

PARLIAMENT OF CEYLON

4th Session 1951



Partition Act, No. 16 of 1951

Date of Assent : April 12, 1951

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FIRST SCHEDULE.

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FIFTH SCHEDULE

AN ACT TO PROVIDE FOR THE PARTITION AND SALE OF
LAND HELD IN COMMON AND TO EFFECT CONSEQUENTIAL
AMENDMENTS IN OTHER WRITTEN LAW.

[Date of Assent: April 12, 1951.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Partition Act, No. 16 of 1951, and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette*.

Short title and
date of
operation.

*Institution of partition action and incidental
procedure*

2. Where any land belongs in common to two or more owners, any one or more of them may institute an action for the partition or sale of the land in accordance with the provisions of this Act.

Institution of
partition
action.

3. (1) Every partition action shall be instituted by presenting a written plaint to the court, within the local limits of whose jurisdiction the land which is the subject matter of the action is situated in whole or in part.

Appropriate
court.

(2) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more courts any land is situated, any one of those courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any partition action relating to the land; and such action so entertained and disposed of shall for all purposes be deemed to be and to have been duly instituted in a court of competent jurisdiction.

(3) Nothing herein contained shall affect or be deemed or construed to affect any provision of any written law (other than this Act) whereby any pecuniary or other limitation has been prescribed in respect of the jurisdiction of any court.

Requisites of
plaint. Cap. 86.

4. In addition to the particulars required to be stated in a plaint by the Civil Procedure Code, every plaint presented to a court for the purpose of instituting a partition action shall contain the following particulars:—

- (a) the name, if any, and the extent and value of the land to which the action relates;
- (b) a description of that land by reference to physical metes and bounds or by reference to a sketch, map or plan which shall be appended to the plaint;
- (c) the names and addresses of all persons who are entitled or claim to be entitled to any right, share, or interest to, of, or in that land or to any improvements made or effected on or to that land, and the nature and extent of any such right, share, interest or improvements, so far as such particulars are known to the plaintiff or can be ascertained by him; and
- (d) a statement setting out, with reference to a pedigree which shall be appended to the plaint, the devolution of the title of the plaintiff and, where possible, the devolution of the title of every other person disclosed in the plaint as a person entitled or claiming to be entitled to that land, or to any right, share, or interest to, of, or in that land.

Persons to be
made parties.

5. The plaintiff in a partition action shall include in his plaint as parties to the action all persons who, to his knowledge,—

(a) are entitled or claim to be entitled—

(i) to any right, share, or interest to, of, or in the land to which the action relates, whether vested or contingent, and whether by way of mortgage, lease, usufruct, servitude, trust, fidei commissum, life interest, or otherwise, or

(ii) to any improvements made or effected on or to the land; or

(b) are in actual possession of the land or any part thereof.

6. (1) The plaintiff in a partition action shall file or cause to be filed in court with the plaint—

Application for registration of action as *lis pendens* to be filed with plaint.

- (a) where the land to which the action relates is situated in one registration district, an application for the registration of the action as a *lis pendens* addressed to the Registrar of Lands of that district, or
- (b) where the land is situated in two or more registration districts, a separate application for the registration of the action as a *lis pendens* addressed to the Registrar of Lands of each of those districts.

(2) The application or each of the applications referred to in sub-section (1) of this section shall be in duplicate and substantially in the form prescribed by the Registration of Documents Ordinance and shall contain a blank space for the insertion of the number to be assigned to the action by the court.

Cap. 101.

(3) Notwithstanding anything to the contrary in the Registration of Documents Ordinance or in any regulation made thereunder, no fee shall be charged for the registration of a partition action as a *lis pendens* under that Ordinance.

Cap. 101.

7. Where the plaintiff in a partition action fails to comply with the requirements of section 4, section 5 or section 6, the court may—

Failure to comply with section 4, 5 or 6.

- (a) return the plaint so that the plaintiff may, then and there or within such time as may be fixed by the court, comply with those requirements, or
- (b) reject the plaint:

Provided that nothing herein contained shall affect the right of the court to reject the plaint on any ground specified in section 46 of the Civil Procedure Code.

Cap. 86.

8. Where the plaint in a partition action is accepted, the court shall forthwith—

Procedure on acceptance of the plaint.

- (a) cause to be inserted in each copy of the application for the registration of the action as a *lis pendens* a reference to the number assigned by the court to the action, and transmit the application in duplicate to the Registrar of Lands of each land registry in which the action is to be registered as a *lis pendens*; and

- (b) fix a date on or before which the plaintiff shall deposit in court such estimated costs of the preliminary survey of the land to which the action relates as may be determined by the court.

In estimating the costs of such preliminary survey, the court shall have regard to the rates set out in the First Schedule to this Act.

Determination
of actual costs of
preliminary
survey.

9. After the preliminary survey of the land to which a partition action relates is made the court shall determine the actual costs of such survey in accordance with the rates set out in the First Schedule to this Act, and, if the actual costs so determined are more than the estimated costs determined under section 8, shall make order specifying the party by whom, and the date on or before which, the amount of the difference between such actual costs and such estimated costs shall be deposited in court.

Failure to
deposit
costs of
preliminary
survey.

10. (1) Where the plaintiff in a partition action fails to deposit, on or before the date fixed for the purpose, such estimated costs of the preliminary survey as are determined by the court under section 8, the court shall dismiss such action.

(2) Where the amount required to be deposited in court by an order made under section 9 is not deposited on or before the date fixed for the purpose by that order, the court may make a second order allowing further time to the party who is liable to deposit that amount. If that amount is not deposited in accordance with the second order, the court may—

- (a) where the defaulting party is the plaintiff, dismiss the partition action, or
- (b) where the defaulting party is a defendant, reject such part, if any, of his statement of claim as avers or has the effect of averring that the land described in the plaint is only a portion of a larger land which should have been made the subject matter of the partition action or that only a portion of the land so described should have been made such subject matter.

(3) If the amount due to a surveyor as the costs of the survey of a land to which a partition action relates is not paid as ordered by the court, it shall be lawful

for the court to direct the recovery thereof in the same action as though the order for the payment of that amount were a decree in favour of that surveyor against the party ordered to pay that amount.

11. A Registrar of Lands to whom an application for the registration of a partition action as a *lis pendens* has been transmitted by a court under section 8 shall, upon registration of the action as a *lis pendens*, return to the court the duplicate of the application duly endorsed in the manner prescribed by the Registration of Documents Ordinance on or before the date fixed by the court for the return of such duplicate.

Registrar of
Lands to
report to
court
registration
of partition
action as a
lis pendens.

Cap. 101.

12. (1) After a partition action is registered as a *lis pendens* under the Registration of Documents Ordinance the plaintiff in the action shall file or cause to be filed in court a declaration under the hand of a proctor certifying that all such entries in the register maintained under that Ordinance as relate to the land constituting the subject matter of the action have been personally inspected by that proctor after the registration of the action as a *lis pendens*, and containing a statement of the name of every person found upon the inspection of those entries to be a person whom the plaintiff is required by section 5 to include in the plaint as a party to the action and also, if an address of that person is registered in the aforesaid register, that address.

Declaration
by proctor, Cap. 101.
and papers
to be filed
with such
declaration.

(2) The plaintiff in a partition action shall, together with the declaration referred to in sub-section (1) of this section, file or cause to be filed in court—

(a) if the aforesaid declaration discloses any person who is not mentioned in the plaint as a party to the action but who should be made such a party under section 5, an amended plaint including therein that person as a party to the action, which amended plaint shall be deemed for all purposes to be the plaint in the action;

(b) as many summonses as there are defendants, each such summons being a summons substantially in the form set out in the Second Schedule to this Act and containing the name and address of the plaintiff and the name and address of the defendant on whom that summons is to be served;

- (c) if the language of any defendant is Sinhalese or Tamil, a translation, in that language, of the summons to be served on that defendant;
 - (d) as many copies of a translation of the plaint in Sinhalese as there are defendants whose language is Sinhalese, as many copies of a translation of the plaint in Tamil as there are defendants whose language is Tamil, and as many copies of the plaint as there are defendants whose language is neither Sinhalese nor Tamil, each such copy being a copy certified by a proctor as a true copy;
 - (e) one copy of the plaint certified by a proctor as a true copy, such copy being the copy to be attached to the commission issued to the surveyor who is to make the preliminary survey of the land to which the action relates;
 - (f) as many copies of a notice substantially in the form set out in the Second Schedule to this Act as there are lands to which the action relates;
 - (g) if the language of any defendant is Sinhalese or Tamil, as many copies of a translation, in that language, of the aforesaid notice as there are copies of that notice for the purposes of paragraph (f) of this sub-section;
 - (h) such number of copies of the aforesaid notice and of each translation thereof referred to in paragraph (g) of this sub-section as would enable the transmission of one copy of such notice and one copy of each such translation to the village headman of the division or of each of the divisions in which the land or each of the lands to which the action relates is situated; and
 - (i) a precept to the Fiscal substantially in the form set out in the Second Schedule to this Act.
- (3) If the plaintiff fails to comply with the provisions of the foregoing sub-sections of this section, the court may dismiss the action.

