



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**PARTITION (AMENDMENT)
ACT, No. 17 OF 1997**

[Certified on 12th August, 1997]

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Partition (Amendment) Act No. 17 of 1997

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[Certified on 12th August, 1997]

L.D.—O. 66/95.

**AN ACT TO AMEND THE PARTITION LAW,
No. 21 OF 1977**

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

1. This Act may be cited as the Partition (Amendment) Act, No. 17 of 1997.

Short title.

2. Section 2 of the Partition Law, No. 21 of 1977 (hereinafter referred to as the “principal enactment”) is hereby amended in subsection (1) of that section, by the substitution for the words “any one or more of them may”, of the words “any one or more of them, whether or not his or their ownership is subject to any life interest in any other person, may”.

Amendment of section 2 of Act No. 21 of 1977.

3. Section 4 of the principal enactment is hereby amended as follows :—

Amendment of section 4 of the principal enactment.

(1) by the renumbering of that section as subsection (1) thereof ;

(2) by the addition, at the end of that section of the following subsection :—

“(2) There shall be appended to every plaint presented to a court for the purpose of instituting a partition action, a memorandum substantially in the form set out in the Second Schedule to this Law, nominating in accordance with section 81, a person to be the legal representative of the plaintiff for the purposes of the action, in the event of his death pending the final determination of the action.”

4. Section 6 of the principal enactment is hereby amended in subsection (2) thereof, by the substitution for the word “duplicate”, of the words ‘triplicate and marked “original”, “duplicate”, and “triplicate”, respectively’.

Amendment of section 6 of the principal enactment.

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Replacement of section 8 of the principal enactment.

5. Section 8 of the principal enactment is hereby repealed and the following new section substituted therefor :—

“Procedure on acceptance of the plaint.

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

(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 ;

(b) cause to be transmitted forthwith, and in any event not later than two weeks from the date of acceptance of the plaint, the application in triplicate to the Registrar of Lands of each Land Registry in which the action is to be registered as a *lis pendens* ;

(c) fix a date, being a date not later than seven weeks from the date of acceptance of the plaint, for the return of the registered *lis pendens*, by the Registrar of Lands ;

Provided that the Court may, if in its opinion the circumstances of the case so require, extend the date for the return of the *lis pendens* after registration ;

(d) fix a date being a date not later than seven weeks from the date of acceptance of the plaint, 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 Court.

In estimating the costs of such preliminary survey, the court shall have regard to such rates as may be prescribed by regulations”.

6. Section 11 of the principal enactment is hereby amended by the substitution, for all the words from "duplicate" to the end of that section, of the following :—

Amendment of section 11 of the principal enactment.

"triplicate 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 triplicate, and shall cause a copy thereof to be sent by registered post to the registered attorney of the plaintiff, or where there is no such registered attorney, to the plaintiff."

7. Section 12 of the principal enactment is hereby amended in subsection (1) of that section, by the substitution for the word, "duplicate", of the word "triplicate".

Amendment of section 12 of the principal enactment.

8. Section 13 of the principal enactment is hereby amended as follows :—

Amendment of section 13 of the principal enactment.

(1) by the repeal of subsection (1) of that section and the substitution therefor of the following subsection :—

"(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 the concise statements, as the case may be, copies of the notices and copies of the translations of the notices filed in court under paragraphs (b), (c), (d), (f) and (g) of subsection (2) of section 12 be sent by registered post to the defendant and the respective Grama Niladharis ; and that copies of the notice filed under paragraph (f) of subsection (2) of section 12, together with copies of translations thereof be transmitted to the Fiscal for exhibition and proclamation as provided for in subsection (3) of section 15" ;

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(2) by the substitution, in subsection (3) thereof, for all the words from “under subsection (2) of this section” to the end of that section, of the following :—

“under subsection (2) of this section in such summonses, translations of summonses, copies of the notice and copies of the translations of the notice as are filed in court under subsection (2) of section 12, shall sign them and cause them to be sent by registered post” ;

(3) in subsection (4) of that section, by the substitution, for the words “summons issued for service on that defendant”, of the words “summons sent by registered post to that defendant.”.

