

FEDERAL STATE BUDGETARY EDUCATIONAL
INSTITUTION OF HIGHER EDUCATION
"NATIONAL RESEARCH OGAREV MORDOVIA STATE UNIVERSITY"

On rights of manuscript



Sautkina Ekaterina Andreevna

SUCCESSION IN REAL RIGHTS

5.1.3 – Private-law (civilistic) sciences

Abstract of dissertation
for the degree of candidate of Juridical Sciences

Scientific supervisor –
Doctor of Juridical Sciences,
Associate Professor
Rodionova Olga Mikhailovna

Saransk – 2024

The relevance of the research topic is revealed through the interrelation of doctrinal, socio-economic, law-making and law enforcement aspects.

The doctrinal aspect. The category of "succession" is a classic one in civil studies. Nevertheless, up to the present time, there are scientific discussions about this concept between representatives of the concept of transitivity and discreteness (non-transitivity) of subjective rights and legal obligations. There is no single approach to the legal essence of succession: whether it is a legal relationship, a process, or another legal phenomenon. To resolve these disputes, it is necessary to consider the category under study more broadly, first of all, within the framework of legal capacity in general, and also to determine the mechanism by which the goal of succession is achieved – the replacement of a person in a civil legal relationship.

The modern reinterpretation of the concept of real rights in Russian civil law also raises the issue of succession in real legal relations. Inconsistency in the differentiation of legal succession in real and legal relations of obligations (especially in situations of singular legal succession) leads to the emergence of ideas about the existence of mixed (property and obligations) relations, despite the fact that the civil law regulation of absolute and relative legal relations is fundamentally different.

A comprehensive study of succession in real rights will help, on the one hand, to distinguish it from succession in obligations, corporate, and exclusive legal relations, and on the other hand, to form new scientific approaches that will help in the future to solve problems that meet modern trends, in particular, digitalization (for example, to identify the main features, rules, mechanism of succession in digital rights).

Socio-economic aspect. Succession is directly related to the processes of creation, modification and termination of civil legal relations. Consequently, legal succession mediates all civil turnover, especially when it comes to a singular succession of rights and obligations. A correct understanding of the essence of this category, as well as the specifics of the implementation of the succession mechanism, will ensure stability, predictability and normal development of property relations.

At the same time, it is difficult to overestimate the importance of the category under study, including in the field of civil law regulation of relations about things. Things are the most traditional objects of human domination. Given the need for universal succession in property rights to determine the legal fate of things and singular succession in order to implement the principle of freedom in civil law, it is important that the legislative regulation of the relations in question ensures compliance with and prevents violations of the rights and legitimate interests of legal successors, as well as third parties when moving things from the property sphere of one person to the property sphere of another person.

Law-making and enforcement aspects. Ensuring the necessary balance of interests of numerous participants in civil turnover related to succession processes can be called one of the main tasks of the legislator in the process of regulating property and personal non-property relations.

The identified problems of practical application of the institute of succession determine the changes and innovations introduced by the legislator in the course of reforms of domestic civil legislation. Most of these changes and additions deserve a positive assessment, but the current legislation still needs to be improved. Many aspects of succession require clarification.

In the practice of applying legal provisions on legal succession, difficulties arise, in particular, when determining the moment when the legal successor has the right of ownership under a contract (purchase and sale, barter, gift), when it is necessary to register the transfer of rights in the state, when reorganizing (including combined). Disputes often arise during inheritance, especially when the legal successor is a minor, as well as during the transfer of extortionate property to public legal entities. In the latter case, the legislative regulation of succession should take into account the importance of maintaining a balance of private and public interest.

Improving the legislation on the issue under consideration will not only make it possible to systematize and detail the provisions on succession, but also reduce the burden on the judicial system.

All of the above, as well as the problem of defining succession in real rights in civil law norms, make the topic of this research relevant both in theory and in practice.

The object of the dissertation research is social relations that mediate the replacement of persons in real rights, fixed in civil law through the rules on succession.

The subject of the research is the norms of civil law, which determine the possibility and order of succession in real rights, as well as materials on the practice of their application by courts, scientific works on the problems of succession.

Purpose and main tasks of the study. The purpose of the dissertation research is to develop new doctrinal ideas in civil studies about succession in property rights.

Based on the specified purpose of the dissertation research, the following tasks are set:

- describe the scientific theories of succession in civil rights and its features;
- to consider the capacity for succession in real rights as a general type of legal relationship;
- analyze the concept, system and structure of the mechanism of succession in real rights;
- to identify the features of the mechanism of succession in limited real rights;
- to investigate the procedure of the mechanism of succession in real rights;
- describe the transfer and acceptance of things as ways to replace a person in the course of succession in real rights;
- determine the actions of public legal entities that mediate succession in real rights.

