

**THE
BANGLADESH CODE
VOLUME - I**

THE WILLS AND INTESTACY REGULATION, 1799

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THE ¹[*] WILLS AND INTESTACY
REGULATION, 1799**

Bengal Regulation V of 1799

[3rd May, 1799]

A Regulation to limit the interference of the Zilla Courts of Diwani Adalat in the execution of wills and administration to the estates of persons dying intestate.

Preamble

1. Doubts having been entertained to what extent and in what manner, the Judges of the Zila Courts of the Diwani Adalat are authorised to interfere in cases wherein the inhabitants of the ²[Bangladesh] may have left wills at their decease, and appointed executors to carry the same into effect, or may have died intestate leaving an estate real or personal; with a view to remove all doubts on the authority of the Zila Courts in such cases, and to apply thereto, as far as possible, the principle that in suits regarding succession and inheritance the Muhammadan laws with respect to Muhammadans, and the Hindu laws with regard to Hindus, be the general rules for the guidance of the Judges, the Vice-President in Council has passed the following Regulation, to be considered in force from the period of its promulgation.

Estates of
Hindus,
Muhammadans
and others, not
being
disqualified
landholders,
leaving wills

2. In all cases of *Hindu*, *Mussalman* or *other person* subject to the jurisdiction of the Zila Courts, having at his death left a will and appointed an executor or executors to carry the same into effect, and in which the heir to the deceased may not be a disqualified landholder subject to the superintendence of the Courts of wards the executors so appointed are to take charge of the estate of the deceased, and proceed in the execution of their trust according to the will of the deceased and the laws and usages of the country,

¹ The word "Bengal" was omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

² The word "Bangladesh" was substituted of the word "Province" by Article 5 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

without any application to the Judge of the *Diwani Adalat* or any other officer of the Government for his sanction; and the Courts of Justice are prohibited to interfere in such cases, except on a regular complaint against the executors for a breach of trust or otherwise, when they are to take cognisance of such complaint in common with all others of a civil nature.

3. In case of a Hindu, Mussalman or other person subject to the jurisdiction of the *Zila* Courts dying intestate, but leaving a son or other heir, who, by the laws of the country, may be entitled to succeed to the whole estate of the deceased, such heir, if of age and competent to take the possession and management of the estate, or, if under age or incompetent and not under the superintendence of the courts of Wards, his guardian or nearest of kin who, by special appointment or by the law and usage of the country, may be authorised to act for him, is not required to apply to the Courts of Justice for permission to take possession of the estate of the deceased as far as the same can be done without violence; and the Courts of Justice are restricted from interference in such cases, except a regular complaint be preferred.

Estates of persons dying intestate

4. If there be more heirs than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager, they are at liberty to take possession, and the Courts of Justice are restricted from interference, without a regular Complaint, as in the case of a single heir;

If there be more heirs than one to estate of intestate

but if the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the Judge, on a regular suit being preferred by the party out of possession, shall take good and sufficient security from the party or parties in possession for his or

their compliance with the judgment that may be passed in the suit; or, in default of such security being given within a reasonable period, may give possession, until the suit may be determined, to the other claimant or claimants who may be able to give such security, declaring at the same time that such possession is not in any degree to affect the right of property at issue between the parties, but to be considered merely as an administration to the estate for the benefit of the heirs who may on investigation be found entitled to succeed thereto.

In what case
Judge may
appoint
Administrator
for care and
management of
estate of
intestate

5. In the event of none of the claimants to the estate of a person dying intestate being able to give the security required by the preceding section, and in all cases wherein there may be no person authorised and willing to take charge of the landed estate of a person deceased, the Judge within whose jurisdiction such estate may be situated (or in which the deceased may have resided, or the principle part of the estate may lie, in the event of its being situated within two or more jurisdictions) is authorised to appoint an administrator for the due care and management of such estate, until, in the former case, the suit depending between the several claimants shall have been determined, or in the latter case until the legal heir to the estate, or other person entitled to receive charge thereof as executor, administrator or otherwise, shall attend and claim the same; when, if the Judge be satisfied that the claim is well-founded, or if the same be established after any inquiry that may appear necessary, the administrator appointed by the Court shall deliver over the estate to him, with a full and just account of all receipts and disbursements during the period of his administration.

Security to be
taken from, and
allowances paid
to
administrators

6. In all instances of an administrator being appointed under this regulation, he is, previous to entering upon the execution of his office, to give good security for the faithful discharge of his trust in a sum proportionate to the extent thereof and appointing him is authorised to fix for him (Subject to the approbation of the Court of *Sadar Diwani Adalat*, to whom a report is to be made in such instances) an adequate personal allowance to be paid out of the proceeds of the estate, and to be a percentage thereupon, after deducting the expenses of management.

7. The Judges of the *Zila* Courts on receiving information that any person within their respective jurisdictions has died intestate, leaving personal property, and that there is no claimant to such property, are to adopt such measures as may be necessary for the temporary care of the property, and to issue an advertisement in the current languages of the country requiring the heir of the deceased, or any person entitled to receive charge of his effects, to attend for this purpose. Such advertisement to be published on the spot where the property was found, at the *Diwani Adalat cutcherry* of the *Zila*, and if ascertainable, at the dwelling place of the deceased; after which, should any person attend and satisfy the Judge of his title to the property, or to receive charge thereof as executor, administrator or otherwise, the same is to be delivered up to him, on repayment of any necessary expense incurred in the care of it.

Procedure cases of persons dying intestate, leaving personal property to which there is no claimant

Should no claim be preferred within the twelve months next ensuing, an inventory of the property and report of the circumstances of the case is to be transmitted to the ¹[Government], for its orders.

8. Nothing in this Regulation is to be understood to limit or alter the jurisdiction of the Court of Wards in the appointment of managers or guardians for disqualified landholders, or in any case wherein a special power may be vested in the Court of Wards.

Saving of jurisdiction of Court of Wards

¹ The word "Government" was substituted for the words "Board of Revenue" by Article 3, Schedule of the Bangladesh Laws (Repealing and Amending) Order, 1973 (President's Order No. 12 of 1973).