

Republic of Iraq
Federal Supreme Court
Ref 2/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 4/2/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

Plaintiff: Mahdi hasan Homadi

Defendant: Abdul Hadi Hasan Homadi

The Claim:

The plaintiff claimed that the defendant had previously filed the lawsuit with the number (939/Beh 1/2022) before the Cort of First Instance of Kufa to demand the removal of the commonality of real estate No. (6/44 - Province-7- Kufa) based on Articles (1070 and 1073) of the Civil Law No. (40) of 1951, and since the procedures for removing the commonality are forced and coerced and do not have the will of the defendant to sell, and since people are in control of their money, and because the provisions of the aforementioned articles contradict the legal provisions contained in the Jaafari school and the provisions of Article (2/1st) of the Constitution of the Republic of Iraq for the year 2005, so the plaintiff requested from this court to rule the unconstitutionality of the two articles (1070 and 1073) of the Iraqi Civil Code No. 40 of 1951, as amended. After registering the case with this court No. (2/Federal/2024) and collecting the legal fee for it, and informing the defendant of its petition and documents in accordance

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with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and in the absence of an answer, the court set a date for considering the case without pleading based on Article (21/3rd) of the Court's Rules of Procedure, in which the court was formed and began to consider the case, the court scrutinized the plaintiff's requests and supports, and after completing the scrutinies, the end of the minutes has been made clear and the court issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Mehdi Hassan Hammadi he filed this lawsuit before this court against the defendant (his brother) Abdulhadi Hassan Hammadi, Articles (1070 and 1073) of the Civil Code; are unconstitutional for violating the provisions of the Constitution, The Federal Supreme Court finds that the Civil Procedure Law No. 83 of 1969 stipulates in article 4 thereof that "the defendant must be a litigant whose acknowledgment shall result in a judgment assessing the issuance of an acknowledgment from him and that he shall be sentenced or bound by something to assess the proof of the case..." Whereas the contested texts were issued by the legislative authority, it is not valid to quarrel with the defendant (Abdulhadi Hassan Hammadi) in such a lawsuit, and that the said defendant has nothing to do with the said text and is not fit to be a litigant in this lawsuit, and his litigation is not realized, the Federal Supreme Court therefore dismissed the case of the plaintiff Mehdi Hassan Hammadi. The decision has been issued unanimously, final and binding according to the provisions of Articles (93 and 94) of the Constitution of the

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Republic of Iraq for the year 2005, and Articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021. The decision has been made clear on 23/Rajab/1445 Hijri corresponding to 4/February/2024 A.D.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court