

CHAPTER 82

PARTITION

Law
No. 21 of 1977.

A LAW TO PROVIDE FOR THE PARTITION AND SALE OF LAND HELD IN COMMON, AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[15th December, 1977.]

Short title.

1. This Law may be cited as the Partition Law.

(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 ;

INSTITUTION OF PARTITION ACTION AND INCIDENTAL PROCEDURE

Institution of
partition
action.

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 Law.

(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

Appropriate
court.

3. (1) Every partition action shall be instituted by presenting a written plaint to the District 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.

(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.

(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.

5. The plaintiff in a partition action shall include in his plaint as parties to the action all persons who, whether in actual possession or not, to his knowledge are entitled or claim to be entitled- **Necessary parties.**

Requisites of
plaint.

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) 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, life interest, or otherwise, or

(a) the name, if any, and the extent and value of the land to which the action relates ;

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

Provided that in the case of a mortgage, the mortgagee or any person claiming any interest under him **shall** be included as a party only if he has registered an address for service of **legal** documents in terms of sections 6 and 28 of the Mortgage Act :

Provided further that if such mortgagee or person aforesaid claims under an instrument executed more than **fifteen** years prior to the institution of the action, he shall not be a necessary party to such action, unless he has registered an address for service of legal documents in terms of the aforesaid provisions of the Mortgage Act within a period of ten years prior to the date of institution of the action.

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

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

- (a) where the land to which the action relates is situated in one registration district, an application for 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 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 subsection (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.

(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.

Failure to comply with provisions of section 4, 5 or 6.

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 -

(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

(6) 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.

8. Where the plaintiff 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 **fix a date** for the return of the *lis pendens* after registration ; 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 Law.

9. Where the plaintiff in a partition action fails to **deposit**, before the date or extended date **fixed** for the purpose, such estimated costs of the preliminary survey as are determined by the court under section 8, the court may dismiss such action. Failure to deposit estimated costs of preliminary survey.

10. (1) After the preliminary survey of the land to which the 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 Law, 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 Determination of actual costs of preliminary survey.

date on or before which, the amount of the difference between such actual costs and such estimated costs shall be deposited in court. The court may, for sufficient cause, make a further, order or orders extending the time for the deposit of such amount.

(2) 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.

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

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.

Declaration by attorney-at-law and papers to be filed with such declaration.

12. (1) After a partition action is registered as a *lis pendens* under the Registration of Documents Ordinance and after the return of the duplicate referred to in section 11, the plaintiff in the action shall file or cause to be filed in court a declaration under the hand of an attorney-at-law 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 attorney-at-law 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.

(2) The plaintiff in a partition action shall, together with the declaration referred to in subsection (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 Law and containing the name and address of the defendant on whom that summons is to be served ;
- (c) if the language of any defendant is not the language of the court, a translation of the summons in that language ;
- (d) as many copies of the plaint as there are defendants, with a translation thereof in the language of each defendant whose language is not the language of the court ; or, with the leave of the court, where compliance with this requirement involves an expense which appears to the court excessive and unnecessary in the circumstances, a concise statement of the relevant paragraphs of the plaint relating to each defendant with translations thereof in the language of any defendant whose language is not the language of the court ;
- (e) one copy of the plaint certified by the registered attorney 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 Law as there are lands to which the action relates together with translations thereof in the language of any defendant whose language is not the language of the court ;

- (g) such number of copies of the aforesaid notice and of each translation thereof referred to in paragraph (f) of this subsection as would enable the transmission of one copy of such notice and one copy of each such translation to the **grama** seva niladhari of the division or of each of the divisions in which the land or each of the lands to which the action relates is situate ;
- (h) a precept to the Fiscal substantially in the form set out in the Second Schedule to this Law.

(3) If the plaintiff without sufficient cause fails to comply with the provisions of the foregoing subsections of this section, the court may dismiss the action.

ISSUE AND SERVICE OF SUMMONS AND PUBLICATION

Issue 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 or of the concise statements, as the case may be, 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 subsection (2) of section 12 shall be issued to the Fiscal together with the precept for service.

(2) When making an order under subsection (1) of this section, the court shall appoint a date on or before which the defendants are required to file their statements of claims, if any, and to comply with the other requirements of the summons. The date so appointed shall be fixed with reasonable regard to the time ordinarily required for the due service of the summons and shall be a date not earlier than thirty days after the initial date fixed for the return to the commission for preliminary survey. *

(3) The Registrar or any other officer of the court shall insert the date appointed by the court under subsection (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 subsection (2) of section 12 and shall sign them and the precept to the Fiscal.

(4) If the language of any defendant is not the language of the court there shall be attached to the summons issued for service on that defendant a translation of the summons and a translation of the plaint or concise statement, as the case may be, in the language of that defendant.

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

15. (1) Where the court orders the issue of summons 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 (g) of subsection (2) of section 12 be transmitted to the **grama** seva niladhari 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 **grama** seva niladhari to whom any copy of a notice and any copy of a translation thereof are transmitted under subsection (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, and shall forward to court a report to that effect substantially in the form set out in the Second Schedule to this Law.

(3) **The Fiscal shall cause-**

- (u) a copy of the notice transmitted to him 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. The costs of such proclamation shall be borne by the plaintiff in the first instance and shall be recoverable "pro rata".

PRELIMINARY SURVEY

Commission to
survey land.

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 forthwith 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 date shall be a date earlier than thirty days prior to the date specified in the summons :

Provided that the court may 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 subsection (1) of this section shall be substantially in the form set out in the Second Schedule to this Law and shall have attached thereto a copy of the plaint certified as a true copy by the registered attorney for the plaintiff. The court may, on such terms as to costs of survey or otherwise, issue a commission at the instance of any party to the action, authorizing the surveyor to survey any larger or smaller land than that pointed out by the plaintiff where such party claims that such survey is necessary for the adjudication of the 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, not less than 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 sent to him by registered post to the address stated in the plaint.

(2) In addition to the written notice required to be issued to the parties under

subsection (1) of this section, the surveyor shall, not less than 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, in doing so shall, where any boundary of the land surveyed by him is undefined, demarcate that boundary on the ground by means of such boundary marks as are not easily removed or destroyed and shall, on or before the date fixed for the purpose, make due return thereto and shall transmit to the court—

Return to
surveyor's
commission.

- (a) a report substantially in the form set out in the Second Schedule to this Law, verified by affidavit stating—
 - (i) the dates on which notice of survey was issued to the parties ;
 - (ii) the nature of the land surveyed and of any buildings, walls, wells, trees, plantations, fences and other improvements thereon ;
 - (iii) whether or not the land surveyed by him is in his opinion substantially the same as the land sought to be partitioned as described in the schedule to the plaint ;
 - (iv) the parties to the 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 ;
 - (v) the persons, if any, who pointed out the land to be surveyed ;
 - (vi) the result of his investigation of any particular fact or matter specifically referred to in the terms of his commission ;

- (vii) the existing means of access to the land from the nearest public road ; and
 - (viii) **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 adjudication 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 boundaries of any land belonging to the State which may fall within the land surveyed by him ;
 - (iii) the locations of all buildings, walls and wells, such locations being indicated by appropriate letters or numerals ;
 - (iv) the trace or course of any road, path or stream within the boundaries of the land ; and
 - (v) any other physical feature of or on the land which, in his opinion, may be necessary for, or prove of assistance in, the adjudication 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 subsection (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 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 subsection (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 authorized 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 subsection, the Surveyor-General or any officer of his department authorized 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 subsection, or the fresh field notes and the fresh plan furnished by the Surveyor-General under that paragraph, shall be used for the purposes of subsection (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 authorized by him in that behalf, shall, for the purposes of the execution of any commission issued under this subsection, 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 subsection 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 State against the party ordered to pay such costs.

