



READER'S queries



Your Advocate



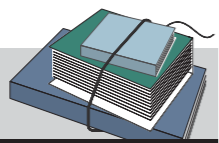
This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law. Send your queries to the Law Desk, The Daily Star. A panel of lawyers

Q: I would like some clarification on the Law of Inheritance under the Muslim Law in Bangladesh: (1) If a male Muslim has left behind property in his name, how will it be inherited by his wife and children (i) if there are sons and daughters (ii) if there are only daughters? Can there be other legal heirs of this property? (2) If a female Muslim has left behind property in her name, how will it be inherited by her husband and children (i) if there are sons and daughters (ii) if there are only daughters? Can there be other legal heirs of this property? Does the situation differ for the husband if the subject property was gifted to the wife by the husband in the first place? (3) If a Muslim husband has gifted property to his wife, can he legally cancel or claim back the gift (i) under any circumstances (ii) under compelling circumstances, i.e. divorce or separation, death of wife? (4) Is a Will legally valid for property and cash wealth in Bangladesh? (5) Is the Nominee system (bank accounts, savings certificates, company or government pension and provident funds etc) legally valid, i.e. cannot be contested in court by legal heirs?

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Your Advocate: Most of your questions are on the Muslim-inheritance. Let me address them accordingly (1)(i) Under Muslim law between brothers and sisters the ratio is 2:1 that is, brother taking double the share of the sister. ii) 1/2, if there is only one daughter and 2/3 if there are more. Yes, the nature of the share indicates that others have entitlement to the property. Rest of the property will go to the residuary, i.e., brother, father, grand father, uncle, brother's sons etc. how high or low so ever. (2) Between sons and daughters only the ratio always is 2:1. Yes, the rest of the property will go to the residuary as in the case of a male. Yes, if the property is already gifted to the wife or any one else the gifted portion will be excluded from distribution. (3) Under no circumstances if the gift is complete. (4) Yes, will apply to cash as well as the landed property. (5) Opinion may differ. But my considered view is that the system of showing a nominee in the circumstances as you have mentioned is more a rule of convenience than of law relating to title. Somebody, suppose a son, is made nominee generally for the purpose of convenient disposal of the account or dealing with other interests lying with the Govt., Companies etc. in absence of the public servant, account holder/ owner as the case may be. It can not be construed to mean that the original claimant by that way contemplated deprivation of all his other heirs on his/her death. Therefore, such attempt, if taken, by the nominee is open to challenge in any appropriate court of law if there is nothing for the nominee to show that the original claimant intended the nominee to be sole beneficiary of his claim.

LAW lexicon



Jactitation

A false boast designed to increase standing at the expense of another. This used to form the basis of an ancient legal petition called "jactitation of marriage" wherein a person could be ordered by the courts to cease claims of being married to a certain person when, in fact, they were not married. The tort of slander of title is a form of jactitation.

Joint custody

A child custody decision which means that both parents share joint legal custody and joint physical custody. This is not very common and many professionals have taken to referring to "joint legal custody but sole maternal physical custody" as "joint custody".

Joint tenancy

When two or more persons are equally owners of some property. The unique aspect of joint tenancy is that as the joint tenancy owners die, their shares accrue to the surviving owner(s) so that, eventually, the entire share is held by one person. A valid joint tenancy is said to require the "four unities": unity of interest (each joint tenant must have an equal interest including equality of duration and extent), unity of title (the interests must arise from the same document), unity of possession (each joint tenant must have an equal right to occupy the entire property) and unity of time: the interests of the joint tenants must arise at the same time.

Judicial review

When a court decision is appealed, it is known as an "appeal." But there are many administrative agencies or tribunals, which make decisions or deliver government services of one sort or another, the decisions of which can also be "appealed." In many cases, the "appeal" from administrative agencies is known as "judicial review" which is essentially a process where a court of law is asked to rule on the appropriateness of the administrative agency or tribunal's decision. Judicial review is a fundamental principle of administrative law. A distinctive feature of judicial review is that the "appeal" is not usually limited to errors in law but may be based on alleged errors on the part of the administrative agency on findings of fact.

Jure

Latin, from Roman law: by right, under legal authority or by the authority of the law. A variation, "juris" means "of right" or "of the law." See jurisprudence below which means "science of the law."

