

Specific aspects of the right of succession

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Abstract:

Despite the stability of the institution of succession law, in practice, various disputes arise regarding inheritance and other issues that must be considered by the court. Most cases related to disputes between different heirs in the field of legal relations of succession will have the character of a lawsuit. This article will discuss this.

Keywords: court proceedings, succession, civil law, inheritance certificate, inheritance, dispute, parties.

Introduction

In practice, there are various disputes between the subjects of the right of succession regarding the scope and content of mutual rights and obligations. In particular, the persons claiming the inheritance cannot agree on the division of the inheritance property, formation of the circle of heirs (declaration of unfitness, non-inclusion of a person in the group of heirs, etc.), as well as disputes between the heirs regarding the nomination or appointment of the manager of the inheritance according to the will, a notary may refuse to approve a will or issue a certificate of inheritance, restore the term of acceptance of inheritance [1].

Materials and methods

Disputes and contradictions that arise in these cases will not apply to the field of notarial jurisdiction, because notaries and other persons have the authority to perform notarial actions in the absence of a material dispute between the participants of the legal relationship. Due to the existence of such a dispute, the notary shall not be entitled to perform the required notarial acts, and the

interested parties shall apply to the court with an appropriate claim to protect their rights and legal interests. In addition, in succession, there may be a need to determine a number of undisputed facts, as well as important situations that the law provides for determination only in court (for example, determining the fact of the death of a citizen, determining the degree of kinship or declaring that he is dead).

Results and discussion

In this case, T. Salomatova's point of view is of special interest [4]. According to his opinion, "inheritance claim" means a court hearing and decision based on the facts related to the transfer of property to a person who considers himself an heir due to mistake or other reasons, arising from disputes about the rights and objects that are part of the inheritance, according to the established procedural procedure is understood as the request submitted for. Based on this definition, the author proposes to divide these types of claims into four independent groups:

- disputes between heirs according to the law: on recognition as an heir, on dividing property, on dividing a share, on depriving the right of succession, on extending the period of acceptance of inheritance and other disputes;

- disputes between legal and testamentary heirs regarding the declaration of a will as invalid in whole or in part;

- disputes between heirs under a will or under different wills;

- disputes between heirs and the state. Noting that the state, in turn, can be the heir, T. Salomatova proposes to divide these disputes into a separate group, and as the basis of her opinion, she cites the existence of procedural features inherent in court consideration and resolution of cases involving the state.

Civil courts handle many types of civil cases related to inheritance. They can be classified as lawsuit cases, separate cases, and appeal cases.

According to the content of subjects, the cases considered in the dispute procedure can be divided into the following types:

- between the heirs according to the law (on dividing the inheritance, on recognizing the right to inheritance, on depriving the right of inheritance, on allocating a share of the inheritance);

- between the heirs according to the law and the heirs according to the will (disputes regarding the invalidation of the will, the mandatory allocation of a share of the inheritance);

- Between heirs under a will or between heirs under different wills (in particular, about invalidating a will made later, about finding an heir unworthy under a will, about dividing inherited property);

- Between the heirs and other persons according to the law (according to the demands of the creditors of the decedent, to claim the inherited property from someone else's illegal possession, to fulfill the obligation under the will, to fulfill the renunciation of inheritance).

As a rule, there are two ways to receive inheritance [3]:

- 1) submit an application for acceptance of inheritance or issuance of a certificate of inheritance right to the notary at the place of inheritance;

- 2) performing actions testifying to actual possession of the inheritance. The legislation lists such actions. In particular, the heir is considered to have accepted the inheritance if:

- comes into ownership or management of inherited property;

- if he takes measures to preserve the heritage property, to protect it from the aggression or claims of third parties;
- if he carries out the costs of maintaining the heritage property at his own expense;
- pays the debts of the testator from his own account or receives sums of money that the testator should receive from a third party.

It can be seen that in this case, only some common actions are listed, testifying that the heir actually received the inheritance. After all, it is not possible to provide a complete list of actions of the heir that testify to the fact that he has actually accepted the inheritance. In notarial practice, it is proved in different ways that the heir started to own or use the property in time.

Conclusion

The following procedural features are typical for hearing cases related to the determination of the fact of acceptance of inheritance. The application for determining the fact of acceptance of the inheritance must contain the following information:

- the state of actual acceptance of the inheritance: exactly which property was accepted by the heir, at what time and in what ways;
- the reasons for not being able to determine the alleged fact in a notarial procedure - lack of relevant written evidence;
- the relevant fact - the purposes of determining the receipt of the certificate of the right of succession;
- in the summary part of the application, the alleged legal fact, that is, by whom and after whose death the inheritance was actually accepted, should be clearly formulated.
- the relevant application is submitted to the court of the applicant's place of residence.

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