

The contradiction and integration research between the existing law and the new period marital disputes settlement in countryside

——From the perspective of housing ownership in divorce cases

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Abstract: The existing law has made relevant provisions on the identification and division of marital property in divorce cases. However, the disparity between urban and rural areas is still evident in today's society. The rural areas are different from cities determined by the real conditions and living backgrounds. It is difficult to find a clear legal basis for divorce cases involving property division in rural areas, especially for the housing ownership in rural, which reflects the contradiction between the existing law and the settlement of rural marriage disputes in the new period. Based on the investigation and analysis of the handling of rural divorce cases in a grass-roots people's court in Jiujiang City in the past three years, this paper selected typical divorce cases involving the housing ownership. And through case analysis, it pointed out the disputes about the application of law, and then presented difficult problems in the rural grass-roots judicial practice.

1. Introduction

Nowadays, in rural divorce cases, after the couple had broken up, the problem of identification and division of marital property was following. The Marriage Law of the People's Republic of China has a disparity with the actual life in rural areas. Even if with the assistance of relevant judicial interpretations, it is still difficult to operate in practice. Obviously, The common property of the couple includes movable property and real property. As for real property, the most difficult problem is the identification and division of housing ownership. According to the collation and statistics of the rural divorce cases in a grass-roots people's court in recent three years, the houses involved in the divorce cases are mainly divided into three categories: Homestead housing, temporary dwellings and commercial housing. This paper chooses the most representative cases of housing ownership determination and division of typical divorce cases, through the feedback of front-line judges, combined with theoretical thinking, attempts to present the difficulties encountered by rural grass-roots courts in dealing with such cases, in order to arouse the attention of the theoretical and practical circles, jointly study and seek breakthroughs, and thus put forward and then improve the efficiency and fairness of divorce cases in rural areas.

2. Definition of Homestead Housing Ownership

Homestead refers to the collective construction land acquired by farmers according to law for the construction of residential buildings and their living ancillary facilities. The legal regulation of homestead in China is found in the Constitution, Land Management Law, Property Law and other relevant laws. According to the law of our country, the ownership and use right of homestead are separated. The ownership of homestead belongs to the collective, and the main range of the use right is limited to the farmers in the collective economic organization. According to Article 152 of the Property Law stipulates, the right to the use of homestead only has the right to occupy and use the land for the construction of housing and its ancillary facilities. It can be seen that the ownership of the houses built by farmers on their homestead, namely, the homestead houses, belongs to the farmers. At the same time, according to the relevant provisions of the Marriage Law of the People's

Republic of China, the property acquired during the period of marital relationship belongs to both spouses. If the house is built during the period of marital relationship, then the house belongs to the joint property of the couple. When they divorce, the property should be divided. The key is that the homestead housing has its own particularity. The right to use homestead is separated from ownership. It is easy for both husband and wife to reach an agreement. But if both husband and wife advocate or do not advocate the ownership of the house, how to deal with it is not clearly stipulated by law. In practice, it is often difficult to judge.

3. The existing law of Identification and division of homestead housing ownership

Case: Mrs. Gao and her husband Mr. Zhu were married in 2000. After the marriage, they had a son and a daughter. Now they are suing for divorce because of emotional discord. In the trial, the court found that the main common property of the two parties is a rural house built by the two sides during the marriage. Now both of them do not claim ownership of the house. How to deal with the house in this case?

There are no special provisions on the identification and division of housing ownership of homestead housing. In practice, the identification of the ownership of homestead housing lacks legal support and related system guarantee, while the division of homestead housing is based on Article 20 of the Supreme People's Court's Interpretation of Several Questions Concerning the Application of the Marriage Law of the People's Republic of China (2). When the two parties fail to reach an agreement on the value and ownership of the house in the marital property, the People's Court shall deal with the following cases separately:

(1) If both parties claim the ownership of the house and agree to obtain it through competitive bidding, it shall be permitted. (2) If one party advocates the ownership of the house, the evaluation institution shall evaluate the house according to the market price, and the party who obtains the ownership of the house shall compensate the other party accordingly. (3) If neither party advocates the ownership of the house, the house shall be auctioned according to the application of the parties, and the proceeds shall be divided. Thus, in this case, it seems that according to the application of the parties, the house can be auctioned and the proceeds can be divided. In addition, according to Article 13 of the Supreme Court's "Some Specific Opinions on Property Separation in Divorce Cases Handled by the People's Court", it is stipulated that "For the houses shared by husband and wife that are not suitable for divorce, they shall be allocated to one party in accordance with the housing conditions of both parties and the principles of caring for and bringing up children or the party without fault. The other party shall be compensated for half the value of the house. If the conditions of both sides are equal, the woman should be taken care of." For that reason, if it is not appropriate to deal with the joint housing of husband and wife by auction discount, then, according to the property division principle of "taking care of the rights and interests of the woman", the woman does not claim the ownership of the house, and the judge directly orders the house to be owned by the man, the man compensates the woman for the corresponding housing price.

