

Flaws and Improvement of the Legal System for Forfeiture of Inheritance

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Received 26 April 2016; accepted 15 June 2016
Published online 26 June 2016

Abstract

The legal system of forfeiting the right of inheritance adheres to “the principle that no one shall profit from his illegal behavior”, based on the *Civil Law* theory. The forfeiture of the right of inheritance consists of absolute forfeiture and relative forfeiture. In China, although the *Inheritance Law* made the provisions of absolute forfeiture of the right, they are excessively rough and recapitulation. Meanwhile, the provision about relative forfeiture of the right was unduly narrow. Falling into the category of the private law, the legal system of inheritance law should be based on interested parties’ intention as well as the public adjudicators’ general standard. In order to maintain and stabilize the normal inheritance procedure and protect the legitimate rights and interests of those law-abiding parties, the future improvements of some major documents concerning the *Inheritance Law* is hereby advised to modify as, in terms of the restoration of the right of inheritance after its forfeiture, “confirmation from judicial process is after the application made by the decedents whose forgiveness shall be asked for.”

Key words: The system of forfeiting the right of inheritance; Privatautonomie; Flaws; *Civil Law Theory*; *Inheritance Law*

Long, Z. T., & Wei, J. G. (2016). Flaws and Improvement of the Legal System for Forfeiture of Inheritance. *Higher Education of Social Science*, 10(6), 26-30. Available from: URL: <http://www.cscanada.net/index.php/hess/article/view/8685> DOI: <http://dx.doi.org/10.3968/8685>

INTRODUCTION

The legal relationship of inheritance is so ubiquitous that everyone living in the real world is involved. The realization of inheritance is a process of implementation of a decedent’s declaration of intention as well as the fulfillment of a successor’s interests. Construction of the existing legal framework can be expressed by the inheritance law, namely, to guarantee the reasonable exertion of the right of inheritance, statute must be amended continuously. Therefore, social property can be inherited from generation to generation, profit distribution that successors obtain from decedents can be relatively equitable, and decedents’ declaration of intention can be fully demonstrated. This process is also a complete implementation process of the civil law principle—“make the best use of everything”. Researches have already been numerous concerning the enactment of the legal system of inheritance law in theory or the proper application of it in judicial practice. Further study on the system of forfeiting the right of inheritance will contribute to the realization of the principle—“public order and moral” in the field of inheritance and the social justice.

1. JURISPRUDENTIAL ANALYSIS TO THE SYSTEM OF FORFEITING THE RIGHT OF INHERITANCE

Inheritance is the result of continuous development of social civilization and the social progress. The arrival of the legal system of inheritance law is for the purpose of regulation to a wide variety of inheritance circumstances and promotion of positive inheritance of tangible and intangible cultural property. No matter judging from China’s ancient culture, or from Western

historical development trend and laws, inheritance is a peculiar product of human society. Therefore, as with other legal systems in the human society, inheritance law also has to abide by the general rules of human society. In other words, “inheritance law should reflect the needs of the whole society members, and solve the practical problems of the public.” (Zhang, 2006, pp.1-2) Therefore, as an essential part of the legal system of inheritance law, the legal system of forfeiting the right of inheritance should also have a profound social foundation and legal basis. The obtainment of the right of inheritance, for the interested parties, has a great influence on their maintenance of rights and interests, and for the society and the country, plays an indispensable role in promoting and facilitating a harmonious society and the socialist legal civilization. China is a country deeply ingrained in its traditional morality and culture. As a result, its social management and the overall situation of national governance are determined, to a great extent, by the ethical relationship with its people’s families. The harmonious and stable society order is the most essential premise and basis for the building of a country and society under the rule of law.

By collating relevant normative legal documents, it’s not difficult to find that the existing legal provisions and relevant judicial interpretation of the system of forfeiting the right of inheritance are mostly legislated in 1980s when China was at the beginning of reform and opening up. At that time, a relatively simple social life led to a weak desire for interests and rights. Even there was an inherited event with profound culture of family property, it could be easily completed with the help of traditional morality and family practices. There were relatively fewer disputes among successors, decedents and successors. Therefore, provisions about the legal system of inheritance law and forfeiting the right of inheritance of that time are excessively rough and recapitulative. This is not only due to the unnecessary of a detailed and comprehensive legal system of the law mentioned, but also to the lack of legal consciousness and civilization at that time.

