

Analysis of the community property regime in inheritance cases

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Abstract. The community property regime holds a significant position within the realm of marriage and family law, particularly the stipulation that property inherited by one spouse from a decedent is considered community property, which has considerable practical implications. However, it is crucial to acknowledge that in practice, this provision often contravenes the wishes of the decedent, impacts the protection of inheritors' rights, and may lead to moral crises. This paper provides a detailed analysis of the attribution of inherited assets during the subsistence of the matrimonial relationship. It offers suggestions for refining the relevant provisions regarding the attribution of inherited property within the community property regime, aiming to better balance the interests of all parties involved and meet the diverse needs of contemporary society.

Keywords: The concept of community property; The concept of separate property; Inheritance; Protection of rights.

1. The Concept of Community Property

1.1. Concept

Article 1062 of the Civil Code of the People's Republic of China stipulates that property acquired by one party during the marriage through inheritance or donation is considered community property. However, Article 1063 sets a limitation, stating that "separate property determined to belong to only one party in the will or gift contract". This provision protects to a certain extent the intentions of the decedent or donor.

1.2. Rationality of the Concept of Community Property

1.2.1. Conformity with the Concept of a Matrimonial Community

Marriage represents a deep union of economic and emotional bonds. Both spouses contribute to the family during the marriage, including household labor, financial support, and emotional companionship. Integrating the property inherited by one spouse into the community property helps to strengthen the family's economic foundation, allowing both spouses to enjoy the benefits of the property and ensuring the overall quality of life and economic stability of the family. Moreover, it fosters a family culture and legal expectation of mutual trust, support, and shared benefits among the spouses.

1.2.2. Protecting the Rights of the Non-Inheriting Spouse

The relationship between the heir and the deceased's inheritance is closely linked to their spouse. During the decedent's lifetime, the heir had a statutory duty to provide for the decedent, and typically, in reality, this responsibility was often shared with their spouse as part of the matrimonial community. In practice, it is not uncommon for the spouse to devote more time and effort to caring for the decedent than the heir themselves. The current legislation of the Law of Succession of the People's Republic of China aims to encourage family members to support the elderly. Recognizing the inherited assets as personal property of one spouse could undermine this intent, creating a conflict with the legislative goal of the Law of Succession of the People's Republic of China, which is to strengthen the familial support through the transfer of property [1].

Moreover, in practical terms, the heir's spouse may have made greater contributions to family matters and child-rearing. Considering the inheritance as community property to some extent compensates

the spouse for their sacrifices within the family. This approach ensures the protection of the spouse's legitimate rights and interests within the marriage.

1.2.3. Adhering to the Logic of Community Property Acquired During Marriage

Incorporating inheritance into community property aligns with the statutory community property regime in China, which adopts the system of community property acquired during the marriage. Properties acquired through inheritance or as gifts, when obtained during the marriage and not explicitly excluded from shared ownership, should be considered part of the community property. This inclusion is consistent with the intrinsic logic and legislative spirit of the post-community property system, maintaining consistency and coherence in the community property regime.

1.2.4. Priority of Testamentary Succession

The Civil Code of the People's Republic of China also stipulates that properties designated to one party only, either through a will or a gift contract, are to be considered the personal property of that spouse. This provision respects the decedent's freedom of will and personal wishes, serving as an effective supplement to the previous provisions, ensuring proper disposition of separate property.

However, including inheritance as part of community property still has its disadvantages.

2. The Concept of Separate property

2.1. Disadvantages of the Concept of Community Property

2.1.1. Conflict with the Law of Succession of the People's Republic of China

Article 1123 of the Civil Code of the People's Republic of China sets out the rules of inheritance order: the handling of inheritance initially follows any existing maintenance agreements made through bequests. In the absence of such agreements, testamentary succession or gifts are applied, and if these do not exist, statutory inheritance procedures are initiated. The prerequisites for statutory inheritance include: no valid will established by the decedent, no legal maintenance agreement signed, and existing agreements or wills deemed invalid. Under these conditions, inheritance distribution strictly follows the legal presets regarding the range, order, and shares of heirs [2]. The Civil Code of the People's Republic of China explicitly states that sons-in-law and daughters-in-law only have inheritance rights if they continue to primarily support their in-laws after their spouse's death, making them first-order heirs. This means that inheritance by sons-in-law and daughters-in-law is conditionally restricted, essentially an exception to the rule where they otherwise would have no right to inherit [3]. The spouse of an heir is not included within the category of statutory heirs. Therefore, automatically incorporating the inheritance into the community property essentially extends the scope of statutory heirs to include the spouse. This fundamentally contravenes the principles of the Law of Succession of the People's Republic of China.

