

Chapter Seventeen

Administration of Estate of a Deceased

1. Introduction

Administration of estates, according to Islamic Law, means management of the property of a deceased Muslim. The duty of administering an estate is entrusted on the state, and the *Qadi* acts on behalf of the state, both as judge and magistrate having civil and criminal jurisdiction.¹² According to Al-Sirajiyah, an authentic treatise on Islamic law of inheritance, a magistrate perform four successive duties with regard to the property of a deceased person. These are¹³-(a) his funeral ceremony and burial with moderate expenses. (b) repayment of his just debts, if any, from the whole of his remaining effects; (c) the payment of his *wasiyat* or legacies, if any, out of a third of what remains after his debts are paid; and (d) fourthly, the distribution of the residue among his heirs, according to the Quran, Hadith and Ijma.

The following illustration will be helpful to understand it. A Muslim male died leaving behind his father, mother, one son and two daughters. The valuation of the estate of the deceased, let us suppose, ten lakh taka. He had debt amounting to ninety thousand taka, he made bequest of one-third of his property and taka ten thousand was spent for funeral expenses. Thus it stands that after funeral expenses (10 thousand taka), repayment of debts (90 thousand taka) and payment of 3 lakh taka (one-third of 9 lakh) for bequest, there remains six lakh taka. This net amount is to be distributed by the administrator among the heirs, father taking one lakh (one-sixth), mother taking one lakh (one-sixth), one son taking two lakh (one-half of two-thirds), and two daughters jointly 4 lakh (one-half of two-thirds).

The performance of the above functions means administering the estates or property of the deceased. The person who does it known as the administrator of the property or representative of the estate or the agent of the deceased. In the early periods, *Qadi* used to perform all these

¹² Asaf A.A. Fysee, *Outlines of Muhammadan Law*, 375.

¹³ Al-Sirajiah, trained. A. Rumsey, PP.11-12.

works, now it is done in Indian sub-continent including Bangladesh by the administrator appointed under the (Bangladesh) Succession Act, 1925 (Act No. XXXIX of 1925) which has replaced the probate and Administration Act, 1881. According to this, an administrator is a person appointed by competent authority to administer the estate of a deceased person when there is no executor. An executor, if appointed by the deceased person, conducts all necessary functions for proper administration of the estates.

According to Muslim Law, the property or estate of a deceased vests in his heir or heirs from the moment of his death. But the heirs are entitled to inherit only to the residue after the payment of debts, if any, bequest, if any, and funeral expenses, as stated in the above illustration. In *Mabub Alam v. Razia Begum* case, Kayani, J. said the theory that the property of a Muslim vests in his heirs immediately after his death is considerably tempered by the injunction that the heirs are entitled only to the residue after the payment of a legacy or debts and since the payment of debts and legacies necessarily involves the administration of the estate, such administration is implied in the very words of the Holy Quran and of authentic texts.

Thus Muslim Law recognises four purposes to which the properties of the deceased are successively applicable:¹

- (a) his funeral expenses;
- (b) his debts (if any);
- (c) his bequest (if any);
- (d) entitlements of his heirs.

But the Succession Act, 1925 which is in force in Bangladesh, supercedes the Muslim law of inheritance. It lays down the following scheme according to which payments are to be made in order of priority:

- (a) Payment of the mortgaged debts and any other amount which is a charge on the property of the deceased.
- (b) Funeral expenses and death-bed charges;
- (c) Expenses of obtaining probate, letters of administration or succession certificate.

¹ AIR (1950) Lah. 12, 16; PLD 1949 Lah. 263.

- (d) Wages due for services rendered to the deceased within three months preceding his death by any labourer or servant;
- (f) Legacies not exceeding one-third of what remains after all the above payments have been made.
- (g) The residue to be distributed among the heirs of the deceased according to the law of the sect to which he belonged at the time of his death.²

These rules are explained below.

(i) Rules regarding funeral expenses

Under Muslim law, death-bed and funeral expenses form the first charge on the estate of a deceased Muslim, which must be spent before payment of debts and bequest. After such payments, debt, if any, must be discharged and any valid bequest made by him. Only reasonable amount is to be spent on funeral expenses. The funeral expenses comprise the washing, shrouding of the body together with the ceremonies connected therewith. If the deceased person had some debt, the funeral expenses should be minimum so that the surplus amount is left for the creditors. Feeding of the poor is included in funeral expenses provided all the heirs are majors.³ But the amount spent on ceremonies for securing the peace of the soul of the deceased could not cover under the head funeral expenses. All legitimate death charges, such as fees of attending doctors, cost of medicine etc. come under this head.⁴

(ii) Rules regarding Payment of debts

Under Muslim law, the payment of the debts of the deceased person takes priority over legacy or *wasiyat*. There are three kinds of debts which are payable from the estates of a deceased person:

- (a) Debt which is a charge on the estate or on any part of it.
- (b) Debt which was acknowledged by the deceased when he was in health or borrowed during illness, which can be proved by independent evidence.
- (c) Debt which is acknowledged during death illness.