PROCEDURE AFTER SERVICE OF SUMMONS

19. (1) On or before the date specified in the summons issued in a partition action or on or before 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 plain relating to the devolution of title, file or cause to be **filed** in court, together with his statement of claim, a pedigree showing the devolution of title ;
- (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) Where a defendant seeks to have a larger land than that sought to be partitioned by the plaintiff made the subject-matter of the action in order to obtain a decree for the partition or sale of such larger land under the provisions of this Law, his statement of claim shall include a statement of the particulars required by section 4 in respect of such larger land ; and he shall comply with the requirements of section 5, as if his statement of claim were a plaint under this Law in respect of such larger land.

(b) Where any defendant seeks to have a larger land made the subject-matter of the action as provided in paragraph (a) of this subsection, 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 such larger land shall be filed in court, and the estimated costs of survey of such larger land as determined by court shall be deposited in court.

(c) Where the party specified under paragraph (b) of this subsection fails to comply with the requirements of that paragraph, the court shall make order rejecting the claim to make the larger land the subject-matter of the action, unless any other party, in whose statement of claim a similar claim shall have been set up, shall comply therewith on or before the date specified in paragraph (b) or within such extended period of time that the court may, on the application of any such party, fix for the purpose.

(d) After the action is registered as a *lis pendens* affecting the larger land and the estimated costs of the survey of the larger land have been deposited in court, the court shall-

- (i) add as parties to the action all persons disclosed in the statement of claim of the party at whose instance the larger land is being made the

Statements of claims ; disclosure of mortgages and leases ; disputes as to corpus.

subject-matter of the action as being persons who ought to be included as parties to an action in respect of such larger land under section 5 ; and

- (ii) proceed with the action as though it had been instituted in respect of such larger land ; and for that purpose, fix a date on or before which the party specified under paragraph (b) of this subsection shall, or any other interested party may, comply with the requirements of section 12 in relation to the larger land as hereinafter modified.

(e) Where the larger land is made the subject-matter of the action, the provisions of sections 12, 13, 14 and 15 shall, *mutatis mutandis*, apply as if the statement of claim of the party seeking a partition or sale of the larger land were the plaint in the action ; and-

- (i) such party shall with his declaration under section 12, in lieu of an amended statement of claim, file an amended caption including therein as parties to the action all persons not mentioned in his statement of claim, but who should be made parties to an action for the larger land under section 5, and such amended caption shall be deemed for all purposes to be the caption to his statement of claim in the action ;
- (ii) summons shall be issued on all persons added as parties under paragraph (d) of this subsection and all persons included as necessary parties under sub-paragraph (i) hereof ;
- (iii) notice of the action in respect of the larger land shall be issued on all parties to the action in the original plaint together with a copy of the statement of claim referred to above ;
- (iv) the provisions of section 20 shall apply to new claimants or parties disclosed thereafter.

(f) If the party specified by the court under paragraph (b) of this subsection or any other interested party fails or neglects to comply with the provisions of section 12, as hereinbefore modified on or before the date specified in that paragraph, the court may make order dismissing the action in respect of the larger land.

(g) Where the requirements of section 12 as hereinbefore modified are complied with, the court shall order summonses and notices of action as provided in paragraph (e) of this subsection to issue and shall also order the issue of a commission for the survey of the larger land, and the provisions of sections 16, 17 and 18 shall accordingly apply in relation to such survey.

(3) (a) Every party to a partition action, not appearing by a registered attorney, shall on or before the date or later date referred to in subsection (1) of this section deliver to the Registrar a memorandum substantially in the form set out in the Second Schedule to this Law setting out an address (hereinafter referred to as the "registered address ") for the service on him of the notice under section 24 and any other legal documents required to be served on a party under the provisions of this Law, unless otherwise provided. Every party shall with such memorandum tender stamps to the value required to cover the cost of postage by registered post of the notice under section 24.

(b) Where a party to a partition action appears by a registered attorney the address of the registered attorney contained in the proxy shall be deemed to be the registered address of such party. And such registered attorney shall on or before the date or later date referred to in subsection (1) of this section, tender to the Registrar stamps to cover the cost of postage by registered post of the notice under section 24.

(c) The **despatch** by registered post to the registered address of a party of the notice under section 24 and of any other legal document required to be served on him, shall be deemed to be sufficient service.

In this subsection " legal document " includes all processes, pleadings, petitions, affidavits, notices, motions and other documents, proceedings and written communications.

(d) The Registrar shall keep and maintain a list of the registered addresses furnished and an account of the stamps tendered to him under this subsection, which list and account shall be filed as part of the record of the case.

Notice of partition action to persons disclosed.

20. (1) The court shall order notice of a partition action to be sent by registered post-

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

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

(2) (a) The plaintiff in a partition action shall file in court the notices which are to be sent under paragraph (a) of subsection (1) of this section.

(b) A defendant who discloses any person referred to in paragraph (b) of subsection (1) of this section, shall, unless the court otherwise orders, file in court the notice to be sent under that subsection to that person.

(c) Every notice under subsection (1) of this section shall be substantially in the form set out in the Second Schedule to this Law.

(3) Any person receiving notice under subsection (1) of this section shall not be added as a party to the action unless he applies by motion in writing to be added on or before the date specified in the notice.

(4) Where such person is added as a party, the court shall forthwith appoint a date on or before which such party shall file his statement of claim.

(5) The provisions of section 69 shall not apply to a person to whom notice has been sent under this section.

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

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 the charges prescribed for the issue of certified copies, to obtain from the court a copy of the plaint or of any statement of claim in that action. *

22. 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 cost incurred by any other party to the action in procuring such document or in furnishing to the court proof of the contents thereof.

Failure to produce material documents of title at trial.

23. (1) Every party to a partition 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 that document is not specified in a list filed as aforesaid. Nothing in this subsection shall apply to documents produced for cross-examination or handed to a witness merely to refresh his memory.

List of documents.

(2) Any party to a partition action who desires to inspect any document specified in the list of documents filed in court under subsection (1) of this 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 registered attorney and to permit such party or registered attorney to take copies thereof. The party obtaining such order may himself serve or cause to be served such order on that other party.

(3) Where any party to a partition action to whom an order under subsection (2) of this 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.

(4) In this section, "documents" shall mean deeds, survey plans or other writings upon which any claim of title is based.

TRIAL

Calling case to fix date of trial.

24. (1) After the expiry of the period fixed for the filing of statements of claim, and after the return of the surveyor to the commission for preliminary survey has been received, the court shall appoint a date for the case to be called in open court in order to fix the date of trial of the action and shall give notice in writing of such date by registered post to all parties who have furnished a registered address and tendered the costs of such notice as provided by subsection (3) of section 19.

(2) On the day appointed under subsection (1) of this section, or where it appears to the court that the case is not ready for trial, on any later date to which the matter shall on that date have been postponed, the court shall fix the date of trial of every partition action in open court.

It shall not be necessary to give notice of the date of trial to any party, unless the court in special circumstances otherwise orders.

Trial.

25. (1) On the date fixed for the trial of a partition action or on any other date to which the trial may be postponed or 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 the action relates, and shall consider and decide which of the orders mentioned in section 26 should be made.

(2) If a defendant shall fail to file a statement of claim on the due date the trial may proceed *ex parte* as against such party in default, who shall not be entitled, without the leave of court, to raise any contest or dispute the claim of any other party to the action at the trial.

(3) The court may permit a party in default to participate in the trial after notice to the other parties to the action affected by the claim or dispute set up or raised by such party in default, on being satisfied of the bona fides of such claim or dispute, and upon such terms as to costs and filing of a

statement of claim or otherwise as the court shall deem fit.

Interlocutory decree.

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.

(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 specified portion of the land sought to be partitioned or surveyed be excluded from the scope of the action ;
- (g) order that any share remain unallotted.

(3) Where in a scheme of partition of a land under this Law 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 the 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 subsection 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) 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 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 Law.

(3) Where the court decides that the land or any portion thereof shall be partitioned, the commission under subsection (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 subsection (1) or subsection (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 for partition or **Form of sale** issued under section 27 shall be **commission.** substantially in the form set out in the Second Schedule to this Law and shall have attached thereto—

(u) a copy of the interlocutory decree certified as a true copy by the Registrar or by any other officer of the court, or by the registered attorney for the party who takes out the commission, 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 **Costs of commission** to be issued, the court **shall—** **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 Law ;
- (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 subsection (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 subsection (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.

(5) After the survey for the final partition of the land has been made, the court shall determine the actual costs of such survey in accordance with the rates set out in the Third Schedule to this Law, and if there is any deficiency, the court shall make an order specifying the person by whom, and the date on or before which, the amount of such deficiency shall be deposited in court.

(6) If the amount of such deficiency is not paid on the due date as ordered by 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.

30. (1) On receipt of a commission to partition the land, the surveyor shall fix a date for partitioning **thē** 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 subsection (1) of this section shall be sent to him by registered post 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 subsection (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 subsection (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 subsection. Every such notice shall, not less than seven days before such later date, be served in the manner provided in subsection (2) of this section and a copy of the notice shall, in addition, be exhibited in a conspicuous position on the land.

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.

Scheme of partition.

32. (1) The surveyor shall make his return to the commission, verified by affidavit, substantially in the form set out in the Second Schedule to this Law, on or before the returnable date or the extended date (as the case may be) fixed under section 27, and together with such return he shall transmit to the court-

Return to commission.

- (u) the plan of partition prepared by him ;

Execution of commission for partition.

- (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 ;
- (d) the appraised value of each lot and of any improvements thereon and the details of the computation of such value ; and
- (e) a summary of distribution,

such report, appraisal and summary being substantially in the form set out in the Second Schedule to this Law.

(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.

Manner of partition.

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.

Compensation and owelty.

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.

(2) The amount determined by the court, under subsection (1) of this section or under subsection (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.

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. The date so fixed shall be a date not earlier than thirty days after the receipt of such return by the court.

Date for consideration of scheme of partition.

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.

Final decree of partition.

COMMISSION FOR DIVISION OF LAND INTO LOTS FOR SALE

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 a return he shall transmit to the court-

Consideration of scheme for division of land into lots.

- (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 subsection (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.

38. (1) Where in a partition action the court orders the issue of a commission to any person to sell the land in lots or otherwise than in lots or orders the Fiscal to

Valuation of land.

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) The valuation referred to in subsection (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, with particular reference to the value of the improvements of each party in each lot, and

(6) where the land is to be sold otherwise than in lots, the appraised value of the land and of any improvements thereon, with particular reference to the value of the interest of each party in the entire land.

(3) 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.

Conditions of sale, &c.

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.

(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.

Notice of sale.

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 post to each party declared in the interlocutory decree to be entitled to any right, share or interest to, of, or in the land.

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 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.

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.

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 realized 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 credit in the net amount he is entitled to receive out of the proceeds of sale after the deduction of the amounts, if any, payable by him on account of *pro rata* costs, compensation for improvements, owelty, mortgage debts or otherwise.

(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

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.

48. (1) Save as provided in subsection (5) 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 which may be preferred therefrom, and in the case of an interlocutory decree, subject also to the provisions of subsection (4) of this section, 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 decree relates 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.

Finality of
interlocutory
and final
decrees of
partition.

Confirmation
of sale.

45. The court shall confirm a sale, if within the period referred to in section 44, no objection is preferred 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 realized by the sale of the land or of any lot under paragraph (6) 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.

In this subsection " omission or defect of procedure " shall include an omission or failure-

Certificate
of sale.

46. Upon the confirmation of the sale of the land or of any lot, the court shall enter in the record a certificate substantially in the form set out in the Second Schedule to this Law, in favour of the purchaser. 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.

(a) to serve summons on any party ; or

(b) to substitute the heirs or legal representatives of a party who dies pending the action or to appoint a person to represent the estate of the deceased party for the purposes of the action ; or

Distribution
and withdrawal
of money in
court.

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.

(c) to **appoint** a guardian *ad litem* of a party who is a minor or a person of unsound mind.

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

In this subsection and in the next subsection " encumbrance " means **any** mortgage, lease, usufruct, servitude, 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.

(2) Where in pursuance of the interlocutory decree a land or any lot thereof is sold, the certificate of sale entered in favour of the purchaser shall be conclusive evidence of the purchaser's title to the land or lot as at the date of the confirmation of sale, free from all encumbrances whatsoever except any servitude which is expressly specified in such interlocutory decree and a lease at will or for a period not exceeding one month.

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

The powers of the Court of Appeal by way of revision and *restitutio in integrum* shall not be affected by the provisions of this subsection.

(4) (a) Whenever a party to a partition action-

- (i) has not been served with summons, or
- (ii) being a minor or a person of unsound mind, has not been duly represented by a guardian *ad litem*, or
- (iii) dies before judgment is entered and no substitution of his heirs or legal representatives has been made or no person has been appointed to represent the estate of the deceased party for the purpose of the action, or
- (iv) being a party who has duly filed his statement of claim and registered his address, fails to appear at the trial,

and in consequence thereof the right, title or interest of such party to or in the land which forms the subject-matter of the interlocutory

decree entered in such action has been extinguished or such party has been otherwise prejudiced by the interlocutory decree, such party or where such party is a minor or a person of unsound mind, a person appointed as guardian *ad litem* of such party, or the heirs or the executor or administrator of such deceased party or any person duly appointed to represent the estate of the deceased party, may at any time, not later than thirty days after the date on which the return of the surveyor under section 32 or the return of the person responsible for the sale under section 42, as the case may be, is received by the court, apply to the court for special leave to establish the right, title or interest of such party to or in the said land notwithstanding the interlocutory decree already entered.

(b) The aforesaid application shall be by petition, supported by an affidavit verifying the facts, which shall conform to the provisions of paragraph (a) of subsection (1) of section 19 and shall specify to what extent and in what manner the applicant seeks to have the interlocutory decree amended, modified or set aside and the parties affected thereby.

(c) If upon inquiry into such application, after prior notice to the parties to the action deriving any interest under the interlocutory decree, the court is satisfied-

- (i) that the party affected had no notice whatsoever of the said partition action prior to the date of the interlocutory decree or having duly filed his statement of claim and registered his address, failed to appear at the trial owing to accident, misfortune or other unavoidable cause, and
- (ii) that such party had a prima facie right, title or interest to or in the said land, and
- (iii) that such right, title or interest has been extinguished or such party has been otherwise prejudicially affected by the said interlocutory decree,

the court shall upon such terms and conditions as the court in its discretion may

impose, which may include an order for payment of costs as well as an order for security for costs, grant special leave to the applicant.

(d) Where the court grants special leave as hereinbefore provided the court shall forthwith settle in the form of issues the questions of fact and law arising from the pleadings and any further pleadings which are relevant to the claim set up in the petition only, and the court shall appoint a date for the trial and determination of the issues.

The applicant, unless the court otherwise orders, shall cause notice of such date to be given to all parties whose rights under the interlocutory decree are likely to be affected or to their registered attorney in such manner as the court shall specify. The court shall thereafter proceed to hear and determine the matters in issue in accordance with the procedure applicable to the trial of a partition action.

(e) Where the court determines any matter in issue in favour of the applicant, the court shall in accordance with its findings amend or modify the interlocutory decree to such extent and in such manner only as shall be necessary to give to the successful party and to no other party or person whomsoever, the right, title or interest to which such party is entitled, or in the event of the applicant being found entitled to the entirety of the said land forming the subject-matter of the interlocutory decree, the court shall set aside the interlocutory decree and dismiss the action.

(5) 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 subsection (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.

(6) Where by an interlocutory or final decree a right, share or interest has been awarded to a party but such party was dead at the time, such decree shall be deemed to be a decree in favour of the representatives in interest of such deceased person at the date of such decree.

(7) The provisions of this section shall apply to all interlocutory and final decrees entered in partition actions instituted under the provisions of the Partition Act, No. 16 of 195 1,* and under the provisions relating to partition actions contained in the Administration of Justice Law, No. 44 of 1973, repealed by the Civil Courts Procedure (Special Provisions) Law, 1977.

49. (1) 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. Any person who has benefited by such act may be made a defendant in such separate action and shall, if damages are awarded in that action, be bound by the award to the extent of such benefit as may be determined by the court, to be that derived by him from such act.

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

(2) Where such action for damages as is referred to in subsection (1) of this section is instituted and is registered as a *lis pendens* under the Registration of Documents Ordinance in, or in continuation of the folio in which the said interlocutory decree was registered before the decree of partition is entered under section 36 or the schedule of distribution is approved by the court under section 47, in the partition action relating to that land, then, if any damages are awarded to the plaintiff in the action for **damages**—

* Chapter 69 of the 1956 Edition of the Legislative Enactments, which has been repealed by the Administration of Justice Law, No. 44 of 1973, as amended by Law No. 25 of 1975.

- (a) the amount of such damages shall be a charge on any share of the land or **any** money allotted in such partition action to the defendant or each of the defendants in the action for damages, and
- (b) such charge shall rank next in priority to the charge referred to in subsection (2) of section 34 and the charge referred to in section 63, and such charge shall be enforceable against such party and any person deriving a right, title or interest therein or thereto from such party, not being a transferee for value without notice of the right, title or interest of such plaintiff.

(3) For the purposes of subsection (1) of this section a party to a partition action on whom summons had not **been** served or a party to such an action being a minor or a person of unsound mind, who shall not have been duly represented by a guardian *ad litem*, shall be deemed to be a person who was not a party to the said action. And where an application for special leave under the provisions of subsection (4) of section 48 had been refused without an adjudication upon the merits of the claim set up by such party, the order refusing leave shall not be a bar to an action under subsection (1) of this section by the same party.

Lease or mortgage of undivided share.

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-

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

(3) If in any interlocutory decree for partition or sale any undivided share is declared subject to a usufruct, life interest, trust, right of revocation or right of re-transfer, the right of such usufructuary, life interest holder, beneficiary or of the person entitled to a right of revocation or of re-transfer shall be limited-

- (a) in the case of a partition otherwise than in accordance with subsection (4) of section 26, to the divided lot or lots allotted in respect of such undivided share ; and
- (b) in the case of a partition in accordance with subsection (4) of section 26, to so much of the extent of land and of any owelty or compensation allotted in respect of such undivided share ; and
- (c) in the case of a sale, to the net share of the proceeds of sale, in respect of such undivided share.

51. Where in a partition action an interlocutory decree under section 26 or a final decree of partition under section 36 or a decree dismissing the action 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 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

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

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. (1) Every party to a partition action who has been declared to be entitled to any land by any final decree entered under this Law and every person who has purchased any land at any sale held under this Law 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.

(2) (a) Where the applicant for delivery of possession seeks to evict any person in occupation of a land or a house standing on the land as tenant for a period not exceeding one month who is liable to be evicted by the applicant, such application shall be made by petition to which such person in occupation shall be made respondent, setting out the material facts entitling the applicant to such order.

(b) After hearing the respondent, if the court shall determine that the respondent having entered into occupation prior to the date of such final decree or certificate of sale, is entitled to continue in occupation of the said house as tenant under the applicant as landlord, the court shall dismiss the application ; otherwise it shall grant the application and direct that an order for delivery of possession of the said house and land to the applicant do issue.

Power of court to enforce it's 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 Law, 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 subsection (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 subsection, 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 subsection 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) 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. Rights of person owning plantation apart from soil

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

55. (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 thereon for the purpose of selling such crops or produce or which is for the purpose of carrying on any trade, Partition of land belonging to partnership.

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 subsection (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 subsection.

Executors and administrators.

56. 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.

57. (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 subsection (3) of section 18 ;
- (c) the costs of deeds and other documents produced to prove the common title ;
- (d) the costs of the proclamation under paragraph (b) of subsection (3) of section 15 ;
- (e) other costs of instituting and prosecuting the action.

The costs referred to in paragraph (e) of this subsection shall be determined in accordance with the rates set out in the Fourth Schedule to this Law.

(2) The costs referred to in subsection (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.

58. The costs in a partition action which an attorney-at-law may recover from his client shall be taxed at the rates set out in the Fifth Schedule to this Law.

Costs recoverable by attorney-at-law.

59. 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.

60. 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.

61. 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 Court of Appeal, only one amount shall be fixed by way of security for costs of appeal.

One set of costs for parties jointly interested.

62. (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 for unreasonable delay.

(2) Where any party to a partition action who is ordered under subsection (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, and may make an order for costs against the plaintiff; or

(b) where that party is a defendant, the court may reject so much of his claim as is in dispute.

(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 subsection (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.

(4) If any party ordered to pre-pay costs under subsection (3) of this section fails to make such pre-payment of costs, the court may make any of the orders referred to in subsection (2) of this section as it may deem fit, according as the party in default is a plaintiff or defendant.

Costs under sections 57 and 60 to be a charge on share of party.

63. All costs due from any party to a partition action under sections 57 and 60 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 subsection (2) of section 34.

Costs in cases not expressly provided for.

64. Costs shall ordinarily be borne by the person who incurs the costs except in cases where it is expressly provided by this Law 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 Law.

65. Where the court is satisfied that the plaintiff in any action under this Law has not paid any costs or charges due from him in any previous action instituted by him under this Law 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

66. (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 under section 36 or by the entry of a certificate of sale.

Sale, lease or mortgage pendente lite is void

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

Provided that any such voluntary alienation, lease or hypothecation shall, in the event of the partition action being dismissed, be deemed to be valid.

(3) Any assignment, after the institution of a partition action, of a lease or hypothecation effected prior to the registration of such partition action as a *lis pendens* shall not be affected by the provisions of subsections (1) and (2) of this section.

67. An appeal shall lie to the Court of Appeal against any judgment, decree or order 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 a judgment, decree or order made or entered in a partition action were a judgment, decree or order made or entered in any action as defined for the purposes of that Code.

Appeals.

68. It shall not be necessary in any proceedings under this Law 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.

69. (1) The court may at any time before judgment is delivered in a partition action add as a party to the action, on such

Addition of parties.

terms as to payment or prepayment of costs as the court may order-

- (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.

(3) Where a party to a partition action derives his right, share or interest to, of or in the land to which the action relates under or by virtue of a revocable deed of gift made by any other person or an instrument which reserves to any other person the right to claim a re-transfer of such right, share or interest as aforesaid within a period specified therein, such other person shall be entitled to intervene at any time before judgment in the said action and establish the right claimed by him as if he had been a co-owner at the time of the institution of the action.

70. 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 a plaintiff for the purpose and may make such order as to costs as the court may deem fit.

Non-prosecution of partition action.

71. (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, 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 five hundred rupees, or to imprisonment of either description for a period not exceeding eighteen months, or to both such fine and imprisonment.

Penalty for dishonest non-disclosure of interested persons.

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

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

72. (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 five hundred rupees, or to imprisonment of either description for a period not exceeding eighteen months or to both such **fine** and imprisonment.

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

(2) A person guilty of an **offence** under subsection (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 subsection

and may be punished for such contempt in accordance with the provisions of Chapter LXV of the Civil Procedure Code.

trial to any other day, upon such terms as to costs or otherwise as to it shall seem proper.

List of surveyors.

73. 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 Law.

(4) Where a date is fixed on or before which an act has to be done by a party to the action or a return has to be made to a commission issued by the court, the case shall be called in open court on such date for the purpose of making an appropriate order in connection therewith or relating thereto.

Exemption from stamp duty.

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

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.

(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.

78. A civil court may either generally or specially authorize any officer to exercise or perform any power or duty conferred or imposed on the Fiscal by this Law, within the local limits of its jurisdiction.

Powers and duties of Fiscal.

Dismissal of partition action.

75. (1) The dismissal of a partition action in respect of any land under section 9, section 12, section 29, section 62, section 65 or section 70 shall not operate as a bar to the institution of another partition action in respect of that land.

79. In any matter or question of procedure not provided for in this Law, 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 Law.

Casus omissus.

(2) The dismissal of a partition action under section 29, section 62, section 65 or section 70 shall not affect the final and conclusive effect given by section 48 to the interlocutory decree entered in such action.

80. Where no form to be used for the purposes of this Law 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.

Power of court to postpone, adjourn or to give extensions of time.

76. (1) Where a day is fixed or time appointed for doing any act or taking any proceeding by a party to the action, the court may, from time to time, upon application by such party and if sufficient cause is shown, fix another day or enlarge or abridge the time appointed, upon such terms, if any, as to the court may seem proper.

81. 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 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 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,

Representation of deceased party or co-owner.

(2) The day may be refixed or the time enlarged although the application for the same is not made until after the expiration of the day or time fixed or appointed.

(3) The court may, for sufficient cause, either on the application of the parties or of its own motion, advance or postpone the

* See List of Enactments omitted from the Revised Edition.

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 person lawfully entitled to the right, share or interest of the deceased were a party to the action.

Transitional provisions.

82. (1) Every action, proceeding or other matter relating to partition actions already instituted and pending under the provisions of the Administration of Justice Law, No. 44 of 1973, in any court, original or appellate, on the appointed date shall be continued and proceeded with to final judgment, completion or execution under the provisions of this Law, as if the same had been instituted after the coming into operation of this Law.

(2) Every action, proceeding or other matter relating to partition actions already instituted and pending under the provisions of the Administration of Justice Law, No. 44 of 1973, in any Magistrate's Court on the appointed date shall stand removed to the District Court of the district within which such Magistrate's Court is situate and such District Court shall have jurisdiction to continue and proceed with such action to final judgment, completion or execution under the provisions of this Law, as if the same had been instituted in such District Court after the coming into operation of this Law.

Interpretation.

83. (1) In this Law, unless the context otherwise requires-

“ appointed date ” means the 15th day of December 1977 ;

“ 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 ditches or fences along the boundaries or of posts of hard wood or other material erected at suitable points on the boundaries ;

“ 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 Law for the partition or sale of any land or lands belonging in common to two or more owners and includes any action, proceeding or other matter continued under section 82 ;

“ registered attorney ” has the same meaning as in the Civil Procedure Code ;

“ surveyor ” means a surveyor whose name is included in a list prepared under section 73 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.

[Sections 8 and 10.]

FIRST SCHEDULE

PRELIMINARY SURVEY

1. For surveying :-

- (u) One acre or less Rs. 65.00
- (b) Over one acre and up to 10 acres Rs. 65.00 for the first acre plus Rs. 15.00 for each additional acre or part thereof.
- (c) Over 10 acres Rs. 200.00 for the first 10 acres plus Rs. 15.00 for each additional acre or part thereof.
- (d) For survey of fixation detail and data outside the corpus for purpose of super-impositions Rs. 3.00 per chain.

- | | | |
|-----|---|--|
| 2. | Investigations in the Surveyor-General's Office or Divisional Survey Office when so ordered by Court. | Fee of Rs. 52.50 plus travelling |
| 3. | For surveying and showing on plan buildings, wells and other structures | Re. 1.00 per structure |
| 4. | For surveying and showing on plan boundary trees and/ or other boundary marks | 0.15 cents per item marked |
| 5. | For surveying and showing on plan fences, walls and ditches, &c. | 0.75 cents per chain |
| 6. | For surveying and showing on plan roads, paths, streams and other topographical features | Rs. 1.50 per chain |
| 7. | Superimpositions | Rs. 30.00 per plan of 5 acres or less plus Rs. 2.00 for each additional acre |
| 8. | Counting trees | Rs. 0.05 cents per tree |
| 9. | Fee for surveyor attending Court to give evidence relating to his survey | Professional fee of Rs. 52.50 per day |
| 10. | Surveyor obstructed and interrupted from completing a survey | Professional fee of Rs. 52.50 plus reimbursement of expenses at rates prescribed |
| 11. | Fees for making plan and report :- | |
| | (a) Under 1 acre, for 1 lot | Rs. 25.00 |
| | (b) Under 1 acre, for 2-5 lots | Rs. 30.00 |
| | (c) Every additional acre | Re. 1.00 |
| | (d) Every additional lot | Re. 1.00 |
| 12. | Fee for certified copy of field notes :- | |
| | (u) For 10 survey lines or less | Rs. 10.00 |
| | (6) For every additional survey line | 0.50 cents |
| 13. | For taking copies of tracings of plans from Court Records or from a Survey Office | Re. 1.00 per acre subject to minimum fee of Rs. 15.00 |
| 14. | Enlarging or reducing plan to scale | Rs. 1.50 per acre subject to a minimum fee of Rs. 20.00 |
| 15. | Travelling to the land to be surveyed, distance being computed from Court | Rs. 2.00 per running mile |
| 16. | Cost of issuing notices to parties by registered post | Current postage and registration rate plus Re. 1.00 per notice sent |
| 17. | Wages and travelling expenses of person making oral proclamation | Rs. 10.00 plus 0.20 cents per mile travelled to site and back |
| 18. | Wages for 5 survey labourers | Rs. 12.00 per head labourer and Rs. 7.50 for each of the other 4 labourers for each day spent by them in clearing, picketting and surveying |
| 19. | Batta for nights out for surveyor | Rs. 30.00 per night out |
| 20. | Batta for nights out for survey labourers | Rs. 5.00 per labourer per night out |
| 21. | Special fees chargeable for surveys in the Registration Areas of Wellawatte, Kirillapone , and Dehiwela in addition to the fees and costs specified above :- | |
| | (i) Cement or clay pickets | 0.50 cents each |
| | (ii) Copy of field notes supplied to the Surveyor-General for examination of Plan | (u) for 10 survey lines or less Rs. 10.00
(b) for every additional survey line 0.50 cents |
| | (iii) Travelling to Land Registry to obtain tracings | Rs. 2.00 per running mile |
| | (iv) Stamp for application for search | Amount currently charged at Land Registry |
| | (v) Charge for each tracing obtained from the records of lot under survey and all necessary abutting lots | Re. 1.00 per acre subject to a minimum fee of Rs. 15.00 |
| | (vi) For drawing up affidavit and swearing affidavit before a Justice of the Peace or Commissioner for Oaths and stamp | Rs. 10.00 |

[Sections 12, 15, 16, 18, 19 (3), 20, 28, 32, 46.]

SECOND SCHEDULE

FORM OF SUMMONS

(Section 12 (2))

[Section 12 (2)]

In the District Court of.....

Action No.

A. B. *.....* Plaintiff

VS.

C. D.

and others *..... Defendants

Whereas the above-named plaintiff has instituted an action under the Partition Law 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 required to file your statement of claim either in person or by registered attorney with the Registrar of this Court on or before the.....day of.....19..... stating 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. If you desire to receive notice of the date on which the above action will be called in open Court in order to fix the date of trial you are required by section 19 (3) of the Partition Law to furnish to the Registrar of this Court a registered address and to tender stamps to the requisite value to cover postage by registered post.

By Order of Court, Signed..... Registrar.

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

[Section 12 (2)]

FORM OF NOTICE

(Section 12 (2))

In the District Court of..... *.....

Caption.

It is hereby notified that action No..... has been instituted in the District Court of..... under the Partition Law for the partition/sale of the land/lands called..... and situated in the village /villages of.....in the..... district.

All persons claiming to be entitled to any right, share or interest whatsoever to of or in the land to which the above action relates, whether vested or contingent, and whether by way of mortgage, lease, usufruct, servitude, trust, life interest or otherwise, or to any buildings or plantations standing thereon or to any other improvement made or effected thereto and desiring to be added as parties are hereby required to apply by motion thereto and to file their statements of claim and register their addresses in accordance with the provisions of Section 19 of the said Partition Law on or before the.....day of....., 19.....

By Order of Court. Signed..... Registrar.

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

[Section 12(2)]

FORM OF PRECEPT TO FISCAL

(Section 12 (2))

In the District Court of..... Action No..... instituted under the Partition Law.

To the Fiscal of the District Court of.....

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 aforesaid Law 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..... Registrar.

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

REPORT BY GRAMA SEVA NILADHARI

[Section 15 (2).]

(Section 15 (2))

In the District Court of

Action No.

On this... day of... 19.....

I, Grama Seva Niladhari of..... do hereby report to Court that I have exhibited the annexed notices with translations on the notice-board of my office from..... 19..... to..... 19.....

Signed Grama Seva Niladhari.

COMMISSION FOR PRELIMINARY SURVEY

[Section 16.]

(Section 16)

In the District Court of.....

Action No. Plaintiff. vs. Defendants.

To

WHEREAS the above-styled action has been instituted by the above-named Plaintiff against the defendants above-named for a partition under the provisions of the Partition Law of the land more fully and particularly described in the Schedule to the plaint, a true copy whereof is annexed hereto.

AND WHEREAS this Court by its Order has appointed you Commissioner to proceed to the said land and make a Plan thereof showing the boundaries and extent and any buildings on the same and other requisite particulars in terms of the provisions of the Partition Law.

You are hereby ordered to proceed to the said land after giving due notice to the aforesaid parties and to survey the said land and make a Plan thereof showing the aforesaid particulars and submit same to this Court with your report substantially in the prescribed form and a true copy of your field notes on or before the... day of... 19.....

A sum of Rs..... is deposited in Court as your fees.

Dated this... day of... 19.....

By Order of Court. Signed.....

Commission drawn by me, (Registered Attorney for Plaintiff/ Plaintiffs) Registrar.

FORM OF SURVEYOR% REPORT

[Section 18 (1) (a).]

(Section 18 (1) (a))

In the District Court of.....

Action No. Plaintiff vs. Defendants.

Preliminary Plan No. dated.....

- (i) Date fixed for commencement of survey :
(ii) (a) Date of Issue of notice of survey to parties :
(b) Date of oral proclamation of survey:
(iii) Date of survey :
(iv) Nature of land surveyed with details of buildings, walls, fences, wells, trees, plantations and other improvements thereof:
(v) Whether or not the land surveyed is substantially the same as the land sought to be partitioned as described in the schedule to the plaint :

- (vi) Parties present :
- (vii) Persons who pointed out the land to be surveyed :
- (viii) Claimants, other than parties, their addresses and nature of claims :
- (ix) Result of investigation of any particular fact or matter specifically referred to in the commission :
- (x) Existing means of access to the land from the nearest public road :
- (xi) Facts, matters and circumstances relating to the survey or to the land surveyed, which may be necessary for, or prove of assistance in, the adjudication of the partition action.

I,..... do hereby solemnly, sincerely, and truly declare and affirm/do make oath **and** state as follows :-

1. I am the Commissioner appointed in the above case.

2. I duly executed the Commission issued to me in the above action in accordance with the directions given therein, and to the best of my knowledge, information and belief the foregoing particulars and my Plan No.....**dated**..... and the certified copy of my field notes are true and accurate.

Signed.....
Commissioner.

Affirmed to/Sworn to at..... on this..... day of..... 19.....

Before me.

Signed*.....
Justice of the Peace/ Commissioner for Oaths.

[Section 19
(31.1)

REGISTERED ADDRESS
(Section 19 (3))

In the District Court of.....

Action No.

On this.....day of..a..... 19.....

I,..... being the..... defendant/..... Plaintiff in the above partition action hereby furnish my postal address for service of the notice under Section 24 of the Partition Law and all other legal documents required to be **served** on me under this Law. I undertake to inform the Registrar of any change of address.

I also tender stamps to the value of Rs..to cover cost of service of the notice under Section 24 on me by registered post.

Signature.....
..... -Defendant/. Plaintiff

Address :.*.....
.....
.....

Signature :.
..... Defendant/. Plaintiff

[Section 20.]

FORM OF NOTICE
(Section 20)

In the District Court of

Action No.a.....

A. B. Plaintiff

VS.

C. D.....

And others..... Defendants.

You are hereby notified that Action No..... has been instituted in the District court of..... under the Partition Law for the partition/sale of the land/ lands called and situated in the village/villages of in the..... District.

If you claim any interest in the land/lands you are hereby required if you so desire to apply by motion in writing on or before.....day of.....19.....to be added as a party to the aforesaid action, and if so added, to take notice of the day appointed by Court, on or before which, you are required to file your statement of claim, if any, and to comply with the requirements of section 19.

Signed..... Registrar,

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

COMMISSION FOR THE FINAL SURVEY

[Section 28.]

(Section 28)

In the District Court of.....

Action No.....*..... Plaintiff vs. Defendants.

To.....

WHEREAS by an Interlocutory Decree of this Court dated the..... day of.....19.....(a true copy whereof is hereto annexed) the parties to this action were declared entitled to the land and premises described therein :

AND WHEREAS this Court has thereby ordered and decreed that the said land be partitioned in terms of the provisions of the Partition Law :

AND WHEREAS you have been appointed Commissioner to partition the said land in terms of the said decree:

NOW KNOW YE AND THESE PRESENTS Witness that you as such Commissioner are hereby ordered in accordance with the provisions of the Partition Law to proceed to the said land with due notice to the parties and to survey and partition the same amongst the said parties according to the shares set out in the said decree in terms of the provisions of the said Law and to make your return hereto substantially in the prescribed form on or before the.....day of.....19.....

A sum of Rs.....has been deposited in Court as your fees for the said survey.

Dated this.....day of.....19.....

By Order of Court.

Signed..... Registrar.

Drawn by me

.....

(Registered Attorney for Plaintiff/ Plaintiffs.)

[Section 28.3

COMMISSION TO SELL

(Section 28)

In the District Court of.....

Action No..... Plaintiff

vs.

..... Defendant.

To.....

WHEREAS by a decree entered of record in the above-styled partition proceedings, a true copy whereof is annexed hereto, it was ordered and decreed that the plaintiff and the defendant abovenamed be and they are thereby declared entitled to the land and premises described therein according to the shares set out therein.

AND WHEREAS it was further ordered and decreed that the said land and premises more fully described in the said decree be sold in terms of Section 27 of the Partition Law and the proceeds of sale be brought into Court to the credit of these proceedings.

AND WHEREAS this Court has nominated and appointed you to carry out the sale of the said land and premises by Public Auction upon conditions of sale to be approved by Court.

You are therefore hereby directed, authorised and empowered to enter the aforesaid land and premises and the buildings which are more fully described in the said decree and prepare and submit in the first instance a valuation report of the said land and premises on or before the.....day of.....One thousand nine hundred and Eighty.....

You are further ordered and directed to sell the said land and premises by Public Auction with due notice to the parties and to the general public upon Conditions of Sale duly approved by Court.

You are further directed to bring into Court to the credit of these proceedings the amount recovered by you at the sale within forty-eight hours of the sale and make your return to this Court within ten days of the sale or on the date to which the Court may extend your Commission directing you to make your return in terms of the provisions of Section 42 of the Partition Law.

A sum of Rupees.....(Rs.....) has been deposited as your valuation fees.

You are hereby further directed not to stay execution of this Commission except on an Order made by this court.

By Order of Court.

Signed.....

Commission drawn by me

Registrar.

.....
(Registered Attorney for Plaintiff/ Plaintiffs.)

COMMISSIONERS RETURN TO COURT

[Section 32.]

(Section 32)

In the District Court of

Action No. Plaintiff
VS.
Defendant

Plan of Partition No. dated

- (i) Date fixed for partition :
(ii) (a) Date of issue of notice of partition to parties:
(b) Date of oral proclamation of partition :
(c) Date of fixing such notice on land :
(iii) (a) Altered date of partition, if any:
(b) Date of issue of notice of such altered date :
(c) Date of fixing of such notice on land :
(iv) Date of partition :
(v) Parties present :
(vi) Manner of partition, names of parties and nature and extent of their respective shares and interests.
(vii) Each party's share in lot allotted in common, if any:

I, Licensed Surveyor, do hereby solemnly, sincerely and truly declare, affirm/do make oath and state as follows :-

- 1. I am the Commissioner appointed in the above action.
2. I duly executed the Commission issued to me in the above action in accordance with the directions given therein and to the best of my knowledge, information and belief, the foregoing particulars relating to the partition of the property described in my Plan No. dated certified copy of my field notes, Summary of Distribution and Schedule of Appraisalment and my Plan No. dated are true and accurate, and my said plan and particulars conform to the Interlocutory Decree and the requirements prescribed by section 32 of the Partition Law.
3. In allotting Lot No., in common, I have obtained the written consent of the allottees.
4. I have demarcated the divided portions on the land by means of (here state nature of boundary marks whether stakes, boundary stones, &c.,) which cannot be easily removed or destroyed.
5. I have informed the parties present of the returnable date of this Commission.

Signed.....
Commissioner.

Affirmed to/Sworn to at on this day of..... 19.....

Before me,

Signed.....
Justice of the Peace/Commissioner for Oaths.

[Section 32.]

SCHEDULE OF APPRAISEMENT

(Section 32)

District Court.

Action No.....

Plan of Partition No. dated

Schedule of appraisement to accompany Summary of Distribution

Lot No.

Soil:

Buildings :

Plantations :

Total value of lot

Lot No.

Soil:

Buildings :

Plantations :

Total value of lot

Lot No.

Soil :

Buildings :

Plantations :

Total value of lot

Lot No.

Soil:

Buildings :

Plantations :

Total value ,of lot

Signed.....

Commissioner.

Dated..... day of 19.....

[Section 46.]

CERTIFICATE OF SALE

(Section 46)

Action No.

In the District Court of

WHEREAS by a decree dated the...day of...19....entered in the above-styled action it was ordered and decreed that all the allotment of land and premises in the Schedule (1) (i) hereto fully described with everything standing thereon, be sold in terms of the provisions of the Partition Law(*) (ii).

And Whereas by Order dated the ... day of... 19..... Mr. Licensed Auctioneer, having been duly appointed Commissioner to carry out the said sale, commission was accordingly issued to him to sell the said land and premises (1) (iii) in accordance with the provisions of the said Partition Law.

And Whereas the said Commissioner did after due valuation, notice and publication in the manner prescribed in the said Partition Law and in accordance with conditions prescribed and other orders issued by this Court put up for sale on the...day of...19.... the said land and premises (1) (iv) first among the co-owners thereof at the appraised value thereof as determined by this court, and there being no bidders at such sale did immediately thereafter put up the said land and premises for public auction/and* being the highest bidder at such sale became and was declared the purchaser thereof. (1)(v).

*Name and address of purchaser.

And Whereas the said purchaser has duly paid and deposited in Court the whole of the said purchase money.(?)

And Whereas this Court by its order dated the...day of... ,19... has duly confirmed the said sale and the said purchaser has now become entitled to a certificate of sale under the provisions of Section 46 of the Partition Law.

Now These Presents witness that I :..... District Judge of..... do hereby certify that all that allotment of land and premises in the Schedule† hereto fully described was duly sold under the provisions of the Partition Law and purchased by the said*..... and in pursuance of the Powers thereto vested in me do hereby enter of record this Certificate of Sale in favour of the said*..... to the intent and purpose that this Certificate of Sale is and shall be conclusive evidence of the title of the said*..... to the said land and premises in the said Schedule hereto fully described free from encumbrances as at the**.....day of.....19.....

*Name and address of purchaser.

**Insert date of confirmation of sale.

Schedule (1) (vi)

Given under my hand and the Seal of this Court on this.....day of.....19

Signed District Judge.

(1) Where sale in lots has been ordered modify as follows :—

(i) “ first schedule ” for “ schedule ” in paragraph one,

(ii) insert the following recital immediately after first paragraph :-

“ And whereas it was further ordered by this court that the said land and premises in the first schedule hereto fully described be sold in lots as depicted in Plan No. dated the day of and made by Mr. Licensed Surveyor and filed of record in the above-styled action ”.

(iii) insert after the words “ land and premises ” in the second ‘paragraph the words “ in lots in manner aforementioned ”.

(iv) substitute for the words “said land and premises ” in the third paragraph the words “the divided lots in the second schedule hereto fully described ”.

(v) after the words “the purchaser thereof ” at the end of the third paragraph insert “ or of the particular lot in the second schedule hereto fully described ”.

(vi) set out description of entire land sold in the first schedule and add description of divided lot in second schedule.

†Say “ in the Second Schedule ” where the sale has been in lots.

(2) Where purchaser is a co-owner, add “ the said purchaser being a co-owner is entitled to credit in a sum of Rs. out of the said purchase price and has duly paid and deposited in court the balance sum of Rs. ”

THIRD SCHEDULE

[Section 29.]

SURVEY FOR THE FINAL PARTITION

1. For surveying :-

- | | |
|--|---|
| (a) If the commission to partition is issued within one year of the preliminary survey to the same surveyor who carried out the preliminary survey | One-third the fee payable for surveying for the preliminary survey. |
| (b) If the commission is issued to the same surveyor after one year of the preliminary survey or to another surveyor | Half the full fee payable for surveying for the preliminary survey. |

2. For partitioning the land into allotments :-

(u) For a corpus 10 acres or less in extent-

- | | | |
|---|----|--------------------------|
| (i) For the first 10 lots | .. | Rs. 12.00 per lot |
| (ii) For every lot in excess of 10 lots | .. | Rs. 8.50 per lot |

(b) For a corpus over 10 acres but not over 25 acres in extent—

- | | | |
|---|----|-------------------|
| (i) For the first 10 lots | .. | Rs. 25.00 per lot |
| (ii) For every lot in excess of 10 lots | .. | Rs. 12.00 per lot |

(c) For a corpus over 25 acres in extent-

- | | | |
|---|----|--------------------------|
| (i) For the first 10 lots | .. | Rs. 35.00 per lot |
| (ii) For every lot in excess of 10 lots | .. | Rs. 20.00 per lot |

3. For counting trees within each lot 05 cent per tree counted.

4. For assessing the value of the soil, plantations, buildings and other structures, and other improvements for the purpose of awarding compensation or owelty. First slab of Rs. 10,000 at $\frac{3}{4}\%$
Next slab of Rs. 20,000 at $\frac{1}{2}\%$
Next slab of Rs. 20,000 at $\frac{1}{4}\%$
Balance. at $\frac{1}{8}\%$ subject to a minimum fee of Rs. 50.00.
5. Fee for surveyor for attending **Court** to give evidence relating to his survey Professional fee of Rs. 52.50 per day.
6. Fee for making Plan:
- (a) Under 1 acre for 1 lot .. Rs. 25.00
- (b) Under 1 acre for 2-5 lots .. Rs. 30.00
- (c) Every additional acre .. Re. 1.00
- (d) Every additional lot .. Re. 1.00
7. Fee for making certified copy of Field Notes:
- (a) For 10 survey lines or under .. Rs. 10.00
- (b) For every additional survey line .. 0.50 cents per line
8. For Report, Schedule of Appraisalment and Summary of Distribution Rs. 5.00 per lot subject to **minimum fee** of Rs. 50.00
9. Travelling to the land to be surveyed, **distance being** computed from Court Rs. 2.00 per running mile
10. Cost of issuing notices to parties by registered post Current postage and registration rate plus Re. 1.00 per notice sent
11. Wages and travelling expenses of person making oral proclamation Rs. 10.00 plus 20 cents per mile travelling to site and back
12. Wages for 5 survey labourers .. Rs. 12.00 per head labourer and Rs. 7.50 for each of the other four labourers for each day spent by them in clearing, **picketting** and surveying
13. Batta for nights out for surveyor .. Rs. 30.00 per night out
14. Batta for nights out for survey labourers .. Rs. 5.00 per labourer per night
15. Special fees chargeable for surveys in the Registration Areas of Wellawatte, Kirillapone and Dehiwela in addition to the fees and costs specified **above**—
- (i) Cement or clay pickets .. 0.50 cents each
- (ii) Copy of field notes supplied to the Surveyor-General for examination of plan (a) for 10 survey lines or less Rs. 10.00
(b) for every additional survey line 50 cents
- (iii) Travelling to Land Registry to obtain tracings .. Rs. 2.00 per running mile
- (iv) Stamp for application for search .. Amount currently charged at Land Registry
- (v) Charge for each tracing obtained from the records of lot under survey and all necessary abutting lots Re. 1.00 per acre subject to a minimum fee of Rs. 15.00
- (vi) For drawing up affidavit and swearing affidavit before a Justice of the Peace or Commissioner for Oaths and Stamp Rs. 10.00

FOURTH SCHEDULE

[Section
57 (1).]

*Amount of costs
under section
57 (1) (e) in a
Partition Action
Rs.*

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

(1) is less than Rs. 3,000	..	..	..	500
(2) is not less than Rs. 3,000 but less than Rs. 5,000	..	..	..	750
(3) is not less than Rs. 5,000 but less than Rs. 10,000	..	..	..	1,250
(4) is not less than Rs. 10,000 but less than Rs. 50,000	..	..	..	1,750
(5) for lands of the value of Rs. 50,000 and up to Rs. 100,000	..	..	..	2,500

For every additional Rs. 50,000 or part thereof add Rs. 500.

FIFTH SCHEDULE

[Section 58.]

COSTS RECOVERABLE BY A REGISTERED **ATTORNEY FROM HIS CLIENT** IN AN ACTION IN THE
DISTRICT COURT

<i>Where the value of interest claimed is</i>	Class I	Class II	Class III
	<i>Under Rs. 3,000</i>	<i>Rs. 3,000 and under Rs. 5,000</i>	<i>Rs. 5,000 and under Rs. 10,000</i>
	<i>Rs. c.</i>	<i>Rs. c.</i>	<i>Rs. c.</i>
1. Conference with client and receiving instructions to sue, defend or intervene ..	16 0	20 0	24 0
2. Every necessary attendance on client in the progress of an action or proceeding ..	6 0	8 0	12 0
3. Every necessary attendance on Attorney-at-Law ..	6 0	8 0	12 0
4. Every attendance in court— (a) on returnable date of summons, notice or other process or commission, and (b) for re-issuing summons, notice or other process or commission	6 0	8 0	10 0
5. Drawing plaint, statement of claim, or petition ..	30 0	40 0	43 0
6. Filing plaint, statement of claim, or petition ..	7 50	8 0	8 0
7. For translating plaint ..	7 50	8 0	8 0
8. For every copy of plaint or of a translation thereof ..	2 0	2 0	2 0
9. For preparing each application for registration of <i>lis pendens</i> and duplicate thereof ..	5 0	5 0	5 0
10. For searching for encumbrances in Land Registry and for Attorney-at-Law's certificate regarding inspection of entries in Land Register relating to land or lands constituting subject-matter of action ..	20 0	20 0	20 0
	plus the fee Registry	payable to	the Land

Where the value of interest claimed is	Class I	Class II	Class III
	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.
11. Drawing summons, notice subpoena, writ, or other process, or order of court, each ..	2 0	2 0	2 0
12. Making copy or translation thereof ..	1 50	1 50	1 50
13. Attending court to support or oppose all necessary or ordinary applications ..	10 0	15 0	15 0
14. Drawing affidavit and fair copy, per folio* ..	2 0	2 0	2 0
15. Drawing brief for Attorney-at-Law and fair copy, per folio* ..	2 0	2 0	2 0
16. Examining witnesses preparatory to trial or for instructions for brief ..	8 0	10 0	12 0
17. Attending court with Attorney-at-Law on trial, if cause argued or heard ..	20 0	25 0	30 0
18. Attending court with Attorney-at-Law on trial, if cause adjourned or postponed ..	10 0'	15 0	15 0
19. Attending court without Attorney-at-Law on trial, and conducting cause ..	40 0	50 0	60 0
20. Attending court without Attorney-at-Law on trial, if cause adjourned or postponed ..	10 0	15 0	15 0
21. Attending court for an inquiry ..	half the rates set out in paragraphs 17, 18, 19 and 20 of this Schedule		
22.. Where judgment is deferred attending court to hear it ..	7 0	7 0	7 0
23. For drawing interlocutory decree ..	20 0	20 0	20 0
24. For drawing final Decree ..	20 0	20 0	20 0
	plus Rs. 2 for each lot		
25. For preparing scheme of distribution ..	10 0	30 0	40 0
26. For drawing bill of costs ..	2 0	2 0	2 0
27. Attending taxation ..	5 0	5 0	5 0

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) Where the value of the interest claimed is Rs. 10,000 and over the taxable charges shall be double those in Class III.

*A folio to consist of 120 words.