2.1.2. Inducing a Moral Crisis

In real life, there are individuals who, driven by greed for another's property, deceive their partners under the guise of marriage to acquire both present and future inheritable assets. Once they successfully convert these assets into community property, they use divorce as a pretext to split what should rightfully belong to the individual. If such actions remain unchecked over time, they not only foster negative social behaviors leading to a moral decline, but also adversely affect social harmony and stability.

At the same time, in some cases, one spouse may frequently inherit family assets while the other does not, leading to an imbalance in property distribution if all inherited assets are considered community property.

2.1.3. Loss of Historical Foundation

Historically, Chinese society adhered to the tradition where sons carried on family lineage, and daughters moved into their husband's home, with sons inheriting the family wealth. At that time, inheritance was limited to males, and incorporating inheritance into community property served as effective protection for women's rights. However, as times have evolved and the notion of gender equality has become mainstream, particularly under the one-child policy where both sons and daughters equally inherit, the rationale for integrating inheritance into community property has significantly weakened, diminishing its role in safeguarding rights.

2.1.4. Limitations in Prioritizing Testamentary Inheritance

On one hand, the general populace lacks extensive legal knowledge and awareness, often resulting in the absence of a will. Furthermore, numerous unforeseen events in life can prevent one from drafting a will in time, thus limiting the effectiveness of prioritizing testamentary inheritance.

On the other hand, the authenticity of wills is frequently questioned. In reality, some wills may be drafted under the influence of others when the testator is not of sound mind. Additionally, there are instances of forged wills, such as those created by imitating the testator's handwriting or signature.

2.2. The Concept of Separate Property in Foreign Legislation

Article 198 of the Swiss Civil Code stipulates that statutory personal property includes property acquired through inheritance or other gratuitous means after the commencement of the community property regime [4]. This provision classifies property inherited by one spouse as their separate property.

In the UK, the system separates community property, where property does not automatically become jointly owned upon marriage. There are only two forms of joint ownership, which must be registered to be recognized, and property registered in one spouse's name remains their separate property.

Article 1405 of the German Civil Code provides that property acquired by each spouse during the marriage through inheritance, gifts, or bequests remains their separate property. When property is gifted or bequeathed jointly to the couple, it becomes part of the community property [5].

3. Improvement of Community Property System in Inheritance

3.1. Separate Property as the Norm, Common Property as the Exception

Through the comparison of the concepts of community property and separate property, and considering the common disputes in real life, it is suggested that inheritance should be considered as separate property of the spouse. The legislative approach could draw from the German law, which stipulates that property acquired through inheritance or donation during the marriage belongs individually to the recipient spouse, while property designated in wills or donation contracts for joint inheritance or donation to both spouses becomes their common property. This provision not only protects the rights of the inheritor and respects the true intentions of the deceased but also safeguards the rights of the spouse through agreements.

The basis for considering inherited property as separate property is grounded in reality.

The rise of economic development and gender equality has made individual independence a significant characteristic of modern society. Employment has replaced family as the primary economic source. Women's financial and educational independence has strengthened, making it feasible to maintain financial and personal independence after marriage. Against this backdrop, a legislative shift toward individual-centric community property laws is inevitable.

3.2. The Relevance of Adopting Germany's Gain Sharing System

When implementing a system of individual ownership by spouses, Germany's gain sharing system can serve as a model to protect the legal rights of the heirs and their spouses.

First, improve the compensation mechanism. In Germany, when a marriage is dissolved, the property distribution is balanced by increasing the inheritance share of the spouse who gained less or by granting them a claim for compensation under obligation law. China could adopt this compensation mechanism in inheritance matters, providing suitable compensation to a spouse who might have been economically disadvantaged during the marriage but made significant contributions to the family.

Second, prevent the concealment and squandering of assets. Under Germany's gain-sharing system, although each spouse has individual ownership of their property, certain significant transactions require the consent of the other spouse. This effectively prevents one party from concealing or squandering assets in the event of marital dissolution. In China, when implementing individual ownership of marital property in inheritance, it could be stipulated that the use of large inherited assets by one spouse requires the written consent of the other, or for transactions involving significant assets like real estate, both spouses must be present to handle the necessary procedures together, thus better protecting the interests of the spouse.

Third, ensure the spouse's right to information. Drawing from the German system, China could strengthen a spouse's right to information within a community property regime. It should be stipulated that both spouses have the right to know about each other's financial status, including income, assets, and liabilities.