Jury

A group of citizens randomly selected from the general population and brought together to assist justice by deciding which version, in their opinion, constitutes "the truth" given different evidence by opposing parties.

Jus

Latin: word, which, in Roman law, meant the law or a right. Also spell "ius" in some English translations. For example, public law was called "jus publicum" and private law was called "jus privatum."

Star LAW report

Pleadings may be amended to determine the real issue

High Court Division (Civil Revisional Jurisdiction),
The Supreme Court of Bangladesh,
Bangladesh Shipping Lines Ltd. (Petitioner),
Vs
Commissioner of Custom, Chittagong and others (Opposite parties),
Before Mr. Justice Md. Abdur Rashid and Mr. Justice Md. Mahmud Hossain.
Date of Judgement, 21st July 2002.

Background

Md Abdur Rashid J: This Rule arises out of an order of the Third Court of Subordinate Judge at Chittagong dated 13-8-2000 passed in other Suit No. 23 of 1999, which rejected an application for amendment of the plaint.

The plaintiff and defendant Nos. 2 and 3 are engaged in the business of handling agency for foreign ship owners. On 31 January 1999 the plaintiff instituted the suit for a decree of several declarations, namely, issue of adjudication orders as described in schedule-A to the plaint against the plaintiff are all illegal, improper and of no legal effect, that the joint declaration dated 1st August 1991 executed between the plaintiff and the defendant no- 2 was a mere working agreement and lost its all legal effect after 3-3-93 and that defendant Nos. 2 and 3 were liable and responsible to act upon and pay under all adjudication and penalty orders covering the period up to 31-7-1991 including those described in aforesaid schedule.

On 13-8-2000 the plaintiff made an application for amendment of the plaint for addition of further relief after clause C of paragraph 20 of the plaint, which are of the following effect,

- the joint declaration dated 1-8-91 to be declared void ab initio and be cancelled;
- money decree for a sum of Taka 3,90,735;
- defendant No. 2 and 3 to be declared liable and responsible to pay the money to be assessed by defendant No. 1 in different adjudication orders on the basis of Import General Manifest as submitted by them; and also
- a decree of mandatory injunction directing defendant Nos. 2 and 3 to pay the penalty and other amount as assessed by defendant No. 1.

On the same date, the application was heard and rejected by the learned Subordinate Judge by impugned order being of the view that proposed amendment was contrary to the nature and character of the main suit.

Mr Niaz Mahmud, learned Advocate for the plaintiff, submitted that the Court below erred in law in refusing the prayer for amendment on wrong assumption that the proposed amendment will result in change in the nature and character of the suit. By reading the plaint and the application for amendment, he submitted that the plaintiff had to add a prayer for a money decree after the plaintiff was made on 7-2-99 to pay Taka 3,90,575 against an adjudication order after the institution of the suit. If defendant Nos. 2 or No. 3 is found ultimately responsible to pay said amount, which could be recovered in the present suit and, as such, a money decree is sought to be added for. Such amendment would also help avoid multiplicity of proceedings. For the same purpose, a decree of mandatory injunction is also sought to be added.

By filing an affidavit-in-opposition on behalf of defendant opposite party No. 2 Mr Morad Reza opposed the proposed amendment and submitted that defendant No. 2 was not at all aware of the suit or the impugned order since it did not receive any summons of the suit. Had it received the summons, it would definitely oppose the prayer by filing a written objection.

He challenged the proposed amendment on number of grounds namely, the amendments sought for was barred by limitation. The new relief sought for declaring the joint declaration dated 1-8-91 void on ground of fraud could not be allowed by way of amendment in the absence of any pleading in the plaint. In a suit for a decree of declaration as sought for in the plaint, new relief for a money decree could not be allowed to be added by amendment. The plaintiff could not be allowed to take away his admission made in the plaint in respect of the aforesaid joint declaration. He also defended the impugned order on the reason that such amendment would result in change of the nature and character of the plaint even if not of the suit.

Deliberation

We have perused the plaint along with the application for amendment and the affidavits of the parties. The question before us is whether the exercise of jurisdiction by the learned Subordinate Judge in rejecting the prayer for amendment is well founded, in the fact and circumstances of the case.

In order to appreciate the conflicting submissions of the learned Advocates, we consider first the authorities as cited at the Bar.

