

Judgment rendered on March 30, 1993

1992 (O) 797

Indication of parties      Omitted

#### Main text

The final appeal of the present case shall be dismissed.

The costs of the final appeal shall be borne by the appellant.

#### Reasons

Reasons for the final appeal made by the attorneys for the final appeal; namely, WATANABE Takuro, FUJIWARA Kanji, and BANDO Shiro.

The fact that the Compilation titled "Chiekosho" [literally meaning "Selections of Chieko"] is a collection of poems written and previously published by TAKAMURA Kotaro, a poet, as well as of his works of poetry, tanka [thirty-one-syllable poems], and prose, and the fact that the Compilation was published with the author's consent during his lifetime, were legally made final in the court of prior instance. Given the foregoing, if there is in fact a person who is other than Kotaro and who was involved in compiling "Chiekosho," it is presumed that Kotaro, too, was personally involved in the compilation unless there were special circumstances. Accordingly, it should be said that the copyright to the compilation belonging to a person who is other than Kotaro and who was involved in the compilation is conceivable only in very limited cases.

In the first place, upon determining whether or not any person other than Kotaro was involved in the compilation of "Chiekosho" in the present case, the findings of the court of prior instance concerning the matter were sufficient to give an affirmation in this regard in light of the evidence presented in the judgment of the prior instance. The findings constitute the following. (1) The person who suggested to Kotaro to compile "Chiekosho" by presenting Kotaro with a draft of poems and the like which can be included in the collection is D, who is a successor of Appellant A and has been engaged in publishing business under the name of A2 (hereinafter simply referred to as "D"). However, the selection of the poems and the like which are compiled in "Chiekosho" is not based on the ideas of D alone, but also those of Kotaro, who, based on the suggestions made by D, personally and with careful consideration, chose the poems and the like to be included in the collection, from among all of Kotaro's works concerning his wife, Chieko, in addition to making final decisions about the poems and the like to be compiled in "Chiekosho" and deciding on the title,

"Chiekosho". (2) The arrangement of the first draft of the collected poems presented by D to Kotaro is different in part from the arrangement used in "Chiekosho". In other words, the arrangement of the poems in the first draft is in the order of appearance in "Dotei", a collection of poems previously published by Kotaro, or, in the case of the poems which appeared in magazines, they were arranged in the order of publication dates of the magazines, or in the case of the poems which appeared in the same magazine, they were arranged in the order of their appearance in the magazine. In contrast, the works in "Chiekosho" are arranged, in principle, in the chronological order of creation except for the work titled "Koryotarukitaku". (3) While D made a suggestion as to the addition of a few more poems and the like to the collection of the first draft, D completely followed the intention of Kotaro, who made adjustments to the first draft and added or subtracted some works.

The facts described above confirm that Kotaro personally finalized the selection and arrangement of the poems and the like in "Chiekosho", and that Kotaro compiled the works. Even if D gathered some of Kotaro's works, it should be said that, from the perspective of compiling and authoring of works, such act is merely within the confines of a proposal or a scheme. Even in light of the other facts which were legally made final in the court of prior instance, it cannot be said that D compiled "Chiekosho", and it must be said that Kotaro is the person who compiled "Chiekosho". Accordingly, it must be said that the copyright to the compilation belongs to Kotaro, and that the appellee obtained the above copyright from Kotaro by way of inheritance in a sequential order, and thus the judgment of the court of prior instance, which determined as such, shall be approved as justifiable. There is no violation of law in the views presented by judgment in prior instance, and the appellant's arguments cannot be accepted.

Therefore, the court unanimously renders the judgment as per the main text pursuant to Articles 401, 95, 89, and 93 of the Code of Civil Procedure.

Supreme Court, Third Petty Bench

Presiding judge:	SAKAUE Toshio
Judge:	TEIKA Katsumi
Judge:	SONOBE Itsuo
Judge:	SATO Shoichiro
Judge:	KABE Tsuneo