

Conditional Dissolution of Marriage and Period of Limitation for Partition of Common Property: Cassation Decision

Description

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Introduction

This article summarizes the decision of the Federal Supreme Court Cassation Division decision regarding conditional dissolution of marriage and period of limitation for demanding partition of common property of spouses after divorce. The case has been between applicant Mrs. Almaz Leshe VS respondent Mr. Bekele Belachew on Vol.19 File No. 102662 on April 15/2008.

Regional First instance court

The case was first brought to Amhara Region Debre Berhan First Instance Court by the applicant. The issue first provided under the statement of claim of the applicant was that the applicant and respondent were married and lived together for 40 years but due to disagreements between them since 2006 E.C the applicant petitioned for a divorce and partition of common property.

The respondent on his statement of defense accepted the fact that they were married but he states that the applicant left the house and they were living separately since she left him 19 years ago and he objected by raising the period of limitation as preliminary objection and for the defence the respondent argued there are no common properties to be shared among them. Finally the regional First Instance Court after hearing both parties decided that the marriage was dissolved 10 years ago and closed the case citing period of limitation.

Appeal to the High Court and Application to Regional Cassation

The applicant appealed to the Semen Shewa Zone High Court opposing the decision of the First Instance Court. But the court did not accept the application. The case was also brought to the Regional Supreme Court Cassation Division. The Cassation bench also dismissed the case stating that there is no basic error of law.

Review by the Federal Supreme Court Cassation Bench

On application the Cassation framed an issue on the appropriateness of decision of lower courts that ordered marriage of applicant and respondent is dissolved conditionally. The Cassation first examines the lower court's decision. And the reasons of the lower court to conclude that the marriage of applicant and respondent dissolve conditionally were due to the fact that they were living separately since 1987 E.C. The high court also accepted this fact.

The Federal Cassation bench states that the First Instance Court bases its decision on Federal Supreme Court Cassation decision file no.31891 i.e. living separately for a long period of time will result on the dissolution of the marriage between spouses conditionally even though court didn't approve on this matter as it is also stipulated under Article 2(1) of Proclamation no.454/1997. There is also a binding decision of the Federal Supreme Court Cassation decision on file no. 679224 which states the fact that if obligations of cohabitation, support and assist each other are in place, merely physical separation of spouses does not dissolve the marriage.

The Cassation also examined the case in line with its former decisions on file no. 14290, 20983, 31891 and 67924. Applicant and respondent got married and have children but it is witnessed that they were living separately since 1987. Accordingly, the Cassation reasoned that according to Amhara Regional

Family Code Article 61 spouses owe each other respect, support and assistance during their marriage time. So this thing was not in place between the parties due to the space between them for a long period of time. So the Cassation concluded that marriage of applicant and respondent was dissolved conditionally since 1987. Regarding partition of common property, the Cassation stated that application for partition of common property should be closed by period of limitation as long as it is not brought within 10 years according to the relevant Cassation decisions mentioned above. Generally the Cassation concluded that there is no basic error of law.

Conclusion

The main idea of marriage is about cohabitation, respect, assisting and supporting each other. So spouses who live separately for a long time without the intention of getting back together and in the absence of the obligation to respect, support and assist each other the marriage is presumed to be dissolved conditionally. Regarding application for partition of common property it will be barred by a 10 years period of limitation.

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