In the case of Malik & Huq and another vs Muhammad Shamsul Islam Chowdhury 13 DLR (SC) 228 in a suit for a decree of declaration against order of discharge from service, injunction to reinstate into service, for damages for the loss due to discharge etc, the Supreme Court of Pakistan held the prayer for amendment to add further relief of a declaration that the plaintiff was entitled to money from the defendants not maintainable. The Supreme Court was of the view that the plaintiff would have to use the defendants separately for money.

In Gopal Das vs Mul Raj, AIR 1937 Lahore 389, in a suit for declaration that certain contracts of sale were valid and the purchase of certain bales were not valid since ratification of the transaction or purchase was obtained by fraudulent misrepresentation, a Division Bench of the Lahore High Court found the prayer for amendment of the plaint for addition of further relief a declaration that certain sum deposited by the plaintiff with the defendant as margin money is accountable by the defendant to the plaintiff cannot be granted under section 42 of the Specific Relief Act as it affects the pecuniary relationship between the parties to the contract.

After reading the above authorities, we read the provisions of Order VI rule 17 of Code. The rule 17 empowers the Court at any stage of the proceedings to allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. And all such amendment shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. The power of the court under the provision is no doubt of a discretionary in nature and the Court shall have to exercise the discretion judiciously in the terms of the rule. The intention with regard to the terms is also made sufficiently clear, the amendment should not only be just but also necessary for resolving the real issue in controversy between the parties. In our judgement an amendment may be just but cannot be allowed if it is not necessary for decision in the suit. So, in the exercise

of the discretion the dominant consideration for the Court is to see whether or not the proposed amendment is necessary to decide the issue that may arise in the suit on the basis of original pleadings.

Let us now consider the proposed amendment on the above principles regarding amendment. At first, we must say that the objections to the proposed amendment on ground of prejudice to the other party for introduction of a new case of fraud or seeking new relief, if any, made in the plaint have got no basis since none of defendants before us has yet appeared in the suit. Moreover, there cannot be any element of surprise for them to contest the suit, if any of them ultimately do so. Objection on ground of limitation also cannot be accepted in the case before us since the proposed amendment has been sought within the limitation of the cause of action for the new relief of a money decree after making a payment on 7-2-99 and also within the date of institution of the suit on 31-1-99. Similarly, the submissions made on behalf of the plaintiff that the proposed amendment would not result in any change of the nature and/or character of the suit would be of no avail if the amendment is not at all necessary for the relief already sought for in the plaint.

In view of the above plaint, the questions at which the parties likely to be at variance are which of the handling agents is liable to pay as per adjudication order to be passed by the defendant No. 1 and for which period of the agency. The plaintiff has not denied the execution of the joint declaration with defendant No. 2 on 1-8-91 nor he has denied his liability to pay for the period from 1-8-91 to 3-2-93. If the plaintiff can prove its case, the plaintiff would not be held responsible for any period either before 1-8-91 or after 3-2-93 and the relief sought for in the plaint is sufficient to address its grievances. The proposed amendment to add further relief that joint declaration dated 1-8-91 to be declared void ab initio and be cancelled and that defendant no. 2 and/or No. 3 to be declared liable and responsible to pay the money to be assessed by defendant No. 1 in different adjudication orders on the basis of Import General Manifest are not at all necessary for adjudication of the aforesaid real issues. Further relief for a money decree for a sum of Taka 3,90,735 and a decree of mandatory injunction directing defendant Nos. 2 and 3 to pay the penalty and other amount to be assessed by defendant No. 1 are equally not necessary. Because, if the plaintiff succeeds to fix the responsibility of defendant No. 2 and/or No. 3 and gets a decree accordingly, then, pursuant to the decree the defendant No. 1 would be obliged to



return the amount realised from the plaintiff on 7-2-99, and would need no mandate from the Court to realise the dues from the agent found responsible. Besides, in view of the principles enunciated in the above cited Malik and Haq and another vs Muhammad Shamsul Islam and Gopal Das vs Mul Raj, in a suit for a decree of declaration an amendment for adding further relief of a money decree cannot be allowed.

Decision

In the fact and circumstances of the case and the law, we find the proposed amendment is neither just nor necessary for determination of the real issues in controversy that may arise in the suit between the parties. The exercise of the discretion by the learned Subordinate Judge in rejecting the application for amendment of the plaint does not, therefore, suffer from any infirmity or illegality, nor such decision has resulted in failure of justice.