The degree of scientific development of the research topic. Currently, there are no monographic or dissertation studies of succession in real rights in the field of civil law, which consider its specifics in comparison with succession in obligations and analyze its mechanism.

Certain aspects of the category of succession were revealed in the Soviet period in the works of such researchers as M. M. Agarkov, S. S. Alekseev, B. S. Antimonov, V. P. Gribanov, O. S. Ioffe. A comprehensive study of this phenomenon is devoted to the work of B. B. Cherepakhin "Legal succession under Soviet civil law". The author considered the concept, scope and grounds of succession, as well as issues of singular and universal succession. A modern study of this category was conducted by M. K. Suleimenov in the monograph "Succession in Civil Law".

In modern Russian legal science, most works on legal succession are devoted to the characteristics of its individual types: universal (V. P. Emelyantsev) and singular (V. A. Belov, R. Yu. Zakirov), reverse (D. V. Nosov), constitutive (E. A. Krashenninnikov), legal succession in obligations (A. N. Latyev, K. I. Sklovsky), in real rights (G. S. Vasiliev, D. Yu. Vatnikov, A.V. Pushkina, A. O. Rybalov, E. G. Semenova), under inheritance (N. S. Bessarab, A. A. Demichev, L. A. Lushina, Yu. A. Popova, E. V. Tsyplyayeva, T. D. Chepiga, O. V. Shvedkova) and reorganization (M. G. Bunicheva, T. V. Vagaytseva, G. I. Voitovich, A.V. Gabov, V. S. Gorbunov, D. I. Stepanov).

The authors of PhD theses on legal succession in civil relations include S. S. Kashirsky, S. V. Kornikhin, M. A. Miroshnikov, A.V. Pushkin, S. V. Strok, A. A. Yagelnitsky.

Despite the existence of interest in the doctrine to the category of succession, at this stage of development of the science of civil law, there is no unity in understanding this institution in approaches to solving various theoretical problems, there is no comprehensive study of succession in real rights.

Methodological basis of the study. The general methodological basis of the dissertation research was the general scientific dialectical method of cognition, which allowed the author to study various points of view on the subject of research in an indissoluble unity and interaction with other legal categories based on judicial practice.

The study used such general scientific methods as analysis and synthesis, induction and deduction, system-structural, formal-logical. Thus, the use of the system-structural method made it possible to establish the place of the institute of succession in the system of Russian civil law. The concept of succession is formulated using the formal-logical method.

In addition, the following special methods of legal science were used in the dissertation research: formal-legal, which analyzes the legislation and law enforcement practice on the research topic; structural-functional, thanks to which the elements of the succession mechanism and their interaction were considered to achieve the ultimate goal of succession – replacing a person in a real legal relationship; the method of legal modeling, which it provided an opportunity to make suggestions for improving the current legislation; comparative legal and historical legal methods - to determine the position of the legislator in modern Germany and in the pre-revolutionary period in Russia regarding the category of "real contract".

The theoretical basis of the research consists of scientific works of Russian civil scientists, as well as works on the general theory of law. In particular, it should be noted scientific work of M. M. Agarkov, S. S. Alekseev, B. Antimonov, N. B. Baraeva, R. A. Barkov, K. Y. Bakhmutkina, V. A. Belov, N. C. Bessarab, M. G. Bunicheva, E. V. Vavilin, T. V. Vagaytseva, D. Y. Vatnikov, G. I. Voitovich, A. V. Gabov, N. F. Gasanov, V. S. Gorbunov, K. A. Gravey, V. P. Gribanov, D. D. Grimm, A. Demichev, D. V. Dobrachev, V. A. Dozortsev, I. A. Emelkina, V. P. Emeliantsev, R. J. Zakirov, O. S. Ioffe, V. A. Kachalova, S. S. Kashirsky, S. V. Kornikhin, E. A. Krashenninnikov, L. V. Krivolapova, L. A. Lushina, I. A. Mankowski, N. I. Matuzov, D. I. Meyer, T. M. Nintsieva, I. B. Novitsky, A. A. Novoselova, V. D. Nosov, K. P. Pobedonostsev, J. A. Popova, O. M. Rodionova, V. A. Ryasentsev, V. I. Serebrovsky, V. I. Sinaisky, S. A. Sinitsyn, K. I. Sklovsky, D. I. Stepanov, S. V. Strok, M. K. Suleimenov, E. A. Sukhanov, A. A. Tabriaev, V. S., Tolstoy, E. A. Fleischitz, E. V. Tsyplyaeva, T. D. Chepiga, B. B. Cherepakhin, O. V. Shvedkova, G. F. Shershenevich, A. A. Yagelnitsky etc.

