

## J. Y. Interpretation No.437 (October 17, 1997) \*

**ISSUE:** Is the Supreme Court precedent consistent with the Constitution in holding that a person who, without the right of inheritance, declares himself to be an heir and thereby exercises right to the estate may be considered to have infringed upon the right of inheritance only if there existed at the time of death of the decedent facts of encroachment upon the status of the true heir and that if an infringement upon the estate occurs after the beginning of inheritance, the injured party is not entitled to claim for restitution of inheritance under Article 1146 of the Civil Code?

**RELEVANT LAWS:**

Article 1146, 1147 and 1148 of the Civil Code (民法第一千一百四十六條、第一千一百四十七條、第一千一百四十八條); Supreme Court's Precedent T.T. 592 (Supreme Court, 1964) (最高法院五十三年台上字第五九二號判例) .

**KEYWORDS:**

inheritance (繼承), heir (繼承人), decedent (被繼承人), decedent's estate (被繼承人財產), estate of inheritance (繼承財產), right of inheritance (繼承權), claim for restitution of inheritance (繼承回復請求權), cause of inheritance (繼承原因), estate (遺產), right to the estate (遺產上權利).\*\*

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\* Translated by Raymond T. Chu.

\*\*Contents within frame, not part of the original text, are added for reference purpose only.

**HOLDING:** Inheritance begins with the death of the decedent. Unless it is otherwise provided in the Civil Code, an heir assumes at the moment the inheritance begins all rights and obligations pertaining to the decedent's estate without the necessity of making any manifestation of his intention to inherit, excluding those rights and obligations belonging exclusively to the decedent. Whether the right of inheritance has been encroached upon must be determined by the fact of whether or not there is, after the occurrence of the cause of inheritance, a challenge from another person to the heir's status as such, whereby the heir is deprived of the possession, management or disposal of the estate of inheritance. Insofar as a person with no right of inheritance who, at the time of or after the inheritance begins, declares himself to be a true heir or where a true heir objects to the right of inheritance of another co-heir, thereby preventing such co-heir from taking possession or exercising management and disposal of the estate, the act per se constitutes an infringement of the right of inheritance, and the injured party or his statutory agent

**解釋文：**繼承因被繼承人死亡而開始。繼承人自繼承開始時，除民法另有規定及專屬於被繼承人本身之權利義務外，承受被繼承人財產上之一切權利義務，無待繼承人為繼承之意思表示。繼承權是否被侵害，應以繼承人繼承原因發生後，有無被他人否認其繼承資格並排除其對繼承財產之占有、管理或處分為斷。凡無繼承權而於繼承開始時或繼承開始後僭稱為真正繼承人或真正繼承人否認其他共同繼承人之繼承權，並排除其占有、管理或處分者，均屬繼承權之侵害，被害人或其法定代理人得依民法第一千一百四十六條規定請求回復之，初不限於繼承開始時自命為繼承人而行使遺產上權利者，始為繼承權之侵害。最高法院五十年台上字第五九二號判例之本旨，係認自命為繼承人而行使遺產上權利之人，必須於被繼承人死亡時即已有侵害繼承地位事實之存在，方得謂為繼承權被侵害態樣之一；若於被繼承人死亡時，其繼承人間對於彼此為繼承人之身分並無爭議，迨事後始發生侵害遺產之事實，則其侵害者，為繼承人已取得之權利，而非侵害繼承權，自無民法第一千一百四十六條繼承回復請求權之適用。在此範圍內，該判例並未增加法律所無之限制，與憲

is entitled to claim restitution of inheritance under Article 1146 of the Civil Code. Thus, infringement of the right of inheritance is not limited to the situation where a self-declared heir exercises rights to the estate at the time the inheritance begins. The Supreme Court's Precedent T.T. 592 (Supreme Court, 1964) holds essentially that a person who declares himself to be an heir and thereby exercises right to the estate may be considered to have committed one of the types of infringement of the right of inheritance only if there existed at the time of death of the decedent facts of encroachment upon the status of the heir. If there was no dispute among the heirs over the status of each one as an heir at the time of death of the decedent, but thereafter an infringement upon the estate occurs, what is injured is the right already acquired by the heir rather than the right of inheritance. Accordingly, the provision of Article 1146 of the Civil Code with respect to claim for restitution of inheritance is inapplicable. To this extent, the Precedent in question has added no restriction not prescribed by law, and is thus not in conflict with the

法尚無牴觸。

Constitution.

**REASONING:** The purpose of the inheritance system is to protect the interest of heirs by enabling those with a specific personal relationship with the decedent to acquire the decedent's estate after the death of the decedent. It is explicitly provided in Articles 1147 and 1148 of the Civil Code that inheritance begins with the death of the decedent and that unless it is otherwise provided in the Civil Code, an heir assumes at the moment the inheritance begins all rights and obligations pertaining to the decedent's estate, excluding those rights and obligations belonging exclusively to the decedent. In the event of infringement of the right of inheritance, the heir is entitled to claim restitution under the law. To enable the heir to claim restitution in case of encroachment upon his right of inheritance, the Civil Code, by setting forth in Paragraph 1 of Article 1146 that "in the event of infringement of the right of inheritance, the injured party or his statutory agent is entitled to claim restitution," requires that the heir only needs to prove that he is a

