

ROMANIA
COURT OF THE DISTRICT 1 BUCHAREST

Civil judgment N° 11501
Public hearing of Jun 14, 2011
The Court is composed of
President Cristina Nicoleta Ghita
Clerk Adriana Covlea

The case of the Civil law suit regarding the complainant Bazgan Sorin, complainant Bazgan Sorin, the complainant Bazgan Angela and the defender Bazgan Ion, having the object of cancellation of the heir certificate.

The debates have taken place in the public hearing of 7.06.2011 being recorded in the concluding-report of this date, which is fully contained by this document, and when the court postponed the sentence for the date of today, June 14, 2011, when the court deliberated and decided as follows :

THE COURT

By the citation registered to the court of the District 1 of Bucharest on August 11, 2009 under the n° 26030/299/2009, the complaint Sorin BAZGAN requested in contradiction with BASGAN I. Ion :

- the reactivation regarding the debate of the inheritance remained from BAZGAN ION ;
- the cancellation of the heir certificate n° 1/06.01.21998 issued in the file n° 1/1998 of BNP Gaspar Gabriela and of the heir certificate n° 9/25.03.2009 additional, issued by BNP Nedelcu and associates in the file n° 10/2009, the ascertainment of the plaintiff as heir of his father BAZGAN ION, and the statement of the inheritance and of the legal quotes, together with the legal expenses.

In the justification he explained that on December 15, 1980 deceased his father, with his last domicile in Bucharest, Str. Argentina n° 25, District, living there together with his wife and with the plaintiff. He specified that the building mentioned in the heir certificate as last domicile of the deceased, known as Bd. Magheru, District 1, was destroyed because of the earthquake of 1997.

He specified that he made deeds of "express and tacit" acceptance of the inheritance, consisting of the fact that he took care together with his Mother and the defendant of the funeral, that he lived together with his Mother in the same building until 1996 when he left the country ; he took all the mobile goods, the Patents, the diaries, the personal notices of the deceased, the photos etc.

He specified that until July 2009 he had not any knowledge regarding any heir certificate that could remain after his Father.

He required to be done the diligences of the inheritance procedure to the other two children from a previous marriage of his Father, Basgan Ion and Basgan Constantin.

Because Basgan Ion residing all this period in Romania, refused to supply the necessary documents to the inheritance debate, he requested that to the Chamber of Public Notary of Bucharest and so he find out by the communication n° C5995 of 15.07.2009 that the inheritance procedure regarding Ion BAZGAN was already registered.

He specified that neither him nor his brother Constantin did not renounce to the inheritance and that the defender false declared that there are no other heirs although he knew the existence of his brothers and of the surviving widow. He specified that although he left Romania in 1986 he had permanent relationship with the family he participate to the funeral of his Father and he had communication

As per legal reasons he invoked the Art. 111 of the Civil Code, the Decree n° 167/1960 rep., Art. 88 alin.1 the first theory of the Law n° 36/1995.

He provided, as proofs of his plaint, the copies of the heir certificate n° 1/06.01.1998 issued by the public notary Gaspar Gabriela and of the heir certificate n° 9/25.03.2009 issued by the public notary Nedelcu Crisan Traian, Death certificate Ion Bazgan (f.10), Birth certificate and passport Sorin Bazgan.

On November 18, 2009, (f.16-17) the defendant filed a contestation-defense that claimed the exception of the statute of limitation, regarding the right to request the reinstatement of the term of the inheritance debate, based on the facts that such a claim can be done only one month after the termination of the causes justifying the expiry of the limitation period.

He also claimed that the right to request the reinstatement of the term of the inheritance debate is not justified, just because the plaintiff declared that he made deeds of inheritance acceptance. There are not evidences that the plaintiff was unable to accept the inheritance.

He also claimed the exception of the statute of limitation, regarding the right to make the cancellation of the heir certificate n° 1/06.01.1998, based on the facts that such certificate could in the worst case, being smitten by relative nullity, prescriptible, according to the Art. 9, aln.2 and others of the Decree N° 167/1958; the statute of limitation of 3 years start running maximum 18 months after the closing act date.

He also claimed the derisive statute of the others claims of the plaintiff.

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As long as the plaintiffs did not bring proofs of their inheritance acceptance, even if in the current case the **exception of lack of interest** was not invoked, **the Court withholds** that: if all the others successors with inheritance vocation (the plaintiffs) were not called for the inheritance debate, the Heir Certificate did not produce any prejudice to them.

According to the art.105 of the Civil Code, a civil act may become void if the three cumulative conditions are fulfilled: the legal requirements are not complied, there was an injury, the injury can not be removed excepting by the cancellation of the act.

In the case of express nullity is presumed, relatively, until proof to the contrary.

The Failure to comply with the legal provisions of the art. 75 of the law 36/1995 , first thesis - "After assessing that he is legally seized, the public notary will record the case and will call by citation all those who have inheritance vocation, and if there is a Will, he has to call the testamentary legatee and the instituted testamentary institutor." based on the above mentioned considerations, the plaintiffs was not injured.

Based on the same considerations, the Court will admit the counterclaim and found that the plaintiff Angela Bazgan is alien to inheritance after Bazgan Ion.

The Court, by error, let unresolved the counterclaim with the object to find that the plaintiff Sorin Bazgan is alien to inheritance, but this aspect may be remediate by default.

For this reasons,
In the name of the law
decides

Reject the principal claim specified as object of the file 26820/299/2009.

Reject the main claim specified regarding the plaintiff BAZGAN SORIN, domiciled in Bucharest, district 5, Bvd Mihail Kogalniceanu, n°19, et2, ap3., BAZGAN CONSTANTIN, domiciled in BAZGAN ANGELA, domiciled in district 2, Bucharest, Mihail Eminescu n°59, ap.1. and the defender BAZGAN ION, domiciled in Bucharest, district 2, Str Parintele Staniloaie, n°4, being the object of the file N° 26039/299/2009 as being unfounded.

Accept counterclaim

Ascertain that Angela Bazgan is alien to inheritance of the deceased Bazgan Ion.

Time for appeal 15 days from the communication.

Pronounced in the public hearing of June 14, 2011.

The President

Signature

The Clerk

Signature

Translation in English

of today September 17, 2013,

by Mrs. Ann Wulff