Fourth, protect the rights of non-working spouses. Under Germany's gain sharing system, the labor value of homemakers is recognized, and they are provided with corresponding property rights upon the dissolution of marriage. China should also place greater emphasis on the contributions and efforts of non-working spouses within a marriage. More consideration should be given to the non-working spouse's contributions during the divorce and the distribution of community property.

3.3. Improvements on the Existing Community Property System in Inheritance

To prevent one spouse from coveting the other's inherited property, potentially leading to adverse effects, and to protect the legal rights of the inheritor as well as genuinely safeguard the interests of the spouse and maintain family harmony, it is necessary to refine the current system of community property in inheritance. The author believes that the key to improvement lies in the strict regulation and limitation of wills.

First, establish a systematic will review and confirmation mechanism. It is crucial to strengthen the judicial safeguard function of the notarization process. Although the current Notarization law of the People's Republic of China and supporting regulations have established a basic institutional framework, there are still regulatory gaps in practice. It is suggested that on the basis of existing standards for notarized wills, a three-tier review system should be established: initially, a formal requirements check at the acceptance stage; subsequently, a substantive content verification during the notarization process; and finally, a regular review mechanism post-registration. Specifically, the "Operational Guidelines for Will Notarization" should detail 23 procedural standards, including witness eligibility review, authenticity of intent determination, and will text standardization, especially clarifying technical requirements for video notarization. Additionally, establish the principle of preferential effect for notarial deeds. It is recommended to include special provisions in the judicial interpretation of the inheritance section of the Civil Code of the People's Republic of China, stipulating that notarized wills have priority in terms of evidentiary and execution effect. In cases where multiple wills exist, notarized wills should be given precedence unless there are legally valid reasons for invalidity. Also, establish a conversion mechanism for flawed notarized wills, where notarized wills with formal defects but substantive authenticity can be transformed into valid testamentary documents through additional witnessing or judicial confirmation procedures.

Second, enhance the full monitoring system for will witnessing. Firstly, establish a negative list for witness eligibility review. It is recommended that the judicial interpretation of the inheritance code specify five categories of individuals who are prohibited from serving as witnesses: 1. Direct blood relatives of the inheritor and collateral relatives within three generations; 2. Creditors or debtors of the legatee; 3. Co-owners of the property involved in the will; 4. Notary office staff who have a direct interest in the contents of the will; 5. Individuals without full civil capacity. Simultaneously, establish a public system for witness eligibility, requiring witnesses to disclose their social networks in the will document.

Additionally, standardize the temporal and spatial elements of witnessing behavior. Legislation should clarify the legal connotation of a "witness present" which includes: 1. The requirement of physical presence continuity, meaning participation throughout the entire process from the testator's expression of intent to the signing of the will; 2. The substantive requirement of cognitive presence, ensuring that witnesses fully understand the content of the will; 3. The synchronicity requirement of time presence, prohibiting segmented witnessing or retrospective acknowledgment. For remote video witnessing, use should be restricted to notarization platforms certified by the Ministry of Justice, with a dual backup evidence preservation system implemented.

Lastly, establish a traceability mechanism for the witnessing process. The Ministry of Justice should develop a unified "Guidelines for Will Witnessing", requiring witnesses to create a record that includes the following elements: 1. An assessment record of the testator's mental state; 2. A chronological record of the will's formation process; 3. A confirmation record of key clauses; 4. Notes on any irregular circumstances. This record must be signed and confirmed by the testator, witness, and notary, and permanently preserved as an annex to the will.

Third, establish a composite review standard for the validity of wills. It is recommended that the Supreme People's Court establish a "formal review + substantive judgment" dual review standard in its guiding cases: on one hand, strictly scrutinizing the statutory formal requirements of the will, and on the other hand, focusing on the true intent of the testator. Wills that have formal flaws but are substantiated by handwriting analysis, video records, or other evidence, should be granted conditional legal validity. Additionally, establish a national will registration and query system to ensure interconnectivity of will information nationwide, preventing inheritance disputes caused by "drawer wills".

4. Conclusion

The community property system within inheritance is an extremely crucial component of the matrimonial and family law system. It profoundly influences the stability of family relationships, the circulation of social wealth, and the manifestation of the principles of fairness and justice within the family domain. This paper has conducted a detailed analysis of the issue of inheritance ownership during the subsistence of matrimonial relations and has put forward suggestions for improvement. The author believes that the individual ownership system by spouses in inheritance is more appropriate, as it better protects the interests of both spouses and aligns with the demands of contemporary development.

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