9. Section 15 of the principal enactment is hereby amended as follows :—

(1) in subsection (1) of that section—

(a) by the substitution, for the words “orders issue of summons for service on the defendants” of the words “orders the service of summons on the defendants” ; and

(b) by the substitution, for the words “be transmitted to the Grama Niladhari” of the words “be sent by registered post to the Grama Niladhari” . ;

(2) in subsection (2) of that section, by the substitution for the words “are transmitted under” of the words “are sent by registered post under” ; and

(3) in subsection (3) of that section by the substitution for the words “transmitted to him to” of the words “transmitted to him under subsection (1) of section 13 to”.

10. Section 16 of the principal enactment is hereby amended in subsection (1) of that section, as follows:—

Amendment
of section 15
of the
principal
enactment.

Amendment
of section 16
of the
principal
enactment.

(1) by the substitution for the words "Where the Court orders the issue of summonses to the fiscal for service on the defendants in a partition action", of the words, "Where the court orders the service of summonses on the defendants in a partition action,".

(2) by the repeal of the proviso to that subsection, and the substitution of the following proviso therefor :—

"Provided that the court may on application made by the Commissioner and for reasons to be recorded, extend, from time to time, the date fixed in the Commission for the return thereof, so however, that each such extension shall not exceed sixty days."

11. Section 18 of the principal enactment is hereby amended as follows :—

(1) in subsection (1) of that section —

(a) by the substitution, in paragraph (a) of that subsection, for the words "a report substantially", of the words "a report, in duplicate, substantially" ;

(b) by the substitution, in paragraph (b) of that subsection, for the words "a plan of the land surveyed", of the words "a plan, in duplicate, of the land surveyed";

(2) in paragraph (b) of subsection (3) of that section, by the substitution for the words "fresh field notes and the fresh plan." of the words "fresh field notes and the fresh plan, in duplicate". Wherever those words occur in that subsection.

12. Section 19 of the principal enactment is hereby amended in subsection (1) thereof by the addition, at the end of that subsection, of the following new paragraph :—

"(d) every defendant in the action shall file or cause to be filed, in Court, a memorandum, substantially in the form set out in the Second Schedule to this Law, nominating in accordance with section 81, a person to be his legal representative for the purposes of the action, in the event of his death pending the final determination of the action."

Amendment
of section 18
of the
principal
enactment.

Amendment
of section 19
of the
principal
enactment.

Amendment
of section 26
of the
principal
enactment.

13. Section 26 of the principal enactment is hereby amended by the repeal of subsection (3) of that section, and the substitution therefor of the following new subsection :—

“(3) Where by virtue of an order made under subsection (1), a person is entitled to an undivided extent of land which, by reason of its trivialness in extent or value or of it being less than the minimum extent required by any written law regulating the subdivision of land for development purposes, the court considers it inexpedient to allot to that person a divided portion, the court may, in lieu of ordering the allotment of a divided portion of the land to that person and on the payment to that person of such compensation as may be determined by court, allot that extent to any other person who is entitled to an undivided extent of the land to which the action relates.”.

Amendment of
section 31 of the
principal enactment.

14. Section 31 of the principal enactment is hereby amended as follows :—

- (1) by the renumbering of that section as subsection (1) of that section ;
- (2) by the addition, at the end of that section, of the following subsection :—

“(2) Where any divided portion or portions that are to be allotted to any person under an interlocutory decree are less than the minimum extent required by written law regulating the subdivision of land for development purposes, the surveyor shall, so far as is practicable, divide the land in such a manner as would enable the allotment or sale of such portions as one lot.”.

Amendment of
section 32 of
the principal
enactment.

