19, 2015, the Beijing Third Intermediate People's Court rendered the civil judgment (2015) San Zhong Min Zhong Zi No. 08205: The other items of the first-instance judgment were affirmed; the third item of the first-instance judgment was revoked; it was changed to: the deposit in the account ending in 4179 at the Industrial and Commercial Bank of China under Lei Moumou's name belonged to Lei Moumou, and the deposits in the accounts ending in 7101, 9389, and 1156 at the Postal Savings Bank of China under Song Moumou's name belonged to Song Moumou, and Lei Moumou should pay Song Moumou RMB 120,000 within seven days from the effective date of the judgment.

Reasoning

The effective judgment held: The marital relationship is based on the affection between spouses. Song Moumou and Lei Moumou developed conflicts over trivial matters in their common life, and after the court ruled not to grant divorce, the parties' relationship still did not improve. Upon mediation by the court, they could not reconcile, and the marital relationship between the two had indeed broken down; a judgment granting the divorce of the two should be rendered.

The focus of the dispute between the parties during the second instance was whether Lei Moumou had transferred jointly owned property of the spouses and how the deposits under the names of both spouses should be divided. Article 17, paragraph 2 of the Marriage Law of the People's Republic of China provides: "Spouses shall have equal rights to dispose of their jointly owned property." Article 47 provides: "Where, at the time of divorce, one party conceals, transfers, sells, or damages jointly owned property of the spouses, or fabricates debts in an attempt to encroach upon the other party's property, when dividing the jointly owned property of the spouses, the party that conceals, transfers, sells, or damages the jointly owned property of the spouses, or fabricates debts, may receive a smaller share or no share. After divorce, where the other party discovers the above acts, it may bring a lawsuit before the people's court to request another division of the jointly owned property of the spouses." That is to say, where one party, during divorce proceedings or before the divorce lawsuit, conceals, transfers, sells, or damages jointly owned property of the spouses, or fabricates debts in an attempt to encroach upon the other party's property, it infringes the spouses' equal right to dispose of jointly owned property, and when dividing the jointly owned property of the spouses upon divorce, that party should receive a smaller share or no share in accordance with Article 47 of the Marriage Law of the People's Republic of China.

In this case, regarding the division of the deposits under the names of the two parties, combined with the relevant evidence, the deposit converted from Song Moumou's pre-marital house demolition compensation should belong to Song Moumou personally, and the pension insurance funds obtained by Song Moumou after marriage should be jointly owned property of the spouses. The deposit in the account ending in 4179 at the Industrial and Commercial Bank of China under Lei Moumou's name was income during the period of the marital relationship and should be divided as jointly owned property of the spouses. On April 30, 2013, Lei Moumou transferred RMB 195,000 from the account ending in 4179 to a non-party by ATM transfer and card withdrawal. Lei Moumou first stated that the money was used for household expenses and later stated that it was used to repay external debts; her statements before and after were clearly contradictory, and she did not provide evidence to prove her assertions, nor could she give a reasonable explanation and description of the whereabouts of the money. Combined with the facts and relevant evidence of the case, it was

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determined that Lei Moumou had the circumstances of transferring and concealing jointly owned property of the spouses. According to the above legal provisions, with respect to the deposit in the account ending in 4179 at the Industrial and Commercial Bank of China under Lei Moumou's name, Lei Moumou could receive a smaller share. Song Moumou's claim for division of the deposit under Lei Moumou's name complied with the law and was supported. Therefore, it was adjudged that Song Moumou's post-marital pension insurance funds of RMB 14,322.48 belonged to Song Moumou, and for the RMB 195,000 deposit transferred by Lei Moumou, Lei Moumou should compensate Song Moumou RMB 120,000.

Relevant Legal Provisions

Article 47 of the Marriage Law of the People's Republic of China.

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