In the result, the Rule is discharged without, however, any order as to costs. Order of stay granted on 13-11-2000 is hereby recalled and vacated. Learned Subordinate Judge is directed to proceed with the suit in accordance with law.

Mustafa Niaz Mahmud, for the petitioner and Murad Reza, for the opposite party no- 2 with JBM Hassan, for the opposite party no-3.

LAWSCAPE



Many years ago, when the death penalty by hanging was still in vogue, a doctor was giving evidence before a judge who had already heard contrary evidence from other doctors. The judge asked the doctor if he was sure of his testimony in light of the evidence from the other doctors. "I am quite certain, my lord," said the doctor. "Doctors sometimes make mistakes," said the judge. "Lawyers do too, my lord," came the retort from the witness. "Ahh, but doctors' mistakes are buried," answered the judge. "That is true, my lord, but lawyers' mistakes frequently swing!"

One judge became frustrated with a lawyer's arguments and he pointed to one of his ears and then to the other and said: "what you are saying is just going in one ear and out the other."

"My lord," replied the lawyer, "I do not doubt it. What is there to prevent it?!"

"Your lordship," pleaded a witness. "You may or may not believe me but I have told the truth. I have been wedded to truth since infancy." "Yes," replied the judge, "But how long have you been a widower."

LAW week



New Chief Justice appointed

Justice Khandaker Mahmud-ul Hasan has been appointed as the 13 th Chief Justice of Bangladesh. He replaced Justice Mainur Reza Chowdhury. He was made the chief justice superseding two judges of the Appellate Division of the Supreme Court. Justice Khandaker Mahmud-ul Hasan was born on January 27, 1939. His father late justice Khandaker Mohammed Hasan came from Munshiganj. Enrolled as a Supreme Court advocate in 1963, Justice Hasan was elevated as a judge to the High Court in 1991 and the Appellate Division on January 20, 2002. He served as ambassador to Iraq from 1980 to 1982. He did his BA (Honours), MA and LLB in Dhaka, LLM in London and is a Barrister-at-Law from Lincoln's Inn. Justice Hasan had been involved with different organisations, including Bangladesh Institute of Law and International Affairs and American Bar Association. He took part in law-related international conferences in Malaysia, Singapore, Pakistan, Sri Lanka, India, Austria and Australia. - *Law Desk.*

Flag Vessels (Amendment) Bill tabled

The Bangladesh Flag Vessels (Amendment) Bill 2003 has been placed in the Jatiya Sangsad. The bill sought inclusion of a general waiver clause in the original law. Minister for Shipping Akbar Hossain introduced the bill seeking two amendments to the Bangladesh Flag Vessels (Protection) Ordinance 1982. Once passed, the amendment would empower the shipping directorate to allow major foreign flag vessel operator to load and unload cargoes at Bangladesh ports without taking waiver certificate for two years. - *Pratham Alo, 23 June.*

Verdict on Fahima rape case

A young man has been sentenced to death and two others given life imprisonment in the sensational Fahima rape case. A Speedy Trial Tribunal awarded death sentence to Sumon and life imprisonment to his uncle Halim and friend Nasir under the Women and Children Repression Prevention Act. It also ordered Halim and Nasir to pay Tk 1 lakh to the family of the victim. Judge Jahangir Alam Mollah delivered the 32-page judgement about 15 months after the incident. According to the case, Sumon used to tease 13-year-old Fahima. At 9:30pm on March 3 last year, Fahima went to his brother Rafiq's shop to eat Chatpati. When Rafiq went home to bring some spices, Sumon and Nasir forcibly took Fahima to a room of one Keramat Ali in Tolarbagh. Sumon raped her with the help of Nasir and Helal. Fahima handed herself from the ceiling of her room with a scarf the same night. Her father filed a case with the Mirpur Police Station. Sub-inspector Rowshan Ara submitted the chargesheet within 12 days. The hearing of the case could not be held for 10 months as the witnesses did not appear before the court. The trial began on May 18 this year. - *Law Desk.*