15. Section 32 of the principal enactment is hereby amended in subsection (1) thereof as follows :—

- (1) by the substitution, in paragraph (a) thereof, for the words “prepared by him”, of the words “prepared by him, in duplicate”.

(2) by the substitution, in paragraph (c) thereof for all the words from "report explaining" to "the dates on which", of the words "report, in duplicate, explaining the manner in which the land had been partitioned stating the names of the parties, the nature and extent of their respective shares and interests and where any such extent is less than the minimum extent required by any written law relating to sub-division of land for development purposes, a statement to that effect, the dates on which";

(3) by the repeal of paragraph (d) of that subsection and the substitution therefor of the following new paragraph :-

"(d) the appraised value of each lot and of any improvements thereon and where the Court has directed the Commissioner to allot portions of land together as one lot under section 26, the appraised valuation of portions considered as one lot, and any improvements thereon and the details of the computation of such value ; and".

(4) by the insertion immediately after paragraph (e) of that subsection of the following new subsection :—

"(f) a certificate to the effect that the plan of partition is in conformity with written law relating to the subdivision of land for development purposes" ; and

(5) by the substitution for the words "report, appraisal and summary", of the words "report, appraisal, summary and certificate".

16. Section 35 of the principal enactment is hereby amended by the substitution for the words "the court shall fix a date for" of the words, "the court shall call the case in open court and shall fix a date, for".

Amendment
of section 35
of the
principal
enactment.

17. Section 36 of the principal enactment is hereby repealed and the following section substituted therefor :—

Replacement
of section 36
of the
principal
enactment.

"Final decree 36. (1) On the date fixed under section 35, of partition. or on any later date which the Court may fix for the purpose, the Court may, after summary inquiry :—

(a) confirm with or without modification the scheme of partition proposed by the surveyor and enter final decree of partition accordingly ;

(b) order the sale of any lot, in accordance with the provisions of this Law, at the appraised value of such lot given by the Surveyor under section 32, where the Commissioner has reported to Court under section 32 that the extent of such lot is less than the minimum extent required by written law relating to the subdivision of land for development purposes and shall enter final decree of partition subject to such alterations as may be rendered necessary by reason of such order of sale.

(2) The provisions of sections 41, 42, 43, 44, 45, 45A, 46, 47 and 48(2) shall, *mutatis mutandis*, apply to a sale ordered under paragraph (b) of subsection (1).”.

Insertion of new section 36A in the principal enactment.

18. The following section is hereby inserted immediately after section 36 and shall have effect as section 36A of the principal enactment :—

“Appeal.

36A. Any person dissatisfied with an order of the Court made under section 36, may prefer an appeal against such order to the Court of Appeal, with the leave of the Court of Appeal first had and obtained”.

Insertion of new section 45A in the principal enactment.

19. The following section is hereby inserted immediately after section 45, and shall have effect as section 45A of the principal enactment :—

“Appeal.

45A. (1) Any person dissatisfied with an order of the Court made under section 45 may prefer an appeal against such order to the Court of Appeal, with the leave of the Court of Appeal first had and obtained.

(2) The provisions of Chapter LVIII of the Civil Procedure Code relating to applications for leave to appeal shall, *mutatis mutandis*, apply to applications for leave to appeal against orders made under sections 36A and 45A”.

20. Section 46 of the principal enactment is hereby amended by the substitution for the words “Law, in favour of the purchaser” of the words “Law, in favour of the purchaser and shall order the issue of a certified copy of such certificate to the purchaser.”.

Amendment of section 46 of the principal enactment.

21. Section 48 of the principal enactment is hereby amended in subsection (4) of that section as follows:—

Amendment of section 48 of the principal enactment.

(1) by the repeal of subparagraph (iii) of paragraph (a) of that subsection ; and

(2) by the substitution, for all the words from “guardian *ad litem* of such party or the heirs or the executor “ to “ as the case may be, is received by court”, of the following :—

“guardian *ad litem* of such party may, on or before the date fixed for the consideration of the scheme of partition under section 35 or at any time not later than thirty days after the return of the person responsible for the sale under section 42 is received by court,”.