Up to today, these provisions are not practical in judicial practice or in law application, and no longer adapt to the current situation—a strong desire for socialist legal civilization and a country under the rule of law. We are now entering a new era—the 21st century, a time of advanced economy and society. Various disputes surge as an increase in the number of private property of citizens as well as the rapid development of market economy, leading to a significantly raise of public rights awareness. However, the sense of responsibility based on traditional morality and culture has been being weakened. Under such circumstance, all kinds of social new problems and new contradictions have emerged

one after another and inheritance disputes are becoming increasingly complex, which are increasingly difficult to be judged in judicial practices. It has become impractical to inherit by the old fashion—relying on traditional morality and family practices. The traditional imperfect legal system has been out of date. It has become one of the themes in our modern times full of legal awareness that further amendment of some legal provisions is inevitable given the background of our national modernized and ruled by law.

Considering the background of the age, this paper mainly focuses on the deficiencies and improvement of the juridical practice in the system of forfeiting the right of inheritance and painstakingly analyzes and explores them so as to deliver a certain contribution to the improvement of the whole inheritance system. Based on the starting point of the research, the writer holds negative views on the assertion that “the existing inheritance law has embodied a sound performance”. To judge whether a system good or not and whether it is still available during its development, devotion in the exploration of social reality or the problems solved or still existent in the juridical practice only is not enough any longer. It becomes much more important to stress on whether this legal system still operates actively with the development of the times.

Since Chinese citizens are influenced by deep-rooted traditional morality and sensitive to the family ethics incidents excessively, the issue of inheritance would frequently resort to the ethical relationship rather than lawsuit. Although the propagation of traditional ethic culture functions as an important “social regulator”, many families have witnessed the inheritance “easy to discuss but hard to make decisions” or “accomplished but still influential” for lack of compulsive confirmation from courts and laws which has bred several social and family problems and tightened the relationship among family members. For instance, there still exists an old saying, “A married daughter-split water”, in many places in China. The married daughter, as a matter of fact, forced to forfeit the right of inheritance (Wang, 2009) is unable to participate in the judicial partition of inheritance indicating the promotion of the construction and improvement of the legal system of inheritance law have stared us in the face.

The analysis above brings up an explicit presentation about the significant impact of traditional ethics exerted on the system of forfeiting the right of inheritance and additionally family always functions as the basic cell constituting the organs of the whole society. A correct framework of the system of forfeiting the right of inheritance is of great importance to the construction of overall social ethical system. Therefore, proper design and further improvement of this legislative system step by step should be highlighted.

2. CLASSIFICATIONS OF THE FORFEITURE OF INHERITANCE

Categories of the forfeiture of inheritance may vary from different criteria. It can be classified into certain forfeiture and declaration forfeiture according to the circumstance whether the judicial confirmation procedures are required after the occurrence of the forfeiture condition. The certain forfeiture means to surrender the right of inheritance automatically and dispense with the judicial procedures. And the forfeiture of inheritance happens only after receiving the confirmation of judicial procedures in declaration forfeiture (Song, 2006, p.82). It can be classified into absolute forfeiture and relative forfeiture on the basis of whether the forfeiture of the inheritance can be restored. Absolute forfeiture represents the right of inheritance once derived from statutory circumstance will be forfeited forever and has no opportunity to regain. But relative forfeiture indicates after forfeiting the right of inheritance if reversibility exists indeed it is potential to restore the right. For example, the decedent expresses explicit consent to forgive the successor.

Nowadays our country has adopted eclecticism of combining the absolute forfeiture and relative forfeiture in the legislation. As the saying goes, case by case. Differential treatment shall not only avoid the overuse of absolute forfeiture but also the possibility of ignoring the social harms for overemphasizing the willingness of decedents excessively and weakening the authority of law generates negative influence on its social education functions. It is even possible that the so called “willingness to forgive” from decedents is an irrational reaction under certain pressures in that the inheritance belongs to inner behavior of the family and will not be inspected from outsides. As for the regulations of the forfeiture of inheritance, the existing legislative basis in China is the *Inheritance Law* passed by National People’s Congress in April 1985. Based on regulations in it, we can make an analysis of the specific situations about the forfeiture of inheritance.