**解釋理由書：**遺產繼承制度，旨在使與被繼承人具有特定身分關係之人，於被繼承人死亡之後，因身分而取得被繼承之財產，藉以保障繼承人之權利。繼承因被繼承人死亡而開始，繼承人自繼承開始後，除民法另有規定及專屬於被繼承人本身之權利義務外，承受被繼承人財產上之一切權利義務，民法第一千一百四十七條及第一千一百四十八條定有明文。繼承權如被侵害，應許繼承人依法請求回復之。我國民法為使繼承人於繼承權受侵害時，只須證明其係真正繼承人即得請求回復其繼承權而不必逐一證明其對繼承財產之真實權利，以及繼承權之回復應有一定之時效限制，乃設繼承回復請求權之制度，於民法第一千一百四十六條第一項規定：「繼承權被侵害者，被害人或其法定代理人得請求回復之」，第二項規定：「前項回復請求權，自知悉被侵害之時起，二年間不行使而消滅。自繼承開始時起逾十年者，亦同」，以有別於物上返還請求權。

true heir, without the necessity of proving one by one his actual rights to the estate of inheritance. Furthermore, to put a limitation of prescription on the claim for restitution of the right of inheritance, the Code provides in Paragraph 2 of the same Article that “such claim for restitution is extinguished if not exercised within two years from the date of discovering such infringement,” and that “the same rule applies where ten years has elapsed from the time the inheritance begins.” The provisions have thus created a system of claim for restitution of the right of inheritance distinguishable from the right of claim for return of things.

Whether the right of inheritance has been encroached upon must be determined by the fact of whether or not there is, after the occurrence of the cause of inheritance, a challenge from another person to the heir's status as such, whereby the heir is deprived of the possession, management or disposal of the estate of inheritance. Insofar as a person with no right of inheritance who, at the time of or after the inheritance begins, declares him-

繼承權是否受侵害，應以繼承人於繼承原因事實發生後，有無被他人否認其繼承資格並排除其對繼承財產之占有、管理或處分為斷。凡無繼承權而於繼承開始時或開始後僭稱為真正繼承人否認其他共同繼承人之繼承權，並排除其占有、管理或處分等情形，均屬繼承權之侵害，初不以於繼承開始時自命為繼承人而行使遺產上之權利者為限。蓋繼承回復請求權與個別物上返還請求權係屬真正繼承人分別獨立而併存之權

self to be a true heir and objects to the right of inheritance of another co-heir, thereby preventing such co-heir from taking possession or exercising management and disposal of the estate of inheritance, the act per se constitutes an infringement of the right of inheritance. It is not limited to the situation where a self-declared heir exercises rights to the estate at the time the inheritance begins. It should be noted that the right to claim restitution of the inheritance and the right to claim return of individual things are separate and independent, but concurrent, rights of the true heir. The Supreme Court's Precedent T.T. 592 (Supreme Court, 1964) holds: "The acquisition of a property right by reason of inheritance is based on operation of law. Once inheritance begins, all rights and obligations pertaining to the decedent's estate pass to the heir, without the need for the heir to make any manifestation of his intention to inherit. Hence, a person who declares himself to be an heir and thereby exercises right to the estate may be considered to have infringed upon the right of inheritance only if such facts existed at the time the inheritance began.

利。最高法院五十二年台上字第五九二號之判例認：「財產權因繼承而取得者，係基於法律之規定，繼承一經開始，被繼承人財產上一切權利義務，即為繼承人所承受，而毋須為繼承之意思表示，故自命為繼承人而行使遺產上權利之人，必須於繼承開始時，即已有此事實之存在，方得謂之繼承權被侵害。若於繼承開始後，始發生此事實，則其侵害者，為繼承人已取得之權利，而非侵害繼承權，自無民法第一千一百四十六條之適用」，旨在說明自命為繼承人而行使遺產上權利之人，必須於被繼承人死亡時即已有侵害繼承地位事實之存在，方得謂為繼承權被侵害態樣之一，若於被繼承人死亡時，其繼承人間對於彼此為繼承人之身分並無爭議，迨事後始發生侵害遺產之事實，則其侵害者，為繼承人已取得之權利，而非侵害繼承權，自無民法第一千一百四十六條繼承回復請求權之適用。在此範圍內，該判例並未增加法律所無之限制，與憲法尚無牴觸。

If the facts of infringement occurred after the inheritance began, what is injured is the right already acquired by the heir, in which case Article 1146 of the Civil Code is inapplicable.” In essence, the decision is meant to explain that a person who declares himself to be an heir and thereby exercises right to the estate may be considered to have committed one of the types of infringement of the right of inheritance only if there existed at the time of death of the decedent facts of encroachment upon the status of the heir. If there was no dispute among the heirs over the status of each one as an heir at the time of death of the decedent, but thereafter an infringement upon the estate occurs, what is injured is the right already acquired by the heir rather than the right of inheritance. Accordingly, the provision of Article 1146 of the Civil Code with respect to claim for restitution of inheritance is inapplicable. To this extent, the Precedent cited has added no restriction not prescribed by law, and is thus not in conflict with the Constitution.

Justice Tze-Chien Wang filed concurring opinion.

Justice Sen-Yen Sun filed dissenting opinion in part, in which Justice Chi-Nan Chen, Justice Huey-Ing Yang, Justice Vincent Sze and Justice Young-Mou Lin joined.

本號解釋王大法官澤鑑提出協同意見書；孫大法官森焱、陳大法官計男、楊大法官慧英、施大法官文森與林大法官永謀共同提出部分不同意見書。