22. Section 49 of the principal enactment is hereby amended in subsection (1) of that section by the substitution for the words “interlocutory decree entered in the action, may by separate action recover”, of the words, “interlocutory decree entered in the action, may, by separate action instituted not later than five years from the date of the final decree in the partition action, recover”.

Amendment of section 49 of the principal enactment.

23. The following section is inserted immediately after section 52 and shall have effect as section 52A of the principal enactment :—

Insertion of new section 52A in the principal enactment.

“Restoration of Possession.

52A. (1) Any person—

(a) who has been declared entitled to any land by any final decree entered under this Law ; or

(b) 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 Court; or

(c) who has derived title from a person referred to in paragraph (a), or paragraph (b),

and whose possession has been, or is interfered with or who has been dispossessed, shall, if such interference or dispossession occurs within ten years of the date of the final decree of partition or the entering of the certificate of sale, as the case may be, be entitled to make application, in the same action, by way of petition for restoration of possession, within twelve months of the date of such interference or dispossession, as the case may be.

(2) The person against whom the application for restoration of possession is made, shall be made the respondent to the application.

(3) The Court shall, after due inquiry into the matter, make order for delivery of possession or otherwise as the justice of the case may require :

Provided that, no order for delivery of possession of the land shall be made where the respondent is a person who derives his title to the land in dispute or part thereof directly from the final decree of partition or sale, or is a person who has acquired title to such land from a person who has derived title to such land under the final decree of partition or sale, or from the privies or heirs of such second mentioned person.”

Amendment of section 67 of the principal enactment.

24. Section 67 of the principal enactment is hereby amended as follows :—

(1) by the re-numbering of that section as subsection (1) thereof ;

(2) in the renumbered subsection (1) of that section, by the substitution—

- (a) for the words "An appeal shall lie to", of the words "Subject to the provisions of sections 36A and 45A, an appeal shall lie to" ; and
- (b) for the words "Civil Procedure Code shall apply", of the words "Civil Procedure Code shall, subject to the succeeding provisions of this section, apply"; and
- (3) by the addition immediately after subsection (1) thereof, of the following new subsections :—

"(2) Where an appeal has been preferred against any judgment, decree or order, made or entered in any court in a partition action, the court shall forward to the Court of Appeal, all papers and proceedings relevant to the judgment, decree or order appealed against, retaining a copy of the judgment, decree or order appealed against and the duplicate of the plan and report transmitted to court under section 32.

(3) Where an appeal has been preferred against any judgment, decree or order made or entered by any court in any partition action, such court may, on application made by way of petition and affidavit in that behalf, make such orders, pending the determination of the appeal, as may be necessary to prevent any waste, or damage to the land in respect of which such action was instituted. Any such Order may be given effect to in the manner provided for in section 53."

25. Section 69 of the principal enactment is hereby amended as follows :—

- (1) by the substitution, in paragraph (a) of subsection (1) of that section, for the words, "made a party to the action, or," of the words, "made a party to the action, after issuing to such person, a notice, substantially in the Form set out in the Second Schedule to this Law, requiring him to make an application to be added as a party to the action on or before the date specified in the notice, and upon such person making such an application or" ;

Amendment
of section 69
of the
principal
enactment.