Issue, Service and Publication of Summons

13. (1) Where the court is satisfied that a partition action has been registered as a *lis pendens* under the Registration of Documents Ordinance, that the estimated costs of the preliminary survey of the land

to which the action relates have been deposited in court and that the plaintiff in the action has complied with the provisions of section 12, the court shall order that such summonses, translations of summonses, copies and translations of the plaint, copies of the notice and copies of the translations of the notice as may have been filed in court under paragraphs (b), (c), (d), (f) and (g) of sub-section (2) of section 12 shall be issued to the Fiscal together with the precept.

(2) When making an order under sub-section (1) of this section, the court shall appoint a date for the appearance of the defendants in court and for compliance with the other requirements of the summons.

(3) The secretary or chief clerk or any other officer of the court shall insert the date appointed by the court under sub-section (2) of this section in such summonses, translations of summonses, copies of the notice and copies of translations of the notice as are filed in court under sub-section (2) of section 12 and shall sign them and the precept to the Fiscal.

(4) If the language of any defendant is Sinhalese or Tamil, there shall be attached to the summons issued for service on that defendant a translation of the summons in that language.

(5) There shall be attached to the summons to be served on a defendant—

- (a) if his language is Sinhalese or Tamil, a translation of the plaint in that language, and
- (b) if his language is neither Sinhalese nor Tamil, a copy of the plaint.

14. The provisions of the Civil Procedure Code relating to the service of summons shall apply in relation to the service of summons in a partition action.

Mode of service of summons. C ap. 86

15. (1) Where the court orders the issue of summonses for service on the defendants in a partition action, the court shall order that a copy of the notice and a copy of each translation thereof filed in court under paragraph (h) of sub-section (2) of section 12 be transmitted to the village headman of the division or of each of the divisions in which the land or each of the lands to which the action relates is situated.

Public notice of institution of partition action.

(2) Every village headman to whom any copy of a notice and any copy of a translation thereof are transmitted under sub-section (1) of this section shall cause such copies to be exhibited in a conspicuous position at his office for a period of not less than thirty days.

(3) Where the value of the land to which a partition action relates is not less than fifteen thousand rupees, the plaintiff in the action shall, forthwith after the court orders the issue of summonses for service on the defendants in the action, cause a copy of such notice as is referred to in paragraph (f) of sub-section (2) of section 12 to be published in such newspaper or newspapers as the court shall determine.

(4) The Fiscal shall cause—

(a) a copy of the notice issued to him under sub-section (1) of section 13 to be exhibited in a conspicuous position on the land or on each of the lands to which the notice relates, and

(b) the contents of the notice to be orally proclaimed, after beat of tom-tom, on such land or on each such land and at some public place in the neighbourhood of such land or of each such land or in the village in which such land or each such land is situated.

Preliminary Survey

Commission to
survey land to
be issued
simultaneously
with summonses.

16. (1) When the court orders the issue of summonses to the Fiscal for service on the defendants in a partition action, the court shall at the same time order the issue of a commission to a surveyor directing him to survey the land to which the action relates and to make due return to his commission on a date to be fixed therein which shall not be later than the date specified in the summonses for the appearance of the defendants:

Provided that the court may, in its discretion, fix a date later than that specified in the summonses, or, if necessary, extend the date fixed in the commission from time to time as the circumstances of the case may require.

(2) The commission issued to a surveyor under sub-section (1) of this section shall be in the prescribed form and shall have attached thereto a copy of the plaint. The court may in such commission make provision authorising the surveyor to survey any larger land than that described in the plaint if any defendant named in the plaint points out such larger land as the land which should be the subject-matter of the partition action.

Survey.

17. (1) On receipt of his commission, the surveyor shall fix a date for commencing the survey of the land referred to therein and shall, at least fourteen days

before that date, issue notice in writing to all the parties named in the plaint that he proposes to commence the survey of the land on that date.

Such notice to any party shall be in the prescribed form and shall be sent to him through the post by registered letter directed to the address stated in the plaint.

(2) In addition to the written notice required to be issued to the parties under sub-section (1) of this section, the surveyor shall, at least fourteen days before the date fixed by him for commencing the survey, cause the fact that he will commence the survey on that date to be orally proclaimed, after beat of tom-tom, on the land to be surveyed.

18. (1) The surveyor shall duly execute the commission issued to him and shall, on or before the date fixed for the purpose, make due return thereto in the prescribed form and shall transmit to the court—

Return to
surveyor's
commission.

(a) a report, verified by affidavit, stating—

- (i) the dates on which notice of survey was issued to the parties;
- (ii) the nature and value of the land surveyed and of any buildings, walls, trees, fences, wells, plantations and other improvements thereon, and the details of his computation of such value;
- (iii) the parties to the partition action who were present at the survey, and the name and address of any person (not being a party to the action) who, at the time of the survey, preferred any claim, and the nature of such claim;
- (iv) the result of his investigation of any particular fact or matter specifically referred to in the terms of his commission; and
- (v) any fact, matter or circumstance relating to his survey or to the land surveyed which, in his opinion, may be necessary for, or prove of assistance in, the determination of the partition action;

(b) a plan of the land surveyed, verified by affidavit, showing—

- (i) the boundaries of any divisions of the land subsisting at the time of his

- survey, such divisions being indicated by appropriate letters or numerals;
- (ii) the locations of all buildings, walls and wells, such locations being indicated by appropriate letters or numerals;
 - (iii) the trace or course of any road, path or stream within the boundaries of the land; and
 - (iv) any other physical feature of or on the land which, in his opinion, may be necessary for, or prove of assistance in, the determination of the partition action; and

(c) a certified copy of his field notes.

(2) The documents referred to in paragraphs (a), (b) and (c) of sub-section (1) of this section may, without further proof, be used as evidence of the facts stated or appearing therein at any stage of the partition action: Provided that the court shall, on the application of any party to the action and on such terms as may be determined by the court, order that the surveyor shall be summoned and examined orally on any point or matter arising on or in connexion with any such document or on any statement of fact therein or any relevant fact which is alleged by any party to have been omitted therefrom.

(3) (a) Notwithstanding anything in sub-section (2) of this section, the court, either of its own motion or on the application of a party to the action, may, before using the copy of the surveyor's field notes and the plan, cause them to be verified and to be certified as correct or, where such field notes and plan are incorrect, cause fresh field notes and a fresh plan to be made by the Surveyor-General or by any officer of his Department authorised by him in that behalf, and may for that purpose issue a commission to the Surveyor-General.

(b) As soon as may be after the receipt by the Surveyor-General of any commission issued under this sub-section, the Surveyor-General or any officer of his Department authorised by him in that behalf shall verify the field notes and the plan received with the commission and shall, where they are correct, certify them to be correct or, where they are incorrect, make fresh field notes and a fresh plan, and the Surveyor-General shall make a due return to the commission with the field notes and the plan so certified or with the fresh field notes and the fresh plan.

(c) The field notes and the plan certified as correct under paragraph (b) of this sub-section, or the fresh field notes and the fresh plan furnished by the Surveyor-General under that paragraph, shall be used for the purposes of sub-section (2) of this section at all stages of the action subsequent to the receipt by the court of the return made by the Surveyor-General under that paragraph.

(d) The Surveyor-General, or any officer of his Department authorised by him in that behalf, shall, for the purposes of the execution of any commission issued under this sub-section, have power to inspect or survey the land after giving not less than seven days' notice to the parties to the action of his intention so to do.

(e) The Surveyor-General shall not be entitled to the reimbursement of the costs incurred in the execution of a commission issued to him under this sub-section unless the court, upon the amount of such costs being certified to the court by the Surveyor-General, makes order specifying the party by whom, and the date on or before which, that amount shall be deposited in court.

(f) The party depositing the amount of the Surveyor-General's costs shall be given credit therefor in such manner as the court may direct.

(g) If the costs due to the Surveyor-General are not deposited as ordered by the court, it shall be lawful for the court to direct the recovery thereof in the same action as though the order for the payment of such costs were a decree in favour of the Crown against the party ordered to pay such costs.

Cap. C

Procedure in Court After Appearance of Parties

19. (1) On the date for appearance in court specified in the summons issued in a partition action or on such later date as the court may fix for the purpose—

- (a) any defendant in the action may file or cause to be filed in court a statement of claim setting out the nature and extent of his right, share or interest to, of or in the land to which the action relates, and shall, if he disputes any averment in the plaint relating to the devolution of title, file or cause to be filed in court, together with his statement of claim, an abstract of the devolution of title with reference to a pedigree which shall be attached to the abstract;

Statements
of claims;
disclosure
of mortgages
and leases;
lists of
documents;
and
inspection
of documents.

Cap. 101.