² Succession Act, 1925, ss. 320-325.

³ Aziz Ahmad, Islamic Law theory and practice, P. 498.

⁴ AIR 1934 All. 71. See Ameer Ali, Muhammedan Law, Voll. II, P. 38.

The first kind of debt has a priority over the second, and the second has a priority over the third. If the debt exceeds the assets, then there is a rateable distribution among the creditors. Creditors of higher priority would be paid first, and if somethings remains, then the creditors of lower grade would be paid rateably.

(iii) Rules regarding legacy

As mentioned above, legacy or bequest is to be paid after the payment of debts. Legacy not exceeding one-third is allowed if made to other than heirs. But in case of more than one-third, consent of the heirs is necessary. Since it is the Quranic injunction, payment of *wasiyat* is obligatory.

2. Vesting of estate

The right to administer the estate of a deceased Muslim belongs to his executor or administrator appointed by his will. He is his legal representative for all purposes, and the property of the deceased vests in him as such.⁵ His duty is to collect the assets, discharge the debts, pay the legacies and distribute the estate amongst the heirs. The estate vests in the executor though no probate has been obtained by him. When an executor has realized the estate, he is nothing but a bare trustee for the heirs as to two-thirds an active trustee as to one-third for the purposes of the will. The reason is this that a Muslim cannot dispose of more than one-third of his net estate by will, and according to the rule of inheritance, the rest two-thirds must devolve on the heirs. But if there is no executor, either appointed by the testator or by the court, the entire estate of the deceased or so much of it as has been left undisposed of by will, devolves upon the heirs in specific shares at the moment of his death.⁶ The devolution is subject to the payment of debts in proportion to the share of each heir and to the payment of legacies.

3. Power of alienation by heir

When there is no executor or administrator, the heirs themselves become the legal representatives and administrators of the estate.⁷ Any heir may, even before the distribution of the estate, transfer his share in

⁵ Section 24, Succession Act, 1925.

⁶ Jaffri Begum V. Amir Mohammad (1885) 7 All. 822.

⁷ Ibid.

the estate after it has vested in him. *Bona fide* transferee for value gets a good title under the estate, not withstand any debts that might be due from the deceased. The following illustration is narrated for easy understanding:

Abdullah dies leaving several number of heirs. After his death all the heirs sell the whole of his estate without paying his debts. After the sale, a creditor of Abdullah obtains a decree against the heirs for the debts and applies for execution of the decrec by an attachment and sale of the property in the hands of the purchaser. He is entitled to do so, because, a creditor of a deceased Muslim cannot follow his estate into the hands of a *Bona fide* purchaser in value.

But if there is only one heir of a deceased Muslim, the heir can validly alienate the whole of the estate he inherits to satisfy any debt of the deceased. On the other hand, if the number of heirs of the deceased is more one and the whole of estate of the deceased is in possession of only one heir, he has no power to alienate the shares of other heirs, even it is for discharging of debts of the deceased. Such a transfer will be effective only in respect of the share of the transferor.

4. Suits by Creditor for recovery of debts from the estate

If an executor or an administrator represents an estate of the deceased, a suit by a creditor of the deceased should be instituted against the executor or administrator, as the case may be. The Court may in such a suit pass a decree against all the assets of the deceased in the possession of the defendants.

5. Recovery of debts due to deceased

A debtor may pay the debts due to the deceased to his executor, though he may not have obtained probate. In case of death of creditor intestate, the debts may be paid to the heirs of the deceased, though the payment of the debt to one heir does not discharge of the debt to all.⁸ But when the debt is to be recovered through a court, the court shall proceed only when the person claiming to be entitled to the payment of such debts produces a probate or letters of administration to the estate of the deceased.

⁸ (1902) 25 Mad. 734.

An executor or administrator can give valid discharge to a debtor of the deceased. No single heir out of the several heirs has the authority to give a valid discharge so far as the share of the other heirs in the debts in concerned. Of course, he can give a valid discharge in proportion to his interest in the estate. An illustration is given in this respect.

A Muslim died leaving only a son and a daughter. A debtor of the deceased pays the debt to son alone. He must pay over again one-third share of the debt to the daughter.

6. Alienation of estate for payment of debts

If a Muslim dies leaving debts and he has only one heir, then that heir can validly alienate the whole of the estate he inherits in order to pay the debts of the deceased. But if the deceased has left several heirs and the whole of the estate of the deceased is in possession of only one heir, he cannot alienate the shares of other heirs, even to discharge the debts of the deceased. Such an alienation, if made, is not binding upon the other heirs. This will take effect only in respect of the share of the transferor.

Similarly, if one of the heirs sells the property in excess of his own share for payment of debts, the other co-heirs may sue for a declaration that the sale is not binding on them. They may pray to the court for setting aside the sale. The court, however, for the sake of equity, reserves the power to pass an order for giving possession to other heirs in proportion to their share in the debt.⁹

⁹ Syed Khalid Rashid, Muslim Law, P. 339.