The normative base of the study was formed by the legislation of the Russian Federation, namely the Civil Code of the Russian Federation, Fundamentals of the Legislation of the Russian Federation on Notaries, federal laws, other normative legal acts and acts of local self-government bodies.

The empirical basis of the study is made up of official explanations of legislative acts, materials, reviews of judicial practice, information letters from judicial instances, other materials of law enforcement practice, official interpretations and comments.

The scientific novelty of the work lies in the fact that when conducting an independent comprehensive analysis of succession in real rights, performed taking into account the current legal framework, as well as the latest achievements of legal thought in the field under study, a number of theoretical and practical problems are identified, and ways to solve them are proposed. The results of the study also show signs of novelty. In particular, the author's definition of the concept of "succession" based on the theory of transitivity is given; it is determined that succession is formed primarily as a result of the implementation of the corresponding general type of right (the ability to succeed), similar in structure to subjective law; the mechanism of succession in real rights is revealed, its stages and elements are established; it is found that It will not be performed without a set of real actions, which is its specificity; specific proposals for further improvement of the current legislation are formulated.

The conducted research allowed us to formulate and justify the following provisions submitted for defense.

1. In the course of the study of succession in real rights, a new substantiation of the theory of transitivity as a derivative acquisition of law is obtained, which consists in changing persons who act as subjects of legal relations by transferring subjective rights and (or) obligations from one person to another within the same legal relationship in relation to the same object. It is precisely the fact that the right to a thing itself ceases only in the event of the death of this thing and its existence does not depend on the death of the person occupying the place of the subject of a real

legal relationship, which makes it impossible to determine the succession through the termination of one legal relationship and the emergence of another on its basis.

It is proved that succession is primarily related to legal capacity as a general type of right, being its element.

2. A system that includes legal succession relations of both general and more specific types, including the capacity for succession and the original real legal relationship, legal norms, as well as legal facts, the most important of which are actions to transfer a thing, is a mechanism for succession in real rights.

It is determined that the operation of the succession mechanism, depending on the course of implementation of the ability to succeed (including in real rights), includes several stages: initial (general or abstract), concretized and concrete. This division makes it possible to identify different types of opportunities in the field of succession and ensure their protection.

3. It is revealed that at the initial stage, persons intending to enter into relations related to legal succession, in fact, confirm that they have the appropriate ability related to the scope of their legal capacity, and there are no obstacles to its implementation. Violation of the abstract capacity for succession is associated with a violation of the legal status of a person as a whole. The way to protect yourself in such a situation is to recognize the right, including, for example, in terms of implementing the guarantee of inviolability of property.

4. It is established that in the presence of legally significant circumstances, the capacity for general succession becomes more concretized (but not yet concrete), remaining in the sphere of legal capacity, but acquiring other opportunities for protection. In particular, a specific method of protection such as transfer of rights may be used to protect a concretized capacity for succession (for example, if a share is sold in violation of the pre-emptive right of purchase, any other participant in shared ownership has the right to demand the transfer of the buyer's rights and obligations to it in court within three months).

In the case of legal succession in real legal relations, the capacity for legal succession becomes concretized when the first legal successor has a thing on the

right that includes the ability to dispose of it, and the second legal successor has the opportunity and interest in acquiring (receiving) it, i.e. in replacing the first legal successor in the corresponding real legal relationship.

5. It is proved that the capacity for succession becomes concrete when it is realized by the first legal successor and the second legal successor, when the latter replaces the legal successor in a legal relationship, and the legal relationship of succession itself is provided by special methods of protection. In the case of succession in real rights, these include, for example, the requirement to restore the term for accepting an inheritance, declared by a person who was called upon to inherit when they were minor, but his legal representative did not accept the inheritance and did not refuse it.

At the same time, in order to realize the capacity for succession, in addition to legal facts (or their totality – legal composition), it is necessary to have the most general elements of the succession mechanism: will, legal norms, legal capacity, as well as the existence of the original legal relationship.

6. It is established that succession in real rights is mediated by the transfer of a thing, which distinguishes it from succession in obligations and other subjective civil rights. At the same time, there are several cases in which the succession mechanism will differ in the set of legal facts necessary for the completion of the succession: 1) legal succession in respect of movable things (except for those in respect of which the law requires state registration of the transfer of rights) includes such legal facts as the conclusion of a contract and the transfer of the thing; 2) legal succession in respect of real estate and certain movable things (the transfer of rights to which is subject to state registration) includes the following legal facts: conclusion of a contract, transfer of a thing, state registration of the transfer of rights; 3) legal succession in respect of things that have already been transferred on a different basis to the new right holder includes as legal facts either only the conclusion of a contract (for example, if the movable thing was transferred to the future new right holder under a loan agreement prior to the conclusion of such a contract), or the conclusion of a

contract and state registration (for example, if the property was leased to a new right owner according to the lease agreement).