- (2) by the insertion, immediately after subsection (1) thereof, of the following new subsection :—

“(1A) Any person who applies to be added as a party under the provisions of subsection (1) of this section, shall file, along with his application, a memorandum substantially in the Form set out in the Second Schedule to this Law nominating in accordance with the provisions of section 81, a person to be his legal representative for the purposes of the partition action in the event of his death pending the final determination of the action.” ;

- (3) by the substitution, in subsection (2) of that section for the words “up to the time of substitution.”, of the words, “up to the time of substitution. The purchaser shall, along with his application to be substituted, file a memorandum, substantially in the form set out in the Second Schedule to this Law, nominating in accordance with the provisions of section 81, a person to be his legal representative for the purposes of the partition action in the event of his death pending the final determination of the action.”;

- (4) by the substitution, in subsection (3) of that section, for the words “institution of the action” of the words, “institution of the action. An intervenient under this subsection shall, with his application to intervene, file a memorandum substantially in the form set out in the Second Schedule to this Law nominating, in accordance with the provisions of section 81, a person to be his legal representative for the purposes of the partition action in the event of his death pending the final determination of the action.”;

- (5) by the addition immediately after subsection (3) of that section, of the following subsections :—

“(4) It shall be lawful for the court to order any person applying to be added as a party under subsection (1), to give security for costs or prepay costs if the court is of opinion that such applicant has been guilty of unreasonable delay in presenting his claim or for other good and sufficient cause.

(5) In determining the quantum of the costs to be ordered under this section, the court shall take into consideration, any delay on the part of the applicant, the stage at which the action is, any expenditure caused unreasonably to the parties and any other matter that the court may consider relevant.

(6) Where any person referred to in this section who is ordered to give security for costs or prepay costs, fails to give such security or make prepayment of costs, within the time allowed therefor by court, the court may reject his application.”

26. Section 70 of the principal enactment is hereby amended as follows :—

Amendment of section 70 of the principal enactment.

(1) by the renumbering of that section as subsection (1) thereof ;

(2) by the addition, at the end of that section, of the following new subsection :—

“(2) Any party in a partition action or any person claiming an interest in the land in respect of which such action has been instituted, may, if no steps have been taken to prosecute the action for a period of two years, apply, by way of motion to court, to have such action dismissed, and the court may dismiss the action if it is satisfied that dismissal is justified in all the circumstances of the case.

(3) Where the court dismisses an action under this section, it shall cause a copy of the order of dismissal of the action to be registered at the Land Registry in the folio in which the *lis pendens* in the action was registered, or the continuation thereof.”

27. Section 81 of the principal enactment, is hereby repealed and the following section substituted therefor :—

Replacement of section 81 of the principal enactment.

“Memorandum nominating legal representative.

81. (1) Every party to a partition action or any other person required to file a memorandum under this Law, (hereinafter referred to as “the nominator”) shall file, or cause to be filed in court, a memorandum, substantially in

the form set out in the Second Schedule to this Law, nominating at least one person, and not more than three persons, in order of preference, to be his legal representative for the purposes of the action in the event of his death pending the final determination of the action.

(2) (a) One of such nominees shall, in the order of preference in which their names are set out in the memorandum, be deemed to be the legal representative of the nominator for the purposes of the action, on the death of such nominator.

(b) In the event of the death or incapacity of any of the nominees whose names are set out in the memorandum, the person next nominated in order of preference shall be deemed to be the legal representative for the purposes of the action, in the event of the death of the nominator.

(c) The person or persons so nominated shall subscribe his or their signatures to the memorandum signifying consent to be so appointed as legal representative. The signatures of the nominator and those of the nominee or nominees so consenting to be appointed shall be witnessed by an Attorney-at-Law or Justice of the Peace or a Commissioner of Oaths :

Provided however, that failure to file such memorandum shall not by such failure alone render the plaint, statement of claim, or application to be added as a party defective or, notwithstanding anything in section 7, be a cause or ground for rejecting such plaint, statement of claim or any application to be added as a party.

(3) The court may at any time before the final determination of the action, on its own motion or on the application of any party,

require a party to the action or any person required to file a memorandum under the provisions of this Law, to file such memorandum on or before a date appointed for such purpose by court.

(4) A nominee may, at any time prior to the death of the nominator apply, with notice to the nominator, to court by way of motion to withdraw his consent to be such nominee and in such event the court shall make order that he ceases to be the nominee of the nominator and shall cause the name of such nominee to be struck off the memorandum filed by the nominator.