Body to protect consumers' interest

For the first time, the government is going to set up Consumer Affairs Bureau (CAB) to protect the rights of the consumers. The bureau would have a secretariat and 20 member national council comprising representative of various professional groups and the private sector. To be headed by a retired judge, the CAB will have the authority to take punitive action against people found guilty of hoarding essentials that causes irrational price hike. It would monitor price of essentials and take follow up actions. The national council will meet regularly and advice the government on consumer related issues. The act is being prepared in the light of Sri Lanak's experience in this regard. - *Daily Star, 20 June.*

Cabinet okays Special Court Bill

The government has decided to give some additional responsibility to the special courts and tribunals for speedy disposal of case. For that purpose the cabinet has approved the Special Court (Additional Responsibility) Bill 2003 which will provide for additional responsibility to certain court for quick disposal of civil and criminal cases. - *Pratham Alo, 24 June.*

Sylhet jail in dilapidated condition

Sylhet jail, which was constructed in 1917, is now on the brink of collapse. The main building and the boundary walls of the jail are in a ramshackle condition. Non functioning of it's drainage system compounding the problems. The main buildings and boundary walls of the 85-year-old cramped jail are in a ramshackle condition. The jail hospital building had been declared 'abandoned' by the Public Works Department (PWD) two years ago and shifted into a tin-shed structure. Lack of staff, facility and medicine expose the prisoners to serious health hazards. - *Daily Star, 21 June*

Call to frame policy for NGOs'

Speakers at a roundtable meeting stressed formulation of a policy for NGOs' in the country. The Credit and Development Forum (CDF) organised the meeting titled 'Internal Resource Mobilisation for Poverty Alleviation Through Micro Finance'. The speakers said that there are too many NGOs' in the country and most of them are doing nothing but their own business. They mentioned that the system for registration of NGOs should be tightened and their rates of interest should be lowered. They also said the NGOs charge high rate of interest, making economic activity with their loans unviable. - *Daily Star, 22 June.*

Recreation facility for DCJ inmates

A welfare program is being taken for the inmates of the Dhaka Central Jail (DCJ) who live their prison days in squalid conditions. Under the program 800 ceiling fans will be provided to the 36 wards of the jail. This would lessen the prisoners' plight on hot summer days. However, inmates living in cells will not get any fans in apprehension of prisoners committing suicide. They will later be provided with fans fitted to walls. In addition fifty television sets will also be installed in the wards. But the biggest improvement the jail will have is the introduction of a central public address system. The names of visitors and prisoners will be announced through loud speakers in the wards. Various donors are providing fund for this program. - *Daily Star, 19 June.*

BAC presses graft charges against 10

The Bureau of Anti-Corruption (BAC) has pressed charges against former state minister for energy Prof Rafiqul Islam and 10 others for misappropriation of Tk 44 crore in the 60 MW Shahjibazar power plant corruption case. The charge sheet was filed by the IO of the case with the Chief Metropolitan Magistrate's Court, Dhaka. Former Power Development Board (PDB) chairman Nuruddin Mahmud Kamal has also been charged. According to the charge sheet, the accused manipulated the tender bidding for the 60 MW power project. Though the lowest bidding was Tk 109 crore, the accused raised the project costs, forcing the government to incur an additional expenditure. - *Ittefaq, 16 June.*

Task force to combat drug smuggling

The government is planning to form a task force comprising representatives from various government agencies to combat drug smuggling and trade. It has been suggested that the director (operation) of the Department of Narcotics Control (DNC) would head the task force and a representative from the DNC zonal office would be its member secretary. The task force will include a commanding officer of Bangladesh Rifles, representatives from the Bangladesh Railway, district police, railway police, ansar, Village Defense Party, Town Defense Party as well as members of parliament and other public representatives from the bordering areas. - *Daily Star, 24 June.*

Criminal case against policemen

A criminal case has been filed with the Chief Metropolitan Magistrate's Court of Dhaka against police personnel. The accused are Assistant Commissioner Manzur Morshed, Inspector Newaz Ali, Officer in Charge of Dhanmondi police station Mozammel Huq and Sub-Inspector Akhter Hossain. Advocate Navana Akhter filed the case accusing the policemen of assaulting her and some of other women while they were in a procession during hartal on 13 May 2003. After hearing metropolitan magistrate Emdadul Haque took the case into cognizance. He asked the DMP commissioner to file a case under relevant sections after investigation. - *Daily Star, 18 June.*

Corresponding Law Desk

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