(b) any party to the action whose right, share or interest to, of or in the land is mortgaged or leased by an instrument registered under the Registration of Documents Ordinance shall disclose or cause to be disclosed to the court the existence of the mortgage or lease and the name and address of the mortgagee or lessee; and

(c) every defendant in the action shall disclose or cause to be disclosed to the court the name and address of every person, not being a party to the action, who to his knowledge has any right, share or interest to, of or in the land.

(2) (a) Every party to the action shall, not less than thirty days before the date of the trial of the action, file or cause to be filed in court a list of documents on which he relies to prove his right, share or interest to, of or in the land together with an abstract of the contents of such documents. No party shall, except with the leave of the court which may be granted on such terms as the court may determine, be at liberty to put any document in evidence on his behalf in the action if no such list as aforesaid has been filed by or on behalf of him in court, or if that document is not specified in a list so filed, or if an abstract of the contents of that document has not been so filed.

(b) Any party to a partition action who desires to inspect any document specified in the list of documents filed in court under paragraph (a) of this sub-section by any other party to the action may, by motion *ex parte*, obtain an order of court to that other party to produce that document, at such place and within such time as may be specified in the order, for the inspection of the first mentioned party or of his proctor and to permit such party or proctor to take copies thereof. The party obtaining such order may himself serve or cause to be served such order on that other party.

(c) Where any party to a partition action to whom an order under paragraph (b) of this sub-section is issued fails to comply with that order in regard to any document to which that order relates, he shall not afterwards be at liberty to put that document in evidence on his behalf in the action unless he satisfies the court that he had sufficient cause for not complying with the order.

Failure to produce material document of title at trial.

20. Every party to a partition action who fails to produce in court at the trial of the action any document relating to his title shall, if the court so orders

on being satisfied that such document is material for establishing the title of such party, be liable to pay the costs incurred by any other party to the action in procuring such document or in furnishing to the court proof of the contents thereof.

21. Every person named in the plaint, or desiring to be added, as a party to a partition action, shall be entitled, on payment of a fee of one rupee, to obtain from the court a copy of the plaint or of any statement of claim in that action.

Issue of copies of plaint and of statements of claims to parties.

22. (1) The court shall order notice of a partition action to be issued to the Fiscal for service—

Notice of partition action to persons disclosed.

(a) on every claimant (not being a party to the action) who is mentioned in the report of the surveyor under sub-section (1) of section 18, and

(b) on every person disclosed under paragraph (c) of sub-section (1) of section 19 by a defendant in the action.

(2) The plaintiff in a partition action shall file or cause to be filed in court the notices which are to be issued to the Fiscal under sub-section (1) of this section:

Provided that a defendant who discloses any person referred to in paragraph (b) of sub-section (1) of this section, and not the plaintiff, shall, if the court so orders, file or cause to be filed in court the notice which is to be issued to the Fiscal under that sub-section for service on that person.

23. (1) Where a defendant in a partition action avers that the land described in the plaint is only a portion of a larger land which should have been made the subject matter of the action or that only a portion of the land so described should have been made such subject matter, the court may on such terms as to the deposit or payment of costs of survey as the court may order, issue a commission to a surveyor directing him to survey the extent of land referred to by that defendant.

Dispute as to corpus sought to be partitioned.

(2) The provisions of sections 17 and 18 shall apply in relation to a survey under a commission issued under sub-section (1) of this section.

(3) Where a survey made under a commission issued under sub-section (1) of this section discloses that the land described in the plaint is only a portion of a larger land which should have been made the subject matter of the action, the court shall specify the party to the action by whom, and the date on or before which, an application for the registration of the action as a

lis pendens affecting that larger land shall be filed in court, and the provisions of sections 6, 8 (a) and 11 shall apply to that application.

(4) The party to the action specified by the court under sub-section (3) of this section—

(a) shall file or cause to be filed in court a statement setting out the names and addresses of all persons (other than persons named in the plaint as parties to the action) who are entitled or claim to be entitled to any right, share, or interest to, of or in the larger land referred to in that sub-section or to any improvements made or effected on or to that land and the nature and extent of any such right, share, interest or improvements, so far as such particulars are known to him or can be ascertained by him, and

(b) shall, after the action is registered as a *lis pendens* affecting such larger land, file or cause to be filed in court a declaration under the hand of a proctor certifying that all such entries in the register maintained under the Registration of Documents Ordinance as relate to such larger land have been personally inspected by that proctor after the registration of the action as a *lis pendens* affecting such larger land, and containing a statement of the name of every person found upon the inspection of those entries to be a person whom the plaintiff is required by section 5 to include in the plaint as a party to the action if the action is in respect of such larger land, and also, if an address of that person is registered in the aforesaid register, that address.

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(5) Where on an application filed in court under sub-section (3) of this section the action is registered as a *lis pendens* affecting a larger land than that described in the plaint, the court may proceed with the action as though it had been instituted in respect of such larger land, and may, for such purpose, make any order in regard to service of notice of the action on any person who should be added as a party to the action and such other orders as the circumstances of the case may require.

24. The court shall fix the date of trial of every partition action, and, if the court so orders, notice of such date shall be given in such manner and to such persons as the court shall specify.

Notice of
trial.

25. On the date fixed for the trial of a partition action or on any other date to which the trial may be adjourned, the court shall examine the title of each party and shall hear and receive evidence in support thereof and shall try and determine all questions of law and fact arising in that action in regard to the right, share, or interest of each party to, of, or in the land to which that action relates, and shall consider and decide which of the orders mentioned in section 26 should be made.

Trial.

26. (1) At the conclusion of the trial of a partition action, or on such later date as the court may fix, the court shall pronounce judgment in open court, and the judgment shall be dated and signed by the judge at the time of pronouncing it. As soon as may be after the judgment is pronounced, the court shall enter an interlocutory decree in accordance with the findings in the judgment, and such decree shall be signed by the judge.

Interlocutory.
decree.

(2) The interlocutory decree may include one or more of the following orders, so however that the orders are not inconsistent with one another:—

- (a) order for a partition of the land;
- (b) order for a sale of the land in whole or in lots;
- (c) order for a sale of a share or portion of the land and a partition of the remainder;
- (d) order that any portion of the land representing the share of any particular party only shall be demarcated and separated from the remainder of the land;
- (e) order that any specified portion of the land shall continue to belong in common to specified parties or to a group of parties;
- (f) order that any share shall remain unallotted.

(3) Where in a scheme of partition of a land under this Act a person is entitled to a divided portion which, by reason of its trivialness in extent or value, the court considers it inexpedient to allot to that person, the court may, on the payment to that person of such compensation as may be determined by the court, allot that portion to any other person who in that scheme is entitled to a divided portion adjoining the first mentioned portion.

(4) Where a partition action is in respect of two or more lands, the interlocutory decree may, in lieu of ordering the allotment of divided portions in all such lands to the persons entitled thereto, order that—

- (a) any divided portion or portions of one or of some of such lands, or
- (b) the entirety of one or of some of such lands, whether with or without any divided portion or portions of any other such land or lands,

be allotted to any such person, whether with or without the award to him of owelty or of compensation for any improvements made by him to any such land. In any order under this sub-section the court shall determine the amount of any owelty or of any compensation for improvements and the party by whom and the party to whom such owelty or compensation shall be paid.

(5) Where in an interlocutory decree the court has ordered the sale of a share or portion of the land and the partition of the remainder, the court may allot to each of the parties such share of the money to be realized by the sale of the share or portion of land ordered to be sold, or such share of the soil in the remainder ordered to be partitioned, or such share of both the money and the remainder of the land, as the court may consider just in the circumstances of each case.

Issue of Commission for Division of Land into Lots or for Sale or Partition.

Commission for division of land into lots, or for sale or partition.

27. (1) Where the court decides that the land shall be sold in lots, the court shall, at the time of pronouncing judgment or on a later date notified by the court, order the issue of a commission for the division of the land into lots to a person to be named in the order and in open court fix the returnable date of the commission.

(2) At the time of pronouncing judgment or on a later date notified by the court the court shall order the issue of a commission for sale, or for partition, or for both sale and partition, or of two separate commissions for sale and for partition as the case may require, to a person to be named in the order and shall in open court fix the returnable date of the commission:

Provided that, where the court orders a sale, the court shall, if the value of the extent of land to be sold is not more than two thousand five hundred rupees, and

may, if such value is more than two thousand five hundred rupees, order the Fiscal to conduct the sale in accordance with the provisions of this Act.

(3) Where the court decides that the land or any portion thereof shall be partitioned, the commission under sub-section (2) of this section shall be issued to the surveyor who made the preliminary survey unless the court directs that such commission shall be issued to some other surveyor.

(4) The court may from time to time extend the returnable date referred to in sub-section (1) or sub-section (2) of this section.

(5) The court may revoke a commission issued under this section and order the issue of a fresh commission.

28. Every commission issued under section 27 shall be substantially in the prescribed form and shall have attached thereto—

Form of
commission.

- (a) a copy of the interlocutory decree certified as a true copy by the secretary or chief clerk or by any other officer of the court, and
- (b) a statement specifying the place of residence of each party who has been allotted in the interlocutory decree any right, share or interest to, of or in the land to which the decree relates.