2.1 Jurisprudential Analysis to “Murdering Decedents Intentionally”

Article 7 of the *Inheritance Law* stipulates those who “murdering decedents intentionally” shall shoulder the absolute forfeiture. And successors shall forfeit the right of inheritance if their murder is intentional, no matter whether it is completed or attempted and no matter what the motivation is. According to the regulations of the law, two conditions shall be fulfilled in order to meet the requirements of this regulation. One is that the successor is intended to murder the decedent no matter whether his intention is to fight for the bequests. As long as it is “intentional” murder, this condition is satisfied. The other is that the successor deprives the life of the decedent. Whether he acts or abstains from an act or whether the

offense is completed or attempted, he will forfeit the right of inheritance. It is noteworthy that the regulation of this law comprehensively combines specific national conditions with profound traditional legal culture. In the 1980s when the socialist legal system was just carried out, this regulation was conducive to praise virtue and punish vice while improving the social morality, carrying forward good socialist conduct and developing people’s sense of justice. It also played an important role in maintaining the stability of the social order. Nevertheless, it can be seen from the legislative clause at that time that the immature legislative theory was not that rigorous logically. Other countries usually subdivided the subjective intention and regarded “sentenced to punishment” as the necessity of the case when “murdering decedents intentionally” became the prominent statutory circumstance of forfeiture of the right of inheritance in their legislation. The current theory of criminal law suggests that juveniles or mental patients with no criminal capacity or lacking cognitive ability shall not be sentenced or punished. The nature of the behavior cannot be defined and they shall not be held criminally liable. Such decriminalization is in the exclusion clause of criminal law. The law of inheritance should supplement similar regulations like the exclusion clause which means juveniles with no criminal capacity and lacking cognitive ability shall not be easily or completely deprived of their rights of inheritance even though they murder the decedents “intentionally”. Otherwise, the society will be overburdened with orphans. In addition, orphans without property and care of families are unable to survive if they are deprived of the right of inheritance. As for mental patients, it is difficult to distinguish whether it is “intentional” or “fault” psychologically. From the theory of criminal law, they still have no criminal responsibility. Therefore, it should be distinguished from the logic of legislation design. To be sure, in the juridical practice whether the intermittent mental patients commit a crime in the normal mental state or not shall be prudently distinguished.

2.2 Jurisprudential Analysis of “Murdering Other Successors for Bequests”

The current *Inheritance Law* specifies “successors who fight for bequests and murder other successors will forfeit the right of inheritance” aimed at cracking down doggeries in the disputes over bequests by means of legislation intervention so as to safeguard the traditional culture of the inheritance law in China and also protect favorable folk tradition and customs left by our ancestors from being damaged. The reasons and purposes may be various for a successor of murdering another successor in reality. So it is inadvisable to define murdering other successors as forfeiture of inheritance regardless of what the reason is, or new unfairness and hypercorrection will come into being. However, definition of “murdering other successors” for “disputes over bequests” still lacks

in relevant technical requirements or refined judicial explanation for this provision. To grasp whether the successors are meant to murder other successors for “disputes over bequests” in the judicial practice maybe uneasy and give rise to possibility of definition difficulty and even false definition.

2.3 Jurisprudential Analysis to the Forfeiture of the Right of the Inheritance by “Abandoning or Maltreating Decedents”

The Inheritance Law of China attributes abandoning or maltreating decedents to a “severe case”. It is meant to subdivide punishment on successors who have forfeited the right of inheritance and achieve the aim of “curing the sickness to save the patients”. Such legislation is conducive to promote family harmony and save those offenders while improving the formation of a good social environment. It is for certain that if the successors repent and are forgiven by decedents before death the right of inheritance on the basis of relevant regulations of current judicial explanation gains access to be restored. So the forfeiture of right of inheritance in such a circumstance belongs to relative forfeiture.

