

# ALTERNATIVE JUSTICE PROCESS FOR DISPUTES ON PROPERTIES IN CIVIL CASE

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**Abstract** - The disputes on properties are the problems happening to most of people in the cities and countryside because they might be the owners or the utilizers of the properties, such as vehicle or land etc. The disputes on the properties according to the cases under the justice process shall be categorized as the civil cases, such as cases about the land ownership, or possessory right in valuable assets etc. In the justice process of Thailand, since a lot of property cases have arisen, the important issue is whether the dispute on property should be settled by alternative justice process or not. The research is found that the disputes in civil cases might be settled by compromisation under the principle of Section 850, Section 851 and Section 852 of the Civil and Commercial Code and other agreements. The Court will record the statements and make judgement accordingly in compliance with Section 138 of the Civil Procedure Code.

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**Keywords** - Dispute, Property, Civil Case

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## I. INTRODUCTION

The current population in Thailand is approximately 66 Million people based on the data of statistic registration system of the Bureau of Registration Administration, Department of Provincial Administration, Ministry of Interior. Among these people, the disputes have incurred in various cases, i.e. the disputes on the commercial contracts of the property operators (Chutikan Srivibun, 2016), disputes on the properties of ordinary person or juristic person, i.e. saving cooperatives (Khanthong Jaidee, Ludech Girdwichai, Marndarath Suksanga, 2019). Among others, the disputes on the properties are the issues arising to most of people in the cities and countryside because they might be the owners or utilizers of the properties, i.e. vehicles or land etc. The disputes on properties are civil cases, such as disputes on the land ownership, disputes on the possessory rights in the valuable assets etc.

Since justice process of Thailand has the different procedure of civil and criminal cases in various aspects, the volume of the cases on properties is significantly increased. According to the Notification on the National Strategy (2018-2037), Clause 4 - The National Strategy on Public Sector Rebalancing and Development in Clause 4.7 - The National Strategy on Public Sector Rebalancing and Development is in compliance and suitable for any context. Clause 4.7.2 prescribes to have laws only to the extent of necessity by designing the laws to address problems precisely, with prudent and concise provisions, and to comply with any international obligations or agreements for the benefits to the people and the national interests that distributed fairly. Clause 4.8 specifies to ensure

that the country's justice process respects human rights and treats all people equitably and Clause 4.8.4 also specifies to promote alternative justice systems, community justice systems, and participatory judicial administration by supporting different patterns of alternative judicial approaches including mediation before the justice process. As mentioned above, the important issue for the research is whether the dispute on the properties should be settled by alternative justice process or not. Therefore, there should be the study of enforcement of laws relating to properties as the guidelines to drive the development of the country regarding the justice process for common interest that is the desirable objective pursuant to the said National Strategy on Public Sector Rebalancing and Development.

## II. RESEARCH OBJECTIVE

1. To study the laws relating to the alternative justice process in case of property disputes;
2. To analyze and collect the recommendation to amend the laws relating to the alternative justice process in case of property disputes.

## II. REVIEW OF RELATED LITERATURE

### Civil Justice Process

Civil justice process of Thailand normally shall follow the Civil Procedure Code, which comprises of the main processes as follows:

### Filing the case

The procedure in this part shall incur when the parties, which are the plaintiff and defendant, have

disputes between them. Section 55 of the Civil Procedure Code specifies that “any person whose rights or duties under the civil law are involved in a dispute or must be exercised through the medium of a Court, is entitled to submit his case to a civil Court having the territorial jurisdiction and competency over it in accordance with the provisions of the civil law and of this Code”. From this provision, it makes known that if person has any dispute in the civil case, it will be disputes relating to rights or duties under civil law. For example, the provision of Section 213 paragraph one of the Civil and Commercial Code specifies that “If a debtor fails to perform his obligation, the creditor may make a demand to the Court for compulsory performance, except where the nature of the obligation does not permit it”. This Section 213 of the Civil and Commercial Code is the principle of specific performance (Daraporn Thirawat, 2017:85) to present that if the creditor has any dispute with the debtor regarding failure of debt payment, the creditor is entitled to file his case to the Court, which is deemed as the case under Section 55 of the Civil Procedure Code (Chalor Wongwattanapikul, 1998 : 47-48).

### **Trial, Judgement and Enforcement**

After the plaintiff files the complaint, the Court will review the complaint whether it is correct according to the laws or not. If the complaint of the plaintiff is correct, the Court will order to send the copy of the complaint to the defendant so that the defendant shall make the reply to defend in the case. If the defendant fails to reply, the Civil Procedure Code prescribes the process of compliance separately for convenience and promptness of the procedure. However, if the defendant makes the reply to defend in the case, the Court will make the appointment of the trial date and consider the case by testimony of the witnesses and evidences, such as documentary evidences, oral evidences and physical evidences. In addition, during the procedure of the case, the parties may also apply for the temporary measures prior to judgment in order to protect the benefit of the winner of the case. (Kanit Nanakorn, 2015 :561-562)

In the proceeding, if the parties have come into any agreement with regards to the issue in dispute or compromising, Section 138 paragraph one of the Civil Procedure Code, which specifies that “In the case where the parties come to an agreement or compromising as the issues of the case without the complaint being withdrawn and if such agreement or compromise is not contrary to the law, the Court will write down in a detailed memorandum the terms of the agreement or compromise and give judgment accordingly”, provided that such agreement should not be contrary to any law (Prasert Siangsutthiwong, 2016:85).