29. (1) Where the court orders a commission to be issued, the court shall—

Costs of
commission.

- (a) determine the amount to be deposited as the costs of the commission, such costs in the case of a commission for partition being determined according to the rates set out in the Third Schedule to this Act:
- (b) fix a date on or before which the costs so determined shall be deposited in court; and
- (c) specify the party by whom the costs are to be deposited.

(2) If the costs are not deposited in court by the party specified on or before the date fixed under sub-section (1) of this section or within such further time as may be allowed by the court on application made in that behalf, the court may order or permit any other party to deposit the costs and fix a date for that purpose.

(3) If the costs are not deposited by the party ordered or permitted so to do under sub-section (2) of this section on or before the date fixed for the purpose or within such further time as may be allowed, the court may dismiss the action or make such other order as the circumstances may require.

(4) The party depositing costs under this section shall be given credit therefor in such manner as the court may direct.

Commission for Partition

Execution of
commission for
partition.

30. (1) On receipt of a commission to partition the land, the surveyor shall fix a date for partitioning the land and shall, at least fourteen days before that date, issue notice in writing to each party mentioned in the statement attached to the commission that the land will be partitioned on that date.

(2) A notice to any party under sub-section (1) of this section shall be in the prescribed form and shall be sent to him through the post by registered letter addressed to his place of residence specified in the statement attached to the commission.

(3) In addition to the written notice required to be issued under sub-section (1) of this section, the surveyor shall, at least ten days before the date fixed for partitioning the land, cause to be orally proclaimed on the land, after beat of tom-tom, the fact that the land will be partitioned on that date.

(4) The date fixed under sub-section (1) of this section for partitioning the land may from time to time be altered to a later date by the surveyor by written notice addressed to the parties mentioned in that sub-section. Every such notice shall, not less than seven days before such later date, be served in the manner provided in sub-section (2) of this section and a copy of the notice shall, in addition, be exhibited in a conspicuous position on the land.

Scheme of
partition.

31. The surveyor shall, on the date or altered date fixed for partitioning the land, proceed to the land and prepare a scheme of partition in conformity with the interlocutory decree and with any special directions contained in his commission and demarcate the divided portions on the land by means of such boundary marks as are not easily removed or destroyed. He shall inform the parties present of the returnable date of his commission fixed under section 27.

Return to
commission.

32. (1) The surveyor shall make his return to the commission, verified by affidavit, on or before the returnable date or the extended returnable date (as the case may be) fixed under section 27 and together with such return he shall transmit to the court—

- (a) the plan of partition prepared by him;
- (b) a certified copy of his field notes;
- (c) a report explaining the manner in which the land has been partitioned stating the names of the parties, the nature and extent of their respective shares and interests, the dates on which notices were issued to such parties for the purpose of partitioning the land and the date on which the land was partitioned, and, where a lot is allotted in common to several parties, specifying each party's share of that lot; and
- (d) a summary of distribution substantially in the prescribed form.

(2) Where no provision is made in the interlocutory decree for the allotment of a lot in common, the surveyor shall not allot a lot in common to any parties without the written consent of those parties.

33. The surveyor shall so partition the land that each party entitled to compensation in respect of improvements effected thereto or of buildings erected thereon will, if that party is entitled to a share of the soil, be allotted, so far as is practicable, that portion of the land which has been so improved or built upon, as the case may be.

Manner of
partition.

34. (1) Where under any scheme of partition prepared by a surveyor, payment has to be made to or by any party to a partition action in respect of compensation for improvements to the land or of owelty, the amount of such payment shall, in the first instance, be assessed by the surveyor and shall be finally determined by the court.

Compensation
and owelty.

(2) The amount determined by the court, under sub-section (1) of this section or under sub-section (4) of section 26, as compensation for improvements or as owelty shall, from the date on which final decree is entered, be a charge on the portion of the land or the extent of land finally allotted to the party made liable for the payment of such compensation or owelty, as the case may be.

Date to be fixed for consideration of scheme of partition.

Final decree of partition.

35. After the surveyor makes a return to the commission, the court shall fix a date for the consideration of the scheme of partition proposed by the surveyor.

36. On the date fixed under section 35, or on any later date which the court may fix for the purpose, the court may, after summary inquiry, confirm with or without modification the scheme of partition proposed by the surveyor and enter final decree of partition accordingly.

Commission for Division of Land into Lots or for Sale

Consideration of scheme of division of land into lots

37. (1) The person who receives a commission to divide a land into lots for the purpose of the sale of the land in lots shall make his return to the commission, verified by affidavit, on or before the returnable date or the extended returnable date fixed under section 27, and together with such return he shall transmit to the court—

- (a) a plan of the division of the land into lots, and
- (b) a report explaining the manner in which the land is divided into lots.

(2) After the person referred to in sub-section (1) of this section makes a return to the commission, the court shall fix a date for the consideration of the scheme of division of the land into lots proposed by such person. On such date, or on any later date which the court may fix for the purpose, the court shall, after summary inquiry, confirm such scheme with or without modification.

Valuation of land.

38. (1) Where in a partition action the court orders the issue of a commission to any person to divide the land to which the action relates into lots for the purpose of the sale of the land in lots or to sell the land otherwise than in lots or orders the Fiscal to sell the land, the court shall fix a date on or before which that person or the Fiscal, as the case may be, shall transmit to the court a valuation of the land.

(2) Where the commission is for the division of a land into lots for the purpose of the sale of the land in lots, the date fixed under sub-section (1) of this section shall be the same as the returnable date of the commission fixed under section 27.

(3) The valuation referred to in sub-section (1) of this section shall show separately and in detail—

- (a) where the land valued is to be sold in lots, the appraised value of each lot and of any improvements thereon, and

(b) where the land is to be sold otherwise than in lots, the appraised value of the land and of any improvements thereon.

(4) After considering the valuation under the preceding provisions of this section and after such inquiry as the court may consider necessary, the court shall determine the value of the land or, where the land is to be sold in lots, the value of each of the lots and the value of the improvements.

39. (1) After determining the value of the land or, where the land is to be sold in lots, the value of each of the lots, and the value of the improvements, the court shall prescribe the conditions of sale and issue such orders as the court may consider necessary for the conduct of the sale, including orders as to the manner in which and the number of days before which notice of the sale or adjourned sale of the land shall be given and published by the person responsible for the sale.

Conditions
of sale,
etc.

(2) The court may, on application made in that behalf by a co-owner who desires to purchase the land or a lot, specify the terms as to credit to be allowed to him at the sale, having regard to the amounts, if any, payable by him by way of *pro rata* costs, compensation for improvements, owelty, mortgage debts or otherwise.

40. The person responsible for the sale shall give notice that he will, on a date to be specified in the notice, sell the land in terms of the commission or order for sale issued to him and in accordance with the conditions prescribed and the orders issued by the court under section 39. He shall, in addition to giving such notice in any other manner which may be specified by the court, give such notice by registered letter sent through the post to each party declared in the interlocutory decree to be entitled to any right, share or interest to, of or in the land.

Notice of sale.

41. On the date specified in the notice referred to in section 40, the person responsible for the sale shall, in terms of the commission or order for sale issued

Sale.

to him, and in accordance with the conditions of sale prescribed and the orders issued by the court under section 39—

- (a) first put up the land or, where the land is to be sold in lots, put up each lot to auction among the co-owners thereof, and if the highest bid made at that auction is not less than the value of the land or of that lot determined by the court under section 38, declare the co-owner by whom that bid was made to be the purchaser of the land or of that lot; and
- (b) if no co-owner becomes the purchaser of the land or of any lot, put the land or that lot up to public auction, permit the co-owners to bid thereat, and declare the highest bidder at such public auction to be the purchaser of the land or of that lot.

Return to
court.

42. The person responsible for the sale shall, after complying with the provisions of section 41, make his return to the court, informing the court of the amount for which the land or, where the land was sold in lots, each lot was sold and the name and address of the purchaser thereof, and pay into court the money deposited with him by the purchaser.

Deposit of
purchase
money in
court.

43. The purchaser of the land or, where the land was sold in lots, the purchaser of each lot shall pay into court the money realised by the sale of the land or of that lot in conformity with the conditions prescribed and the orders issued by the court under section 39:

Provided that, where the purchaser is a co-owner, he shall be allowed such credit as may have been determined by the court under sub-section (2) of section 39.

Disposal of
objections
to sale.

44. Any objection to a sale held under section 41 shall be preferred to court within a period of thirty days reckoned from the date of receipt by the court of the return to the commission for sale, and the court shall, after inquiry, make such order as the circumstances of the case may require.

Confirmation
of sale.

45. The court shall confirm a sale if, within the period referred to in section 44, no objection is pre-

ferred against the sale, or if any objection duly preferred under that section is not upheld by the court after inquiry:

Provided that, where the amount realised by the sale of the land or of any lot under paragraph (b) of section 41 is less than the value of the land or of that lot determined by the court under section 38, the court may set aside the sale of the land or of that lot on such terms and conditions as the court may determine and order the issue of a fresh commission for the sale of the land or of that lot and make all such orders as the court considers necessary for the conduct of the sale.

46. Upon the confirmation of the sale of the land or of any lot, the court shall enter in the record a certificate of sale in favour of the purchaser and the certificate so entered under the hand of the judge of the court shall be conclusive evidence of the purchaser's title to the land or lot as on the date of the certificate. The court may, on the application of the purchaser, attach to the certificate a plan of the land or lot prepared at the cost of the purchaser and authenticated by the court.

Certificate
of sale.

47. (1) The court shall cause to be prepared by a party named by the court a schedule of distribution showing the amount which each party is entitled to withdraw out of the money deposited in court.

Distribution
and with-
drawal of
money in
court.

(2) No money shall be withdrawn from court by any party until the schedule of distribution has been approved by the court.

(3) A party entitled to compensation in respect of a plantation or a building or otherwise shall share proportionately with the other parties in any gain or loss, as the case may be, resulting from the sale of the land at a figure above or below the value determined by the court under section 38.

Special Provisions relating to Decrees

48. (1) Save as provided in sub-section (3) of this section, the interlocutory decree entered under section 26 and the final decree of partition entered under section 36 shall, subject to the decision on any appeal

Finality of
interlocutory
decree and
final decree
of partition.

which may be preferred therefrom, be good and sufficient evidence of the title of any person as to any right, share or interest awarded therein to him and be final and conclusive for all purposes against all persons whomsoever, whatever right, title or interest they have, or claim to have, to or in the land to which such decrees relate and notwithstanding any omission or defect of procedure or in the proof of title adduced before the court or the fact that all persons concerned are not parties to the partition action; and the right, share or interest awarded by any such decree shall be free from all encumbrances whatsoever other than those specified in that decree.

In this sub-section "encumbrance" means any mortgage, lease, usufruct, servitude, *fidei commissum*, life interest, trust, or any interest whatsoever howsoever arising except a constructive or charitable trust, a lease at will or for a period not exceeding one month, and the rights of a proprietor of a nindagama.

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(2) The interlocutory decree and the final decree of partition entered in a partition action shall have the final and conclusive effect declared by sub-section (1) of this section notwithstanding the provisions of section 44 of the Evidence Ordinance, and accordingly such provisions shall not apply to such decrees.

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(3) The interlocutory decree or the final decree of partition entered in a partition action shall not have the final and conclusive effect given to it by section (1) of this section as against a person who, not having been a party to the partition action, claims any such right, title or interest to or in the land or any portion of the land to which the decree relates as is not directly or remotely derived from the decree if, but only if, he proves that the decree has been entered by a court without competent jurisdiction or that the partition action has not been duly registered under the Registration of Documents Ordinance as a *lis pendens* affecting such land.

Action for
damages by
person who
is not a party
to partition
action.

49. Any person, not being a party to a partition action, whose rights to the land to which the action relates have been extinguished or who is otherwise prejudiced by the interlocutory decree entered in the action, may, by separate action, recover damages from

any party to the action by whose act, whether of commission or omission, such damages may have accrued, and where the whole or any part of such damages cannot be recovered from any such party, recover such damages or part thereof from any other person who has benefited by any such act of such party.

50. (1) If in an interlocutory decree for partition any undivided share of the land constituting the subject matter of the partition action in which such decree is entered is declared to be subject to a mortgage or lease, the rights of the mortgagee or of the purchaser of the mortgaged share under a mortgage decree, or of the lessee, shall—

Lease or mortgage of undivided share.

(a) where the partition is otherwise than in accordance with an order made under sub-section (4) of section 26, be limited to the share allotted in such interlocutory decree to the mortgagor or lessor; and

(b) where the partition is in accordance with an order made under sub-section (4) of section 26, be limited to so much of the extent of land and of any owelty or compensation allotted in the partition action to the mortgagor or lessor as the court shall determine.

(2) If in an interlocutory decree for sale any undivided share of the land constituting the subject matter of the partition action in which such decree is entered is declared to be subject to a mortgage or lease, the rights of the mortgagee or of the purchaser of the mortgaged share under a mortgage decree, or of the lessee, shall be limited to the mortgagor's or lessor's share of the proceeds of the sale of the land.

51. Where in a partition action an interlocutory decree under section 26 or a final decree of partition under section 36 or a certificate of sale under section 46 is entered, the court shall cause a copy of such decree or certificate to be transmitted to the Registrar of Lands of the district or of each of the districts in which the land or each of the lands to which such decree or certificate relates is situated, and such

Registration of interlocutory decree, final decree of partition, and certificate of sale.

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Registrar shall duly register such copy under the Registration of Documents Ordinance as an instrument affecting the land or each of the lands to which it relates. No fee shall be charged for the registration of such copy under such Ordinance notwithstanding anything to the contrary in such Ordinance or in any regulation made thereunder.

Delivery of possession of land to parties and purchasers.

52. Every party to a partition action who has been declared to be entitled to any land by any final decree entered under this Act and every person who has purchased any land at any sale held under this Act and in whose favour a certificate of sale in respect of the land so purchased has been entered by the court, shall be entitled to obtain from the court, in the same action, on application made by motion in that behalf, an order for the delivery to him of possession of the land:-

Provided that where such party is liable to pay any amount as owelty or as compensation for improvements, he shall not be entitled to obtain such order until that amount is paid.

Power of court to enforce its decrees and orders and to deal with offences of contempt of court.

53. (1) A court exercising jurisdiction in a partition action shall have full power to give effect to every order or decree made or entered in the action (including the power to order delivery of possession of any land or portion of land to any person entitled thereto) and to punish as for contempt of court any person who—

- (a) disobeys any such order, or
- (b) obstructs or resists any person acting under the authority of the court or exercising any power conferred on him by this Act, or
- (c) damages, destroys or removes, during the pendency of the action, any boundary mark which, under section 31, has been made or set up on the land to which the action relates.

(2) Where, under sub-section (1) of this section, a person is convicted of obstructing or resisting a surveyor engaged, under the authority of the court, in doing any work on a land, the court may, in addition, to the imposition of any punishment on that person

under that sub-section, order him to pay an amount determined by the court as the expenses of the surveyor if in consequence of the obstruction or resistance it is necessary for the surveyor to proceed again to such land for the purpose of doing such work. Any amount ordered by the court under this sub-section to be paid by any person may be recovered as though that amount were a fine imposed on that person by the court.

Special Cases

54. (1) Every praveni nilakaraya shall, for the purposes of this Act, be deemed to be a co-owner of the praveni panguwa of which he is a shareholder and shall be entitled to institute a partition action to obtain a decree for the partition or sale of that panguwa or of any of the lands in that panguwa.

Right of praveni nilakaraya to institute partition action.

(2) The rights of the proprietor of a nindagama shall in no way be affected by the partition or sale under this Act of a panguwa or of any of the lands in a panguwa, and that proprietor shall be entitled to exercise those rights as though that partition or sale had not occurred.

(3) In this section, the expression "praveni nilakaraya" and "praveni panguwa" have the meanings respectively assigned to them in section 2 of the Service Tenures Ordinance.

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55. (1) Where a person having the ownership of a permanent plantation, apart from the soil, on the land to which a partition action relates is a party to the action, he shall be entitled only to receive compensation in respect of that plantation.

Person owning a permanent plantation on a land apart from the soil.

(2) The ownership of a permanent plantation, apart from the soil, on a land may, for the purposes of sub-section (1) of this section, be established by proof of any agreement with the owner of the land or of any custom recognised in the locality in which the land is situated, notwithstanding the provisions of the Prevention of Frauds Ordinance.

Cap. 57.

56. (1) A co-owner shall not be entitled to institute a partition action in respect of a land if there exists a valid deed of partnership which binds such co-owner to cultivate that land or to raise crops or produce

Partition of land belonging to partnerships.

thereon for the purpose of selling such crops or produce or which is for the purpose of carrying on any trade, manufacture or occupation relating to or connected with the joint ownership of that land, and if any of the terms, conditions or covenants of that deed of partnership will be avoided, infringed or violated by a partition or sale of the land.

(2) The provisions of sub-section (1) of this section shall not apply in any case in which the right to institute a partition action has been expressly reserved in the deed of partnership referred to in that sub-section.

Executors and administrators.

57. No person acting in the capacity of an executor or administrator shall institute a partition action in respect of any land belonging to the estate which he is administering.

Costs

Recoverable costs.

58. (1) In any partition action, the following costs shall, unless the court otherwise directs, be borne by the parties to the action in the proportion of their respective rights to the land to which the action relates:—

- (a) the costs of the execution of the commission for the preliminary survey and the costs of the execution of the commission for the partition or sale of the land or for the division of the land into lots for the purpose of the sale of the land in lots, determined as hereinbefore provided;
- (b) the costs of the execution of any commission issued to the Surveyor-General under sub-section (3) of section 18;
- (c) other costs of instituting and prosecuting the action.

The costs referred to in paragraph (c) of this sub-section shall be determined, in the case of a partition action in a District Court, in accordance with the rates set out in the Fourth Schedule to this Act, and, in the case of a partition action in a Court of Requests, by that Court in its discretion.

(2) The costs referred to in sub-section (1) of this section shall be known as the "recoverable costs" and the proportionate share thereof to be borne by each of the parties shall be known as the "pro rata

costs" of that party and shall be recoverable in the same action from that party by the party who has incurred the recoverable costs.

59. The costs in a partition action which a proctor may recover from his client shall, in the case of a partition action in a District Court, be taxed at the rates set out in the Fifth Schedule to this Act and, in the case of a partition action in a Court of Requests, be determined by that Court in its discretion.

Costs recoverable by proctor from his client.

60. In the event of a contest, the court, after hearing the parties concerned, shall fix the amount of the costs of the contest having regard to the value of the share or interest in dispute, and direct by whom such costs shall be paid.

Costs of contest.

61. Where a party omits to prove his title, the court may permit one of the other parties to prove the title of the party in default. The amount allowed by the court as the costs of proving such title shall be specified in an order and shall be recoverable from the party in default.

Costs of proving title of defaulting party.

62. When parties are jointly interested in a contest, the court shall ordinarily allow only one set of costs for all such parties and may in its discretion apportion such costs among such parties; and, in the event of an appeal by or against them to the Supreme Court, only one amount shall be fixed by way of security for costs of appeal.

One set of costs for parties jointly interested.

63. (1) It shall be lawful for the court at any stage of a partition action to order any party to give security for costs if the court is of opinion that the party has been guilty of unreasonable delay in presenting or prosecuting his claim, or for other good and sufficient cause.

Security for costs of parties.

(2) Where any party to a partition action who is ordered under sub-section (1) of this section to give security for costs fails to give such security within the time allowed therefor by the court, then—

(a) where that party is the plaintiff, the court may dismiss the action or may permit any defendant to prosecute the action and may substitute him as plaintiff for that purpose, or

(b) where that party is a defendant, the court may reject his claim.

(3) Where the trial of a partition action is postponed or adjourned in consequence of such delay on the part of a party to the action as is referred to in sub-section (1) of this section, the court may order that any costs payable by that party because of the postponement or adjournment shall be pre-paid.

Costs under sections 58 and 61 to be a charge on the share of party from whom they are due.

64. All costs due from any party to a partition action under sections 58 and 61 shall be a charge on the share of land or money allotted to that party in that action and such charge shall rank next in priority to the charge referred to in sub-section (2) of section 34.

Costs in cases not expressly provided for.

65. Costs shall ordinarily be borne by the person who incurs the costs except in cases where it is expressly provided by this Act that any costs or proportion of costs shall be borne, or may be ordered by the court to be borne, by some other person.

Default in paying costs and charges in previous action under this Act.

66. Where the court is satisfied that the plaintiff in any action under this Act has not paid any costs or charges due from him in any previous action instituted by him under this Act in respect of the same land, the court may—

(a) fix a date for the payment of such costs or charges and stay proceedings until such payment is made; and

(b) where such payment is not made on or before that date, dismiss the action.

Miscellaneous

Sale, lease or mortgage *pendente lite* is void.
Cap. 101.

67. (1) After a partition action is duly registered as a *lis pendens* under the Registration of Documents Ordinance no voluntary alienation, lease or hypothecation of any undivided share or interest of or in the land to which the action relates shall be made or effected until the final determination of the action by dismissal thereof, or by the entry of a decree of partition or by the entry of a certificate of sale.

(2) Any voluntary alienation, lease or hypothecation made or effected in contravention of the provisions of sub-section (1) of this section shall be void.

Appeals.

Cap. 86.

68. An appeal shall lie to the Supreme Court against any order or decree made or entered by any court in any partition action; and all the provisions of the Civil Procedure Code shall apply accordingly to any such appeal as though an order or decree made or entered in a partition action were an order or decree made or entered in any action as defined for the purposes of that Code.

69. It shall not be necessary in any proceedings under this Act to adduce formal proof of the execution of any deed which, on the face of it, purports to have been duly executed, unless the genuineness of that deed is impeached by a party claiming adversely to the party producing that deed, or unless the court requires such proof.

Proof of deeds.

70. (1) The Court may at any time before interlocutory decree is entered in a partition action add as a party to the action, on such terms as to payment or prepayment of costs as the court may order,—

Addition of parties.

(a) any person who, in the opinion of the court, should be, or should have been, made a party to the action, or

(b) any person who, claiming an interest in the land, applies to be added as a party to the action.

(2) Where a person is a party to a partition action and his right, title and interest to or in the land to which the partition action relates are sold, during the pendency of the partition action, in execution of, or under, any decree, order or process of any court, the purchaser of such right, title and interest at the sale shall be entitled to be substituted for that person as a party to the partition action, and such purchaser, when so substituted, shall be bound by the proceedings in the partition action up to the time of the substitution.

71. No partition action shall abate by reason of the non-prosecution thereof, but, if a partition action is not prosecuted with reasonable diligence after the court has endeavoured to compel the parties to bring the action to a termination, the court may dismiss the action: Provided, however, that in a case where a plaintiff fails or neglects to prosecute a partition action, the court may, by order, permit any defendant to prosecute that action and may substitute him as plaintiff for the purpose and may make such order as to costs as the court may deem fit.

Result of non-prosecution of partition action.

72. (1) Every party to a partition action who, knowing that any person has any interest in the land to which such action relates, fraudulently or dishonestly fails or omits to disclose in the pleading filed by him the fact that such person has such interest or that such person is a necessary party to such action,

Penalty for dishonest non-disclosure of interested persons.

shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees, or to imprisonment of either description for a period not exceeding one year, or to both such fine and imprisonment.

(2) No prosecution for an offence under sub-section (1) of this section shall be entertained without the sanction of the Attorney-General.

(3) A person guilty of an offence under sub-section (1) of this section shall also, by reason of his fraudulent or dishonest failure or omission mentioned in that sub-section, be guilty of a contempt of the court in which the partition action referred to in that sub-section has been instituted and may be punished for such contempt in accordance with the provisions of Chapter LXV of the Civil Procedure Code.

Cap. 86.

Penalty for
false return,
&c., by
surveyor.

73. (1) Whoever, being a person to whom a commission for the survey, partition or sale of any land has been issued, makes any statement which he knows or has reasonable cause to believe to be false in the return made by him to such commission, or inserts in the survey plan or in the plan of partition prepared by him or in his field notes any signs, marks or particulars which he knows or has reasonable cause to believe to be false shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees, or to imprisonment of either description for a period not exceeding one year or to both such fine and imprisonment.

(2) A person guilty of an offence under sub-section (1) of this section shall also, by reason of his false return, survey plan, plan of partition, or field notes, be guilty of a contempt of the court which issued the commission referred to in that sub-section and may be punished for such contempt in accordance with the provisions of Chapter LXV of the Civil Procedure Code.

Cap. 86.

List of
surveyors.

74. Every court having jurisdiction to try a partition action shall from time to time prepare a list of surveyors to whom commissions may be issued under this Act.

Exemption
from stamp
duty.

75. (1) All pleadings and processes and all documents filed or produced in a partition action under this Act shall be exempt from stamp duty.

(2) All partition deeds shall be exempt from stamp duty.

(3) Nothing herein contained shall affect the proviso to paragraph (b) of the Exemptions under the heading " F. Miscellaneous " in Part II of Schedule A to the Stamp Ordinance.

Cap. 189.

76. (1) The dismissal of a partition action in respect of any land under section 10, section 12, section 29, section 63, section 66 or section 71 shall not operate as a bar to the institution of another partition action in respect of that land.

Dismissal of partition action.

(2) The dismissal of a partition action under section 29, section 63, section 66 or section 71 shall not affect the final and conclusive effect given by section 48 to the interlocutory decree entered in such action.

77. The provisions of the Civil Procedure Code relating to the execution or service of writs, warrants and other processes of court shall apply in relation to the execution or service of writs, warrants and other processes of court in a partition action.

Service of process. Cap. 86.

78. The Fiscal may either generally or specially authorise any officer to exercise or perform any power or duty conferred or imposed on the Fiscal by this Act.

Delegation of powers and duties of Fiscal under this Act.

79. In any matter or question of procedure not provided for in this Act, the procedure laid down in the Civil Procedure Code in a like matter or question shall be followed by the court, if such procedure is not inconsistent with the provisions of this Act.

Casus omissus to be governed by Civil Procedure Code. Cap. 86.

80. Where no form to be used for the purposes of this Act has been prescribed in any particular case or for any particular purpose, such form shall be used as the court may approve for use in that case or for that purpose.

Forms.

81. (1) The Minister may, by regulation, amend in any manner he may consider necessary, or substitute a new Schedule for, any of the Schedules to this Act and prescribe all matters required or authorised by this Act to be prescribed.