4. Disputes on the Application of Law to the Identification and division of Housing Ownership in Homestead

In this case, homestead housing has its particularity, and "the land follows the house, the house follows the land, and the house integrates with the land" is a basic principle for the transfer of land and its attached houses. The transfer of rural homestead housing inevitably involves the transfer of the right to use rural homestead, while the right to use homestead involves related matters of administrative examination and approval. Articles 62 and 63 of the Land Management Law stipulate that homestead is exclusively enjoyed by rural villagers in China. It can only be obtained after the application of villagers and the administrative approval of relevant departments. In principle, a household can only own one homestead. If the homestead is transferred, it can not be re-applied for acquisition, and it is strictly forbidden to transfer or lease the homestead for non-agricultural construction. Besides, the application of Supreme People's Court's Interpretation on Several

Questions Concerning the Application of Marriage Law of the People's Republic of China (2) should be based on the premise that houses have complete property rights and can be freely and conveniently circulated and traded in the market. Rural homestead houses are not allowed to be transferred to urban residents without corresponding property rights certificates and relevant laws and regulations. The possibility of such houses transferring to urban residents is very small. It is difficult to deal with the houses as soon as possible, and even depreciate the old and idle houses for a long time, which is not conducive to protecting the property rights and interests of the couple involved in divorce. In the Supreme Court's "Several Specific Opinions on Property Separation in People's Court Trial of Divorce Cases", the principle of "taking care of women" is that housing belongs to the man and compensation is given to the woman. If this provision is applied, the man's economic condition is worse, or he claims that his economic condition is worse, the woman will not be able to get the so-called compensation. To put it further, if she can get compensation, how to identify the standard of the amount? whether the corresponding evaluation agencies can make a reasonable evaluation of the restricted homestead housing in the market? The property rights and interests of the women can not be effectively guaranteed. Therefore, in view of the problem of the division of housing in the common property of husband and wife, it is unreasonable to apply the current law to the division of housing in the common property of husband and wife, because homestead housing is different from commercial housing or other real estate which circulates freely in the market. However, there is no uniform regulation on whether the housing built during the marriage relationship is the joint property of the couple, that is, as for the identification of the ownership of the housing, we still can't reach in agreement.

5. Problems in the Judicial Practice of the Identification and Separation of Homestead Housing Ownership

In rural divorce cases, the housing division of homestead will also involve the distinction of family property and marital property. It can be said that this is the ownership of homestead housing. Only by accurately identifying ownership, the next property division can be carried out. In other words, in practice, the determination of the ownership of homestead housing is directly related to the legitimacy of property division in divorce cases. For example, in the above-mentioned divorce case, if the woman claims to be the joint property of the husband and wife, she requires equal division of the ownership of the house or the equal division of the price of the house, while the man thinks that the house built during the marriage between the two parties has the investment of their parents and brothers. The house was built on the basis of the income of the whole family. If there is sufficient evidence, the house is not the joint property of the husband and wife, but the joint property of the family. The woman is only one of the owners and can only share a small part of it. Besides, in rural areas, women mostly have no stable income, live with their male family members, undertake different tasks, create wealth together, and family income is difficult to distinguish accurately. If in the above-mentioned case, the man proves that the house he built is funded by himself, while the woman does not have capital investment, then it will be difficult to define it because whether the house built during this period is joint property of husband and wife. But Marriage Law of the People's Republic of China does not clearly stipulate this, nor does the relevant judicial interpretation explain it. So, during the period of marriage, the houses built by the husband and wife on the homestead are the joint property of the husband and wife or the joint property of the family. The author believes that we can't do everything in one way, we need legal regulation and consideration in many situations and allocate the burden of proof.

It can be said that rural homestead housing is different from general real estate. It has no corresponding property rights certificate and lacks of relevant supporting measures, which makes it difficult to identify the ownership of homestead housing. According to a divorce case handled by a grass-roots people's court and the local police court, the majority of the evidence provided by the parties is witness testimony of the village committee, house photos and certification of the land department on the right to the use of residential land, which can not prove the ownership of residential land housing. One of the reasons for this phenomenon is the imperfect administrative

system.

The Marriage Law and its interpretation only stipulate that "the property acquired during the marriage relationship is the common property of husband and wife". However, the particularity of homestead housing makes it difficult to simply apply this provision. However, the registration system of homestead housing is still imperfect. Although some places have started to establish a registration system to verify and register the information of residential housing area and owner, it is difficult to register carefully and accurately because of the large radiation area and complicated affairs.

At the same time, for the verification and registration of homestead housing, it is not clear which administrative organ should be responsible for, what documents should be issued, the legal effect of its decisions and whether it has credibility, all kinds of problems restrict the identification of ownership of homestead housing and the division of housing to a certain extent. Therefore, in specific divorce cases, because the law does not clearly stipulate, the registration information system is not perfect, the administrative organs make the determination either without legal basis, or with low legal effect, judges often can not accept evidence alone.

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