**Example** - The Supreme Court Judgment No.3028/2525 decided that although the plaintiff who

was the foreigner, violated Section 86 of the Land Code, the provision of Section 94 specifies that “All the land which as foreigner has acquired unlawfully or without permission shall be disposed of by such foreigner within the time limit prescribed by the Director-General. If the land is not disposed of within the time prescribed the Director-General shall have the power to dispose of it. The provisions on the forced sale of land in Chapter 3 shall apply *mutatis mutandis*”. This means that although the foreigner who has acquired the land unlawfully according to Section 86, cannot return or exercise his right on land as the ownership and he has to dispose such land in accordance with the provision specified in Section 94, which provides the result of the Section 86, the acquisition of such land still have an effect. As a result, if the foreigner is still entitled to get approval according to Section 94, therefore, the judgment of the Court of the First Instance according to compromise is not contrary to Section 86.

In case where the parties have not reached the agreement, then, after the Court has allowed the parties to bring in the witnesses for testimony and completed the testimony, the Court will make the judgment to consider the issue of the case pursuant to Section 131 of the Civil Procedure Code, which specifies that “Any Court to which a case is submitted shall (2) with respect to the issues of the case, either give a decision thereon by a judgment or order, or strike the case out of the Case-List, as provided under this Title.

After the Court has given the decision of the case, the losing party may be in the debtor position pursuant to the judgment, the winning party is in the creditor position, which will file the request for execution in accordance with Section 274 of the Civil Procedure Code specifying that “If the party or person losing the case or the person required by the judgment or order of the Court to perform an obligation (judgment debtor) entirely or partially fails to comply with the decree issued in accordance with the judgment or order of the Court, the party or person winning the case or the person entitled to the performance of an obligation under the judgment or order of the Court (judgment creditor) shall be entitled to request the execution by means of seizure of properties, attachment of claims or other execution measures as provided in this Book within ten days from the date of the judgment or order. If the judgment creditor requests the executing officer to partially seize the property or attach the claim, or partially carries out the execution by other measure within such period of time, the execution against such property or claim or the execution by such other measure may continue until its completion”. For the period of ten year of such execution, it will commence from the date of judgment or order, not the date of which the case is final (Auen Kunkeaw, 2017:19). Nevertheless, after the Court of the First Instance has made the judgment

of the civil case, the parties may further proceed with the case in order to defend to the higher courts by means of appeal or Dika appeal. Therefore, whenever the case is completed, the case is deemed as final. The execution period shall be commenced from the date of the judgment or order.

**Example** – The Supreme Court Judgment No. 10731/2558 provided the decision that, if the Court had made the judgment and such judgment had established the debts thereunder, the Court would issue the order of enforcement as specified in Section 272 of the Civil Procedure Code. In this case, the Court had the judgment by default to both defendants to lose the case. The Court of the First Instance could not give the enforcement order on the date of judgment. Then, it was the duty of the judgment creditor to file the declaration to the Court of the First Instance to request for the enforcement order by sending it to the domicile of the judgment debtors and upon expiry of the period according to the enforcement order, if the judgment debtors still failed to pay such debts, the judgment creditor was entitled to request for execution. In case where the debt was the money, the creditor under the judgment had to file the unilateral request to the Court for issuance of the execution writ. Thereafter, he had to proceed further for the execution officer to know that the Court had issued the execution writ and to declare to the execution officer to take further action of the execution process. The creditor had to complete all processes within ten years from the date of the judgment pursuant to Section 271 specifying the period of which the judgment creditor should do in order to request for execution, which it was not required to start from the date of which the judgment is final. This is in line with the provision of Section 145 paragraph one and Section 231 paragraph one of the Civil Procedure Code, which specifies that the judgment shall be binding on the parties to the proceedings from the day of its pronouncement up to the day, if any, of its being amended, reversed or set aside, and although the judgment debtors had filed the appeal or Dika appeal, the judgment creditor was entitled to request for execution, unless the debtor had filed the motion for stay of execution to the Court and the approval should be granted by the Court. In this case, the period of execution within ten years should be commenced from the date of the judgment of the Court of the First Instance of such case.

### III. RESEARCH METHODOLOGY

This is the Documentary Research with the process as follows:-

#### Documentary Research

The research in this part is intended to respond to the objectives of research with regard “to study the laws relating to the alternative justice process in case of

property disputes” and “to analyze and collect the recommendation to amend the laws relating to the alternative justice process in case of property disputes” with the related details as follows:-

The sampling group is comprised of:

- 1) Academic documents, researches related to the alternative justice process in case of property disputes;
- 2) The Supreme Court Judgment related to the property disputes.