7. It is proved that the allocation of the so-called "constitutive succession" as a type of legal succession, the most striking example of which is limited real rights, is inappropriate, since in such situations a new subjective right arises, since, firstly, persons who have certain powers exercise them independently and independently of the persons who have granted them these powers, and secondly, the protection of the capabilities of persons exercising rights in some part is guaranteed (for example, the protection of the pledgee's rights to the subject of pledge from illegal actions of the pledgor and other persons). At the same time, "constitutive succession" is a restriction on the exercise of powers that are not related to the replacement of persons who possess them.

8. It is proved that the expression "right of succession", used as a designation of a specific feature of limited property rights, is conditional, since it does not reflect its legal nature. The allocation of this feature is due to the fact that succession in the right of ownership, burdened with limited property rights related to the transfer of a thing to possession and use, is not accompanied by its return to the owner, which follows from the right of the owner of a limited property right to demand that unauthorized persons refrain from any influence on the thing belonging to him. Therefore, the so-called "right of succession" is a legislative provision that confirms the independence of limited real rights, along with the right of ownership, by securing the prohibition of termination of limited real rights to property in case of succession (transfer of ownership of this property to another person).

9. Problems in understanding the mechanism of inheritance of extortionate property are identified, which lead to the inability to determine the person who replaces the place of the subject of real rights, which can be solved by defining the acquisition of extortionate property by a public legal entity as a legal relationship related to the implementation of the ability to legal succession by a public legal entity as an ability of a general type. In order to ensure the completion of the succession process and prevent the appearance of ownerless property, it should be determined

that public law entities have: a) the obligation to accept extortionate property, and only in a jurisdictional way, within a certain period of time, b) the obligation to accept and transfer property bequeathed to legal entities whose property is the property of the relevant public legal entity, c) the right to refuse extortionate property in favor of individuals in certain situations.

The conducted research allowed us to formulate the following proposals for improving the legislation.

1. In order to protect the rights and interests of minors (and, consequently, other heirs and third parties) when exercising the capacity for succession in inheritance, it is necessary to establish at the legislative level the obligation of legal representatives of minors to accept inheritance, especially including real estate, in a jurisdictional manner or to refuse it with the prior permission of the guardianship and guardianship authorities. It is necessary to supplement paragraph 2 of Article 1153 of the Civil Code of the Russian Federation with paragraph six of the following content: "Actual acceptance of inheritance by legal representatives of minors in respect of property due to these minors is not allowed."

2. It is advisable to fix the mandatory acceptance of real estate as part of the inheritance in a jurisdictional way (due to its special value), since law enforcement is significantly complicated in a situation where the heir did not accept the inheritance in a jurisdictional way, did not refuse it, did not actually use the real estate and applied to the court after the deadline for accepting the inheritance real estate from the inheritance. Paragraph 2 of Article 1153 of the Civil Code of the Russian Federation should be supplemented with the seventh paragraph of the following content: "The actual acceptance of immovable property as part of an inheritance is not allowed."

The scientific and practical significance of the study lies in the fact that the conclusions and suggestions contained in it can be used to improve the current legislation and law enforcement practice both in the development of regulatory legal acts and for the interpretation of current legal norms, as well as in the educational

process of law schools when teaching such academic disciplines as "Civil Law", "Inheritance law".

Testing of research results. The dissertation was completed, discussed, approved and recommended for defense at the meeting of the Department of Civil Law and Procedure of the Ogarev Mordovia State University.

The main conclusions and suggestions formulated by the author and contained in the work are reflected in the dissertation published works in peer-reviewed scientific publications recommended by the Higher Attestation Commission under the Ministry of Science and Higher Education of the Russian Federation for publishing the results of dissertations for the degree of Candidate of Juridical Sciences.

The conclusions formulated in the course of the study were presented for discussion at the XIX International Conference of Young Scientists "Traditions and Innovations in the system of modern Russian Law".

List of the author's publications. The main provisions and conclusions of the study were tested in 7 works of the author, 5 of them in peer-reviewed scientific publications recommended by the Higher Attestation Commission under the Ministry of Science and Higher Education of the Russian Federation.

The structure of the work is determined by the set purpose and formulated tasks of the study. The dissertation consists of an introduction, three chapters including seven paragraphs, a conclusion, and a list of sources used.