3. DISPUTES ON THE SYSTEM OF RESTORING THE RIGHT OF INHERITANCE

The acquirement of the right of inheritance again for successors who have forfeited it is quite different in the world. Some insist successors eager to regain the right of inheritance must satisfy the following requirements. One is the successor must deliver explicit attitude toward repentance and take specific behavior expression. The other is the decedent must have affirmative disclosure of forgiveness before death and subscribe to restore the successor’s right of inheritance. *The Swiss Civil Code* points out that it is feasible if the decedent provides unilateral consent (the right of inheritance forfeited by successors can be restored only if the decedent is forgiven) (Guo, 2008, p.64) . But in Japan and France, restoration of the right of inheritance becomes impossible once forfeited. That is to say the subjective opinion of the decedent is not the legal requirement to restore the right of inheritance. Decedents who adhere to leave the bequests to the successor can but bequeath or donation inter vivos (Liu, 1990, p.160) .

3.1 The Restoration of the Right of Inheritance in “Successors Murdering Decedents Intentionally”

“Murdering decedents intentionally” cannot be forgiven absolutely in the existing *Inheritance Law* of our country since it is outrageous in our traditional culture and significantly damages the long-term good folk morals and custom in China. Moreover, intentional murder is counted as sort of serious crime. Permission of the

successor to restore the right of inheritance may let alone the criminal behaviors and contribute to more offenses. Sever punishment of this kind of “monstrous crime” on criminals is hard to carry out which is unfavorable to establish a good social morality (Guo, 2008, p.64). Some scholars propose absolute forfeiture of the right of inheritance only happens when successors murder the decedents intentionally. It is rather serious to define all losses into absolute forfeiture. So the relative forfeiture is put forward to embody the principle “autonomy of will” of *Inheritance Law* as the private law. In terms of relative forfeiture, of course, scholars propose “judicial confirmation” should be added after “the successor is truly guilty and forgiven by the decedent actively.

3.2 “Repentance” and “Forgiveness” Arranged Together Or Not

The Inheritance Law stipulates “repentance” of successors and “forgiveness” of decedents arranged together turn into two premises of restoring the right of inheritance. Some hold the view that the two conditions are not necessary in the legislation. The repentance of successors has become a necessity for decedents to ponder whether to forgive or not before death. Successors unregenerate for their behaviors are unable to receive forgiveness from decedents (Liu, 1990, pp.148-149).

Although it makes sense in logic hardship actually may also exist. A conclusion from the analysis above has been deduced “judicial confirmation” should be implemented before the conduct of restoration of the right of the inheritance based on forgiveness in the strict judicial practice. As for the old over sixties or ill abed for many years, judiciary finds it hard to tell whether the “forgiveness” is subjective and carry through the authentication procedures like other evidences. Concrete behaviors of successors to be evaluated for identifying the sincerity of repentance are arranged in the judicial affirmation. The principle of “autonomy of will” in the private law calls for certain limitation to ensure a good public order and folk custom.

4. SUGGESTIONS ON LEGISLATION AMENDMENT

In the era of fully promoting rule of law and proposing the civilization of ruling by law while respecting and inheriting the legal culture, our inheritance system should not only attend to decedents’ will but also actively play a vital role in promoting the civilization construction of ruling by law in the whole society. Avoidance of producing negative influence and damage to the development of moral civilization and legal construction should be attentive enough. Following amendments are proposed for a better improvement hereby

Firstly, “a serious act” in the regulation “a serious act of forging, tampering with or destroying the will” shall be deleted in the *Inheritance Law* (Wang, 2009). Therefore, socialist culture and ethics will be improved with reflection of the fairness and justice and honesty and credibility of the whole society.

Secondly, when referring the regulation “if successors forfeit the right of inheritance, their direct lineal descendants cannot inherit in subrogation in the *Inheritance Law*”, an amendment is suggested that “if successors forfeit the right of inheritance, their direct lineal descendants can inherit in subrogation”. The proposal is come up with not just because many other countries also have practiced it. Subrogating succession of their direct lineal descendants will not be ruled out for successors without the right of inheritance beset with statutory circumstances. Successors forfeiting the right of inheritance may be trapped in financial difficulties which probably impose a negative impact on the living quality of subrogation successors. Even their lives and survival are unable to be guaranteed basically and social instability

may emerge. And if the subrogation successors are juveniles, it shall be unfavorable for their healthy growth under a serious material environment.

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