(5) A nominator may, subject to the provisions of subsection (1) of this section, at any time before the final determination of the action make application, with notice to the nominees, to tender a fresh memorandum nominating one or more nominees. On the filing of such new memorandum, the previous memorandum of such nominator shall stand revoked and the nomination contained in such fresh memorandum shall forthwith take effect.

(6) On the death of a nominator, the person first nominated in the memorandum filed by the nominator in order of preference, shall be deemed to be the legal representative of such nominator for the purposes of the action from the time of his death.

(7) A nominee deemed to be the legal representative of a deceased nominator shall be entitled to take all such steps for the purposes of the action as the deceased nominator would have been entitled to take had he been alive.

(8) (a) A nominee shall not decline to act as the legal representative of the deceased nominator. He may however with the leave of the

Court first had and obtained, by way of petition and after notice to the other nominees if any, of such nominator, apply for permission from court to be released from the office of legal representative of such nominator.

(b) In the event of the court granting such permission, the nominee who is next in order of preference in the memorandum filed by the nominator shall be deemed to be the legal representative of such deceased nominator, for the purposes of the action.

(c) Where an application under paragraph (a) of this subsection is made by a nominee who was the sole nominee or sole remaining nominee of a deceased nominator, such nominee shall notice the heirs of such deceased nominator regarding his application and in the event of the court granting permission as aforesaid, such court shall appoint a consenting heir of such deceased nominator to act as the legal representative of such deceased nominator for the purposes of the action.

(9) Notwithstanding that a party or person has failed to file a memorandum under the provisions of this section, and that there has been no appointment of a legal representative to represent the estate of such deceased party or person, any judgment or decree entered in the action or any order made, partition or sale effected or thing done in the action shall be deemed to be valid and effective and in conformity with the provisions of this Law and shall bind the legal heirs and representatives of such deceased party or person. Such failure to file a memorandum shall also not be a ground for invalidating the proceedings in such action.

(10) (a) On the death of a party or person who had failed to file a memorandum as required by this section, any party or person may

apply to court by an *ex parte* application, requesting that a person be appointed as the legal representative of such deceased party or person and the court may, on being satisfied after inquiry that such appointment is necessary, appoint a suitable person to be the legal representative of such deceased party or person for the purposes of the action. Such legal representative shall be bound by the proceedings had up to the time of such appointment.

(b) Such application and appointment shall not be a ground for the postponement of the trial or proceedings :

Provided that the court may, in its discretion, after recording reasons therefor and on the prepayment of costs, allow a postponement of the trial if in the opinion of court it is in the interests of justice to do so.

(c) In ordering pre-payment of costs the court shall take into account the date of institution of the action and the dates on which trial was held prior to such application and the stage at which the action is and any other matters which the court considers relevant.

(11) (a) An heir of a deceased nominator may, at any time after the death of such nominator, apply to court to have the legal representative of such deceased nominator removed and to have another person named in such application or the person next named in order of preference in the memorandum filed by the deceased nominator, appointed as such legal representative. The person who for the time being is the legal representative of the deceased nominator shall be made a respondent to such application.

(b) The court may, upon being satisfied that it is in the interests of the heirs of the deceased

nominator to do so, remove such legal representative and appoint the person next named in order of preference in the memorandum filed by the deceased nominator or if there are sufficient grounds for doing so, appoint the person named in the application, as the legal representative of the deceased nominator.

(c) An application under this section shall be by way of petition and affidavit and the court may in its discretion, issue notice of the application to the other heirs, if any, of the deceased nominator.

(12) No proceeding under this Law shall be postponed or adjourned nor any step in the action postponed by reason of the death of a party or person required to file a memorandum under this Law.