#### Data Collection and Data Analysis

The researchers have created the data collection form. After collection of data, it is analyzed based on such contents.

#### Data Collection Location

Textbooks, books, articles, researches, provision of laws of Thailand and foreign laws, thesis, and data from internet (information technology) from libraries, such as library of Suan Sunandha Rajabhat University, library of the Thai Bar under the Royal Patronage, library of Ramkhamhaeng University, library of Thammasat University etc.

### IV. RESULT OF THE RESEARCH

In the civil case of the property dispute, the parties are entitled to settle the dispute by means of compromising under the provision of Section 850 of the Civil and Commercial Code specifying that “A compromise is a contract whereby the parties settle a dispute, whether actual or contemplated by mutual concessions”, together with Section 851 specifying that “A contract of compromise is not enforceable by action unless there be some written evidence signed by the party liable or his agent”, and Section 852 specifying that “The effect of the compromise is to extinguish the claims abandoned by each party and to secure to each party the rights which are declared to belong to him”. The Court shall proceed to grant the judgment pursuant to the agreements in compliance with Section 138 paragraph one of the Civil Procedure Code, which specifies that “In the case where the parties come to an agreement or compromise as to the issues of the case without the plaintiff being withdrawn and if such agreement or compromise is not contrary to the law, the Court shall write down in a detailed memorandum the terms of the agreement or compromise and give judgment accordingly”. If the parties fail to comply with such judgment, the parties are empowered to enforce pursuant to the compromising agreement without filing the new case.

### V. DISCUSSION

The problem is whether the property dispute could be settled by alternative justice process or not.

The researchers viewed that most of the disputes relating to the properties of the parties in civil cases are related to the ownership and possessory right to utilize the properties, which was the ground of dispute in right, which is called “ground of action”. Although such person may be entitled to exercise his right to proceed with the case in the Court in accordance with Section 55 of the Civil Procedure Code specifying that “Any person, whose rights or duties under the civil law are involved in a dispute or must be exercised through the medium of a Court, is entitled to submit his case to a civil Court having territorial jurisdiction and competency over it in accordance with the provisions of the civil law and of this Code, the normal justice process of civil case has many processes from filing the case, replying to defend the case, testimony of witnesses and evidences as per schedule of the Court appointment. If there are many appointments for proceedings or it takes time until the case is final. It is the reasons of waste of expenses and resources in justice process. Therefore, the property dispute would be applied as the tools of dispute resolution by alternative justice process, which is to apply the compromising principle for negotiation of such disputes, which would reduce the amount of civil cases in the Court.

## RECOMMENDATION

### Social Recommendation

Pursuant to the Notification Re: National Strategy (B.E. 2561-2580), the National Strategy on Public Sector Rebalancing and Development with regards to ensure that the country’s justice process respects human rights and treats all people equitably also provides to promote alternative justice systems. The researchers then have recommendation to set legal measure by means of establishment of committee of dispute resolution on properties in the place where such properties are located so that people shall have the alternative of dispute settlement with regards to properties by the persons close to them in such areas.

### Academic recommendation

This research is the studying of measures on legal principle in dispute settlement based on the data of the normal civil justice process as prescribed by the Civil and Commercial Code and the Civil Procedure Code. The researchers then provide the academic recommendation that the academic research with regards to other civil justice processes with special characteristic should be further studied, such as the civil case which is deemed as the consumer case or intellectual property case.

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## REFERENCES

- [1] Auen Kunkeaw.(2017).Civil Execution (5nd ed) : Krungsiam publishing company limited, Bangkok, Thailand.
- [2] Chalor Wongwattanapikul.(1998).Civil and Commercial Code on Obligation: Ramkhamhaeng University Publication House, Bangkok , Thailand.
- [3] Chutikan Srivibun, “Antecedent Factor Affecting the Performance of a Real Estate Entrepreneur,Type Medium Hotel in the Area Special Economic Zone (Terrace Economy),” IEEE Trans. SSRU Graduate Studies Journal, vol. 2, pp. 383-394, July - December 2016.
- [4] Daraporn Thirawat.(2017).The Law of Obligations: General Principles (5nd ed) : Project for textbooks and teaching materials Faculty of Law Thammasat University, Bangkok , Thailand.
- [5] Kanit Nanakorn.(2015). Civil Procedure Law (3nd ed):Winyon chon Publication House, Bangkok, Thailand.
- [6] Khanthong Jaidee , LudechGirdwichai and Marndarath Suksanga “The Mamage of Savings and Credit Cooperatives to Empower the Community Economic Strength in the Central Region of Thailand,” IEEE Trans. International Journal of Innovation, and Change, vol. 7, pp. 167-184, Issue 8, 2019.
- [7] Prasert Siangsutthiwong.(2016). Study Guide on Civil Procedure Seminar : Apichot Publishing, Bangkok, Thailand.

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