Regulations. Power to amend or replace Schedule.

(2) No regulation made by the Minister shall have effect until it is approved by the Senate and the House of Representatives and notification of such approval is published in the *Gazette*.

82. Where a party to a partition action or any other person entitled, or claiming or alleged to be entitled, to any right, share, or interest to, of, or in the land, dies after the institution of that action, the court may, on the *ex parte* application of any other party appoint a person to represent the estate of the deceased

Representation of estate of deceased party or co-owner.

for the purposes of the action if the court is satisfied, after such inquiry as the court deems fit, that such appointment is necessary or desirable for the purpose of enabling the court to proceed with the action with a view to its speedy determination; and any decree entered, order made, partition or sale effected, or thing done in the action shall, if the person so appointed is a party to the action, be for all purposes as valid and effectual as if the executor or administrator of the deceased or the person lawfully entitled to the right, share or interest of the deceased were a party to the action.

Interpretation.

83. (1) In this Act, unless the context otherwise requires—

“ boundary marks ” means the marks made or set up on a land, at the time of the partition thereof, for the purpose of defining the boundaries of the divided portions into which the land is partitioned, whether such marks consist of trenches or fences along the boundaries or of posts of hard wood or other material erected at suitable points on the boundaries;

Cap. 72.

“ constructive or charitable trust ” has the same meaning as in the Trusts Ordinance;

“ land ”, when used with reference to a partition action, means the land or lands constituting the subject matter of that action;

“ partition action ” means an action instituted under this Act for the partition or sale of any land or lands belonging in common to two or more owners;

“ prescribed ” means prescribed by or under this Act;

“ surveyor ” means a surveyor whose name is included in a list prepared under section 74 and for the time being in force.

(2) For the purposes of sections 39, 41 and 43, “ co-owner ” means a party to whom a share of the land has been allotted in the interlocutory decree and includes a person who has been declared by such decree to be entitled to any right to compensation for improvements.

Repeal.
Cap. 56.

84. The Partition Ordinance is hereby repealed.

Amendment of
other written law.
Cap. 101.

85. (1) Section 12 of the Registration of Documents Ordinance is hereby repealed.

(2) Part II of Schedule A to the Stamp Ordinance is hereby amended, in paragraph (b) of the Exemptions under the heading "F. Miscellaneous", as follows:—

- (a) by the substitution, for the words "pleadings and other documents", of the words "pleadings, processes and documents"; and
- (b) by the substitution, for the words "Partition Ordinance" wherever they occur in that paragraph, of the words "Partition Act".

FIRST SCHEDULE

(Sections 8 and 9)

Costs of Preliminary Survey in the District Court of Colombo

1. Preliminary Survey—

- (a) one acre or less .. Rs. 20
- (b) over 1 acre and up to 10 acres .. Rs. 20 for the first acre plus Rs. 6 for each additional acre or part thereof
- (c) over 10 acres and up to 25 acres .. Rs. 74 for the first 10 acres plus Rs. 5 for each additional acre or part thereof
- (d) over 25 acres .. Rs. 149 for the first 25 acres plus Rs. 4 for every additional acre or part thereof

2. Travelling to the land—

- (a) for each of the first 5 return miles .. Rs. 2
- (b) for each of the second 5 return miles .. Re. 1.50
- (c) for every return mile thereafter .. Re. 1

3. Cost of notices to the parties

- (other than notices of alteration of date to suit the convenience of the surveyor) inclusive of cost of registration of letter .. 70 cents per notice

4. Tom-tom beater's wages inclusive of travelling .. Rs. 5
5. Wages of 3 labourers .. Rs. 2.50 per labourer per day
6. Fee for making plan and report including copy of field notes—
 - 10 acres and under .. Rs. 15
 - over 10 acres but not over 25 acres .. Rs. 20
 - over 25 acres .. Rs. 25
7. For surveying and showing on plan buildings, wells, etc. .. Re. 1 for each thing surveyed and shown
8. For marking boundary trees or other boundary marks .. 10 cents for each thing marked
9. For surveying and showing on plan fences, walls, ditches, etc. .. 40 cents per chain
10. For surveying and showing on plan roads, paths, streams, etc. .. 80 cents per chain
11. For taking copies of tracings or plans from court records .. Rs. 4 per acre up to a limit of Rs. 15
12. Enlarging plan or reducing to scale .. per acre 80 cents with a minimum of Rs. 4
13. Batta for nights out for surveyor .. Rs. 10 per night
14. Bata for nights out for 3 labourers .. Re. 1 per labourer per night
15. Counting trees .. 2 cents per tree
16. Surveyor attending court to give evidence relating to his work .. Rs. 15 per day
17. Assessing value of land, buildings, walls, trees, fences, wells, plantations and other improvements .. An amount to be fixed by court not exceeding 1 per cent. of the total valuation
18. Examination of the survey plan of towns within the registration areas of Wellawatte, Kirillapone and Dehiwela .. Rs. 12

Costs of Preliminary Survey in Courts other than the
District Court of Colombo.

1. Preliminary survey—
 - (a) one acre or less .. Rs. 15
 - (b) over 1 acre and up to 10 acres .. Rs. 15 for the first acre plus Rs. 4 for each additional acre or part thereof
 - (c) over 10 acres and up to 25 acres .. Rs. 51 for the first 10 acres plus Rs. 2.50 for each additional acre or part thereof.
 - (d) over 25 acres .. Rs. 88.50 for the first 25 acres plus Rs. 2 for every additional acre or part thereof
2. Travelling to the land—
 - (a) for each of the first 5 return miles .. Rs. 2
 - (b) for each of the second 5 return miles .. Re. 1.50
 - (c) for every return mile thereafter .. Re. 1
3. Cost of notices to the parties (other than notices of alteration of date to suit the convenience of surveyor) inclusive of cost of registration of letter .. 50 cents per notice
4. Tom-tom beater's wages inclusive of travelling .. Rs. 5
5. Wages of 3 labourers .. Rs. 2.50 per labourer per day
6. Fee for making plan and report including copy of field notes irrespective of extent surveyed .. Rs. 5
7. For surveying and showing on plan buildings, wells, etc. 50 cents for each thing surveyed and shown
8. For marking boundary trees or other boundary marks .. 10 cents for each thing marked
9. For surveying and showing on plan fences, walls, ditches, etc. .. 40 cents per chain

10. For surveying and showing on plan roads, paths, streams, etc. .. 80 cents per chain
11. For taking copies of tracings or plans from court records Rs. 4 per acre up to a limit of Rs. 15
12. Enlarging plan or reducing to scale .. 80 cents per acre with a minimum of Rs. 4
13. Batta for nights out for surveyor .. Rs. 7.50 per night
14. Batta for nights out for 3 labourers .. Re. 1 per labourer per night
15. Counting trees .. 2 cents per tree
16. Surveyor attending court to give evidence relating to his work .. Rs. 10 per day
17. Assessing value of land, buildings, walls, trees, fences, wells, plantations and other improvements .. An amount to be fixed by court not exceeding 1 per cent. of the total valuation

SECOND SCHEDULE

(Section 12)

Form of Summons

In the District Court

Court of Requests

of

Action No.....

A. B.....Plaintiff

Vs.

C.D.....

and othersDefendants

Whereas the above-named plaintiff has instituted an action under the Partition Act, No.....of 1951, for the partition/sale of the land/lands called.....situated at.....and described in the copy/translation of the plaint annexed hereto, you are hereby summoned to appear in this court either in person or by proctor on the.....day of.....19....., at.....o'clock of the forenoon and to state whether you dispute the accuracy of the share/shares allotted in the

plaint to you or to any other party and whether you are aware of any other person having a right, share or interest to, of or in the said land/lands.

By order of Court,

Signed.....
Secretary/Chief Clerk.

The.....day of....., 19.....

Form of Notice

In the District Court
_____ of
Court of Requests

Action No.....

A. B.....Plaintiff

Vs.

C.D.....

and others Defendants.

It is hereby notified that Action No.....has been
District Court
instituted in the_____ of
Court of Requests
under the Partition Act, No. of 1951, for the
partition/sale of the land/lands called
and situated in the village/villages of.....in
the.....District.

The defendants in the aforesaid action are summoned to appear
in court on the day of, 19,
at.....o'clock of the forenoon.

By order of Court,

Signed.....
Secretary/Chief Clerk.

The.....day of.....19.....

FORM OF PRECEPT TO FISCAL

In the District Court
_____ of
Court of Requests

Action No.....instituted under the Partition Act, No.....of 1951.
To the Fiscal of the.....Province.

Serve forthwith each summons sent herewith on the defendant in
the above-mentioned action to whom it is directed together with
such of the documents sent herewith as are required by the afore-
said Act to be attached to that summons, and certify to this court
on or before the.....day of.....19.....,
in what manner you have executed this precept.

By order of Court,

Signed.....
Secretary/Chief Clerk.

The day of.....19.....