(13) An application under subsections (4), (5), (8)(a), (10) or (11) shall not be a ground for the postponement of the trial. The court may however grant a postponement on the payment of costs by the person making the application, if it is of the opinion that it is in the interests of justice to allow such postponement.

(14) For the purposes of this section "legal representative" means, a person who represents the estate of a deceased party or person, for the purposes of the action, by virtue of a nomination, or of an appointment by court under this section."

Amendment of
Second
Schedule of
principal
enactment.

28. The Second Schedule to the principal enactment is hereby amended as follows :—

(1) by the substitution, in the form prescribed under section 12 (2) entitled "FORM OF SUMMONS", for the words "postage by registered post", of the words "postage by registered post. You are also hereby

required to file on or before that date (whether you are filing a statement of claim or not), a memorandum substantially in the form set out in the Second Schedule to the Partition Law, nominating in accordance with section 81 of that Law, a person to be your legal representative for the purposes of the action in the event of your death pending the final determination of the action” ;

(2) by the substitution, in the Form prescribed under section 12(2) entitled “FORM OF NOTICE”, for the words “on or before the, day of 19...”, of the words “on or before the day of 19.... You are hereby also required to file on or before that date (whether you are filing a statement of claim or not) a memorandum substantially in the form set out in the Second Schedule to the Partition Law, nominating, in accordance with section 81 of that Law, a person to be your legal representative for the purposes of the action in the event of your death pending the final determination of the action”;

(3) by the substitution, in the form prescribed under section 12(2) entitled “FORM OF PRECEPT TO FISCAL”, for all the words, from “serve forthwith” to “executed this precept” of the following paragraph :—

“exhibit forthwith the notice sent herewith and cause to be proclaimed, the contents thereof, in the manner provided in subsection (3) of section 15 of the Partition Law and certify to this court on or before the day of 19..... in what manner you have executed this precept.” ;

(4) by the substitution, in the Form prescribed under section 16 entitled “COMMISSION FOR PRELIMINARY SURVEY”, for all the words from “submit the same” to “deposited in court against your fees”, of the following :—

“Submit the same, in duplicate, to this court with your report, substantially in the prescribed Form and in duplicate, and a true copy of your field notes on or before the day of 19.....

You are further required to serve the copy of the notice referred to in subsection (3) of section 16 on any person (not being a party to the action) or his agent who at the time of the survey may prefer any claim to the land.

A sum of Rs. is deposited in court against your fees.”.

N.B.—Extensions of the date fixed herein will be given only on application made by you, giving reasons why you require such extension.” ;

(5) by the substitution, in the form prescribed under section 20 entitled, “FORM OF NOTICE”, for the words, “requirements of section 19.” of the following :—

“requirements of section 19. You are also hereby required to file on or before the ... day of 19..... (whether you are filing a statement of claim or not), a memorandum, substantially in the form set out in the Second Schedule to the Partition Law, nominating in accordance with the provisions of section 81 of that Law, a person to be your legal representative for the purposes of the action in the event of your death pending the final determination of the action.” ;

(6) in the form entitled “COMMISSIONER’S RETURN TO COURT” prescribed under section 32—

(a) by the repeal of paragraph (vi) thereof, and the substitution therefor of the following paragraph :—

“(vi) manner of partition, names of parties and nature and extent of their respective shares and interests. (here state the number of lots

into which the land has been partitioned and the number of lots allotted together as one lot if any, and refer to Partition Plan with number and date, Schedules of Appraisalment, and Summary of Distribution, and state whether there are any lots which do not conform to the requirements of any written law relating to subdivision of land for development purposes” ;

(b) by the insertion immediately after paragraph (vii) thereof, of the following paragraph :—

“(viii) the appraised value of any lots considered as one lot.” ; and

(c) by the addition, after item 5 thereof of the following :—

“6. I certify that the said plan, is in conformity with written law relating to subdivision of land for development purposes”.

