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The Federal Supreme Court (F S C) has been convened on 12.4.2017 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed AL-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

Plaintiff: (ra.ain.ain) his agent the barrister (mim.ain).

Defendants: (feh.ain.mim). (sin) & (mim) & (theh) & (mim) & (sin) & (yeh) sons of (ain.ain).

### Claim

The agent of the plaintiff claimed that his client previously initiated the case No. (3431/beh/2016) in AL-Najaf first instance court to remove joint ownership from real estate No. (13/195 district 18 Alwat AL-fahal). Then, the case was referred to AL-Kufa first instance court according to the venue jurisdiction, and the agent of the first defendant defended that his client resides the real estate as she is spouse of the testator, and he requested to reject the case relying on the decision of the Revolutionary Leadership Council (dissolved) No. (1041 for 1982) which inhibited to remove joint ownership if the spouse resides the real estate, and he requested to reject the case and clarified the following points: the decision No. (1041) abovementioned will be a reason to delay of distributing the inheritance and contradicts with the provisions of the Islamic law, as well as it contradicts with provisions of two clauses (alif & jim) of article (22 and (2<sup>nd</sup>) of article (13) and clause (1<sup>st</sup>) of article (23) and article (46) of the constitution. The rights of the heirs in distributing the inheritance is a basic right for them and should not be restricted according to the aforementioned texts and the basics of Islamic law which any text must not violate it, and he requested to

consider the decision No. (1041 for 1982) issued by the Revolution Leadership Council (dissolved) unconstitutional and to cancel it). After registering the case at this court according to clause (3<sup>rd</sup>) of article (1) of the FSC bylaw. The answer of the gents of the defendant was received in case (256/beh1/2017 first instance court of AL-Kufa), requesting to reject the case for the following reasons: 1. removing of joint ownership was not listed as a Koranic text, permanent or decisive Hadith. 2. The constitution protects the basics of Islamic beliefs which all sects approved on it. 3. There is no base in the law about the violation of the challenged unconstitutional decision in article (13/2<sup>nd</sup>) of the constitution. 4. As for objecting that the decision violates article (23/1<sup>st</sup>) of the constitution, their client did not dispose the real estate in way may threatens the ownership of the real estate selling, mortgage or leasing, and their client does not reject that the plaintiff may enjoy the benefits if the real estate except selling. 5. The mother of the plaintiffs has not a house or a breadwinner, and her staying in the house according to the unconstitutional challenged decision is to protect her residence in her last days. 6. The staying of the plaintiff's mother in the joint ownership real estate corresponds with the text of article (1070) of Iraqi civil law. 7. Finally, saying the contrary of what he stated is a reason leads to expel all mothers from their residences, whereas their shares is not enough to purchase a new house, and requested to reject the case and to burden the plaintiff all fees of advocacy and expenses. After completing the required procedures in the case according to clause (2<sup>nd</sup>) of article (2) of the aforementioned bylaw. The day 11.27.2017 was set as a date for pleading and on that day the court was convened. The both parties did not attend because they were not notified, and to complete the notifications the pleading was postponed to 12.4.2017 and on that day the court was convened. The agents of the plaintiff and the defendant attended, and the public in presence pleading proceeded. The agent of the plaintiff repeated what listed in the petition of the case and requested to cancel the decision of Revolution Leadership Council (dissolved) No. (1041 for 1982) which inhibited removing of joint ownership of the real estate if it was resided by the spouse of the testator, and this matter violates provisions of the constitution (article 2/alif and clauses (alif & jim) of article (2) and clause 1<sup>st</sup> of article (23) and article (46). The decision restricts the right of the heirs to get their right and violates the Islamic law. The agent of the defendants repeated what listed in the answering draft, and requested to reject the case.

Whereas the court completed its investigations, and nothing left to be said, the end of the pleading and the text of the decision were recited publicly.

### The decision

After scrutiny and deliberation by the FSC, the court found that the agent of the plaintiff clarified in his case that his client initiated the case No. (3431/beh2/2016) in AL-Najaf first instance court to remove joint ownership of the real estate No. (13/195 district 18 Alwat AL-Fahal) and the case was referred to AL-Kufa first instance court according to venue jurisdiction and registered in number (256/beh1/2017) and the agent of the first defendant requested to reject the case because his client is residing in this real estate as she is spouse of the testator relying on the decision of the Revolution Leadership Council (dissolved) No. (1041 for 1982) which inhibited removing of joint ownership of a real estate if it was resided by the spouse. The plaintiff initiated this case, and challenged unconstitutionality of the Revolution Leadership Council (dissolved) decision abovementioned, and requested to cancel it because it is violates the constitution and Islamic law. The FSC finds that the litigant in any case, his admission should be based on his approval in the reviewed case and he should be obliged or sentenced of something according to provisions of article (4) of civil procedure law No. (83 for 1969). Accordingly, the litigation in the case is undirected because the defendants did not enact the decision (challenge subject) or not what took its place, and it the litigation is undirected the court shall judge even by itself of rejecting the case without going into its base according to provisions of article (80/1) of the same law abovementioned. Therefore, the case must be rejected for Non-adversarial. Accordingly, the FSC decided unanimously to judge by rejecting the case of the plaintiff and to burden him the expenses and advocacy fees amount of one hundred thousand Iraqi dinars of the agent of defendants. The decision issued decisively in the presence of the parties according to article (94) of the constitution, and made clear on 12.4.2017.