THIRD SCHEDULE

(Section 29)

Costs of Commission for Partition in the District Court of
Colombo

1. Survey for partitioning land,
 $\frac{1}{3}$ rd of the fee provided for
the preliminary survey
under item 1 in the First
Schedule for the purpose of
a re-survey for partitioning
the land where in the opinion
of the court a re-survey is
necessary
2. For partitioning the land into
allotments at the rate of
Rs. 6 per lot up to 10 lots and
at the rate of Rs. 4 per lot
for each lot in excess of 10
lots
3. For making plan, report and
schedule of adjustment of
compensation—
 - (a) 25 acres and under .. Rs. 20
 - (b) over 25 acres up to and in-
cluding 50 acres .. Rs. 25
 - (c) over 50 acres .. Rs. 30
4. Assessing the value of the
various lots, buildings, walls,
trees, fences, wells, planta-
tions and other improve-
ments for the purpose of
awarding compensation or
owelty

An amount to be fixed by
court not exceeding 1%
of the valuation
5. Cost of notices to the parties
(other than notices of altera-
tion of date to suit the con-
venience of surveyor) inclu-
sive of registration of letter 70 cents per notice
6. Wages of tom-tom beater in-
clusive of cost of travelling.. Rs. 5
7. Travelling to the land—
 - (a) for each of the first 5
return miles .. Rs. 2
 - (b) for each of the second 5
return miles .. Re. 1.50
 - (c) for every return mile thero-
after .. Re. 1
8. Wages of 3 labourers .. Rs. 2.50 per labourer per day
9. Batta for nights out for surve-
yor .. Rs. 10 per night

10. Batta for nights out for 3 labourers .. Re. 1 per labourer per night
11. Surveyor attending court to give evidence relating to his work .. Rs. 15 per day

Costs of Commission for Partition in Courts other than the District Court of Colombo

1. Survey for partitioning land, $\frac{1}{3}$ of the fee provided for the preliminary survey under item 1 in the First Schedule for the purpose of a re-survey for partitioning the land where in the opinion of the court a re-survey is necessary
2. For partitioning the land into allotments at the rate of Rs. 3.50 per lot up to 10 lots and at the rate of Rs. 2 per lot for each lot in excess of 10 lots
3. For making plan, report and schedule of adjustment of compensation (irrespective of the extent of land) .. Rs. 15
4. Assessing the value of the various lots, buildings, walls, trees, fences, wells, plantations and other improvements for the purpose of awarding compensation or owelty .. An amount to be fixed by court, not exceeding 1% of the valuation
5. Cost of notices to the parties (other than notices of alteration of date to suit the convenience of surveyor) inclusive of cost of registration of letter .. 50 cents per notice
6. Wages of tom-tom beater inclusive of cost of travelling .. Rs. 5
7. Travelling to the land—
 - (a) for each of the first 5 return miles .. Rs. 2
 - (b) for each of the second 5 return miles .. Re. 1.50
 - (c) for every return mile thereafter .. Re. 1

8. Wages of 3 labourers ..	Rs. 2·50 per labourer
9. Batta for nights out for surveyor ..	Rs. 7·50 per night
10. Batta for nights out for 3 labourers ..	Re. 1 per labourer per night
11. Surveyor attending court to give evidence relating to his work ..	Rs. 10 per day

FOURTH SCHEDULE

[Section 58 (1)]

Amount of costs
under section 58 (1)
(c) in a partition
action in a District
Court
Rs.

Where the value of the subject matter of the partition action—

(1) is not less than Rs. 300 but less than Rs. 500	90
(2) is not less than Rs. 500 but less than Rs. 1,000	140
(3) is not less than Rs. 1,000 but less than Rs. 2,000	200
(4) is not less than Rs. 2,000 but less than Rs. 3,000	325
(5) is not less than Rs. 3,000 but less than Rs. 5,000	425
(6) is not less than Rs. 5,000 but less than Rs. 10,000	750
(7) is not less than Rs. 10,000 but less than Rs. 50,000	1,000
(8) is not less than Rs. 50,000	1,500

FIFTH SCHEDULE

(Section 59)

Costs recoverable by a Proctor from his client in an action in the District Court

	Class I	Class II	Class III	Class IV
		Rs. 750 and under Rs. 3,000	Rs. 3,000 and under Rs. 5,000	Rs. 5,000 and under Rs. 10,000
Where the value of interest claimed is	Rs. 750	Rs. 3,000	Rs. 5,000	Rs. 10,000
	Rs. c.	Rs. c.	Rs. c.	Rs. c.
1. Conference with client and receiving instructions to sue, defend, or intervene ..	5 0 ..	8 0 ..	10 0 ..	12 0
2. Every necessary attendance on client in the progress of an action or proceeding ..	2 0 ..	3 0 ..	4 0 ..	6 0

	Class I	Class II	Class III	Class IV
		Rs. 750	Rs. 3,000	Rs. 5,000
Where the value of interest claimed is	Under Rs. 750	and under Rs. 3,000	and under Rs. 5,000	and under Rs. 10,000
	Rs. c.	Rs. c.	Rs. c.	Rs. c.
3. Every necessary attendance on advocate ..	2 0 ..	3 0 ..	4 0 ..	6 0
4. Every attendance in court—				
(a) on returnable date of sum- mons, notice or other pro- cess or commission, and				
(b) for re-issuing summons, notice or other process or commission ..	2 0 ..	3 0 ..	4 0 ..	5 0
5. Drawing plaint, statement of claim, or petition ..	10 0 ..	15 0 ..	20 0 ..	24 0
6. Attending court and filing plaint, statement of claim, or petition ..	2 50 ..	3 75 ..	4 0 ..	4 0
7. For translating plaint into Sinha- lese or Tamil ..	2 50 ..	3 75 ..	4 0 ..	4 0
8. For every copy of plaint or of a translation thereof ..	1 0 ..	1 0 ..	1 0 ..	1 0
9. For preparing each application for registration of <i>lis pendens</i> and duplicate thereof ..	2 50 ..	2 50 ..	2 50 ..	2 50
10. For searching for encumbrances in Land Registry and for Proctor's certificate regarding inspection of entries in Land Register relating to land or lands constituting subject matter of action ..	10 0 ..	10 0 ..	10 0 ..	10 0
	plus the fee payable to the Land Registry			
11. Cost of advertising the action in a newspaper, the actual costs incurred ..				
12. Drawing summons, notice, sub- poena, writ, or other process, or order of court, each ..	1 0 ..	1 0 ..	1 0 ..	1 0
13. Making copy or translation thereof	0 50 ..	0 75 ..	0 75 ..	0 75
14. Attending court to support or oppose all necessary or ordinary applications ..	5 0 ..	5 0 ..	7 50 ..	7 50
15. Drawing affidavit and fair copy, per folio* ..	1 0 ..	1 0 ..	1 0 ..	1 0
16. Drawing brief for Advocate and fair copy, per folio* ..	1 0 ..	1 0 ..	1 0 ..	1 0
17. Examining witnesses preparatory to trial or for instructions for brief ..	3 0 ..	4 0 ..	5 0 ..	6 0
18. Attending court with Advocate on trial, if cause argued or heard ..	10 0 ..	10 0 ..	12 50 ..	15 0
19. Attending court with Advocate on trial if cause adjourned, or postponed ..	5 0 ..	5 0 ..	7 50 ..	7 50

	Class		Class		Class		Class	
	I		II		III		IV	
Where the value of interest claimed is	Under Rs. 750		Rs. 750 and under Rs. 3,000		Rs. 3,000 and under Rs. 5,000		Rs. 5,000 and under Rs. 10,000	
	Rs. c.		Rs. c.		Rs. c.		Rs. c.	
20. Attending court without Advocate on trial, and conducting cause ..	20	0 ..	20	0 ..	25	0 ..	30	0
21. Attending court without Advocate on trial, if cause adjourned or postponed ..	5	0 ..	5	0 ..	7	50 ..	7	50
22. Attending court for an inquiry ..	Half the rates set out in paras. 18, 19, 20 and 21 of this schedule.							
23. Where judgment is deferred, attend- ing court to hear it ..	2	50 ..	3	50 ..	3	50 ..	3	50
24. For drawing interlocutory decree ..	10	0 ..	10	0 ..	10	0 ..	10	0
25. For drawing final decree ..	10	0 ..	10	0 ..	10	0 ..	10	0
	plus Re. 1 for each lot							
26. For preparing scheme of distribution	7	50 ..	10	0 ..	15	0 ..	20	0
27. For drawing bill of costs ..	0	75 ..	1	0 ..	1	0 ..	1	0
28. Attending taxation ..	1	50 ..	2	50 ..	2	50 ..	2	50

Note.—(1) Costs in respect of plaint, summons, petition, affidavit or notice, or of copies or of translation thereof will be the actual cost of printing, typing or roneoing, or at the rates indicated in respect thereof in this Schedule, whichever is lower.

(2) In all actions over Rs. 10,000 the taxable charges shall be one-fourth higher than in Class IV.

* A folio to consist of 120 words.