N.B.— If there are any exceptions to this certificate, for example, if any lot depicted in the plan is not in conformity with any written law relating to the subdivision of land for development purposes, particulars thereof should be set out as an exception to the certificate ;

(7) by the addition, at the end of that Schedule of the following new forms :—

“FORM OF NOTICE UNDER SECTION 69(1)(A)
[section 69(1)(A)]

In the District Court of
Action No.....
A. B..... Plaintiff.
Vs.
C.D.....
And others.....Defendants

22 *Partition (Amendment) Act No. 17 of 1997*

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

The court is of the opinion that you should be, or should have been made a party to the action.

If you claim any interest in the land/lands you are hereby required to apply by motion in writing on or before.....day of.....19.....to be added as a party to the aforesaid action, and you are also hereby required to file your statement of claim if any, and to comply with the requirements of section 19. You are also hereby required to file on or before the day of 19..... (whether you file a statement of claim or not) a memorandum substantially in the Form set out in the Second Schedule to the Partition Law, nominating in accordance with section 81 of that Law, a person to be your legal representative for the purposes of the action in the event of your death pending the final determination of the action.

You are also hereby required, if you are added as a party to the aforesaid action by the Court, 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

FORM OF MEMORANDUM NOMINATING LEGAL REPRESENTATIVE (section 81)

In the District Court of.....
Action No.....

..... Plaintiff
Vs.
..... Defendant and others

I,.....(the Plaintiff/Defendant/
Claimant before the surveyor/Disclosed Party/Party Added
by Court/Party seeking to be added/substituted) hereby nomi-
nate :

- Preference No. 1
- 2
- 3

as my legal representative for the purpose of the action in the
event of my death before the final determination of this action
and I hereby further request that they be appointed in the order
of the preference given above as my legal representative for
the purposes of the action in the event of my death as
aforesaid.

1. I,.....of.....consent
to the above appointment.

.....
Signature.

I,.....of.....being
an Attorney-at-law/Justice of the Peace/Commissioner
of Oaths certify that the above named person having read
over and understood the contents of this memorandum/
to whom the contents of this memorandum were read and
explained by me/ placed his signature in my presence
at.....on this day of
.....19.....

.....
Signature.

Attorney-at-law/Justice of the Peace./Commissioner
of Oaths

2. I,.....of.....
consent to the above appointment.

.....
Signature.

I, of being an Attorney-at-law/Justice of the Peace/Commissioner of Oaths certify that the above named person having read over and understood the contents of this memorandum/to whom the contents of this memorandum were read and explained by me/ placed his signature in my presence at..... on this day of.....19.....

.....
Signature.

Attorney-at-Law/Justice of the Peace/Commissioner of Oaths

3. I, of consent to the above appointment.

.....
Signature.

I, of being an Attorney-at-law/Justice of the Peace/Commissioner of Oaths certify that the above named person having read over and understood the contents of this memorandum/to whom the contents of this memorandum were read and explained by me/ placed his signature in my presence at..... on this..... day of.....19.....

.....
Signature.

Attorney-at-law/Justice of the Peace./Commissioner of Oaths

Signature :.....

(Plaintiff/Defendant/Party/Claimant/Necessary Party/Added/ Substituted Party)

I,.....of.....being an Attorney-at-law/Justice of the Peace/Commissioner of Oaths certify that the above named person having read over and understood the contents of this memorandum/to whom the contents of this memorandum were read and explained by me/ placed his signature in my presence at..... on this..... day of.....19.....

.....

Signature.

Attorney-at-law/Justice of the Peace/Commissioner of Oaths."

29. Every partition action, application or other matter instituted and pending in any Court, on the date of commencement of this Act, shall, so far as the circumstances permit, be continued and proceeded with to final judgment and decree under the provisions of the principal enactment as amended by this Act, (including the provisions requiring the filing of memoranda nominating a legal representative by parties to the action and others,) in the same manner and in every respect as if the same had been originally instituted after the date of commencement of this Act.

Transitional provision.

30. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency.