

Property acquired with notice of existing contract.

**93.** Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract:

Provided that in the case of a contract affecting immovable property, such contract shall have been duly registered before such acquisition.

Purchase by person contracting to buy property to be held on trust.

**94.** Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Advantage secretly gained by one of several compounding creditors.

**95.** Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Constructive trusts in cases not expressly provided for.

**96.** In any case not coming within the scope of any of the preceding sections where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

#### Illustrations

- (a) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.
- (b) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys.
- (c) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is revoked by A as to Rs. 10,000 and B thereupon holds that sum for the benefit of A.

Obligor's duties, liabilities, and disabilities.

**97.** The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and, save as in

this Ordinance otherwise provided, is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that—

- (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill, and loss of time in such cultivation or employment; and
- (b) where he holds the property by virtue of a contract with a person for whose benefit he holds it, or with anyone through whom such person claims, he may, without the permission of the court, buy or become lessee or mortgagee of the property or any part thereof.

**98.** Nothing contained in this Chapter shall impair the rights of transferees in good faith for valuable consideration, or create an obligation in evasion of any law for the time being in force.

Saving rights of bona fide purchasers.

## CHAPTER X

### CHARITABLE TRUSTS

**99.** (1) The expression "charitable Special trust" includes any trust for the benefit of the public or any section of the public within or without Sri Lanka of any of the following categories :—

- (a) for the relief of poverty ; or
- (b) for the advancement of education or knowledge ; or
- (c) for the advancement of religion or the maintenance of religious rites and practices ; or
- (d) for any other purposes beneficial or of interest to mankind not falling within the preceding categories.

(2) The expression "adaptation" with reference to a trust means adaptation of the trust in such a manner as to carry out the wishes of the author of the trust as nearly as practicable, according to the doctrine of *cypres*, where it is not possible to carry out those wishes in the exact manner prescribed by the instrument of trust.

(3) The expression "settlement of a scheme" includes variation of a scheme previously settled.

(4) The expression "place of religious resort" includes the establishments commonly known as "madams" or "chat trams".

General powers of the court.

**100.** The court shall have the same power for the establishment, regulation, protection, and adaptation of all "charitable trusts" (as defined by this Ordinance) as are exercised for the time being with reference to "charitable trusts" within the meaning of English law by the High Court of Justice in England.

Actions for carrying into effect trusts for public charity.

**101.** (1) In case of any alleged breach of any express or constructive charitable trust, or whenever the direction of the court is deemed necessary for the administration of any such trust, the Attorney-General acting *ex officio*, or two or more persons having an interest in the trust, and having obtained the consent in writing of the Attorney-General, may institute an action in the court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is held or situate to obtain a decree—

- (a) removing any trustees or trustee of the charity and, if necessary, appointing new trustees thereof;
- (b) directing accounts and inquiries ;
- (c) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (d) authorizing the whole or any part of the trust property to be let, sold, mortgaged, or exchanged ;
- (e) settling a scheme for the management of the trust ;
- (f) granting such further or other relief as the nature of the case may require.

(2) Nothing contained in this or the next succeeding section shall be deemed to preclude the trustee or author of any charitable trust from applying to the court by action or otherwise for such direction or relief as he may be entitled to obtain under the general provisions of this Ordinance, or

for the purpose of invoking the assistance of the court for the better securing of the objects of the trust, or for regulating its administration or the succession to the trusteeship, and upon any such application the court may make such order as it may deem equitable.

(3) For the purpose of any proceeding under this section with respect to any religious trust, regard shall be had to the statutory or other powers belonging to, or customarily exercised by, the authorities of any religious body or society concerned in the administration of the trust.

(4) This section shall not apply to trusts governed by the next succeeding section.

**102.** (1) Subject to the conditions of subsection (3) hereof, any five persons interested in any place of worship, or in any religious establishment or place of religious resort, or in the performance of the worship or of the service thereof, or in the trusts, express or constructive, relating thereto, may, without joining as plaintiff any of the other persons interested, institute an action in the court within the local limits of whose civil jurisdiction any such place or establishment is situate, or if such place is situate outside Sri Lanka, and the action is instituted with respect to immovable property situate within Sri Lanka, in the court having local jurisdiction, to obtain a decree—

- (a) settling a scheme for the management of the trusts thereof ;
- (b) vesting any property in the trustees ;
- (c) enumerating the properties comprised in the trust, or declaring that any property is trust property - comprised in the trust ;
- (d) directing accounts and inquiries ;
- (e) declaring what proportion of the trust property or of any interest therein - shall be allocated to any particular object of the trust;
- (f) - declaring any trustee, manager, or superintendent of such place or establishment, or member of any committee of management, guilty of any misfeasance, breach of trust, or neglect of duty ;

Suits by persons interested in religious trusts-

(g) awarding damages and costs "against any such trustee, manager, superintendent, or member of a committee in respect of any such misfeasance, breach of trust, or neglect of duty ;

(h) directing the removal of any trustee, manager, superintendent, or member of a committee, and, if necessary, directing the appointment of any new trustee, manager, superintendent, or member of a committee ;

(i) directing the specific performance of any act by any trustee\* manager, superintendent, or member of a committee ;

(j) granting such further or other relief as the nature of the case may require.

(2) The interest required in order to entitle a person to sue under this section need not be a pecuniary or immediate interest, or such an interest as would entitle the person suing to take any part in the management or superintendence of the trust. Any person who is connected with the trust as donor, or by family or hereditary interests, or who for a period of not less than twelve months has been in the habit of attending at the performance of the worship or services of, or connected with, the place or establishment in question, or of contributing to the general or any special expenses incidental to such worship or services, or of partaking in the benefit of any distribution of alms thereat, or in connection therewith, or of otherwise enjoying the benefit of the trust, shall be deemed to be a person interested within the meaning of this section.

(3) No action shall be entertained under this section unless the plaintiffs shall have previously presented a petition to the Government Agent of the Administrative District in which such place or establishment is situate praying for the appointment of a . commissioner or commissioners to inquire into the subject-matter of the plaint, and unless the Government Agent shall have certified that an inquiry has been held in pursuance of the said petition, and that the commissioner or commissioners (or a majority of them) has reported—

(a) that the subject-matter of the plaint is one that calls for the consideration of the court ; and

(b) either that it has not proved possible to bring about an amicable settlement of the questions involved, or that the assistance of the court is required for the purpose of giving effect to any amicable settlement that has been arrived at.

(4) It shall be the duty of the Government Agent, in any case in which he shall have good reason to believe that the persons presenting such petition or any five of them are persons interested within the meaning of subsection (2) of this section, for which purpose he may require to be satisfied by affidavit or otherwise, to appoint for the purposes of the inquiry a commissioner or commissioners whom he may consider to be a person or persons of acknowledged standing and repute in the general or local religious community concerned ,

Provided that the Government Agent may appoint himself as the commissioner or as one of the commissioners ;

Provided further, that the Government Agent may require the petitioners to deposit with him an amount sufficient to cover the reasonable expenses of the commissioner or commissioners in respect of travelling expenses and subsistence incidental to the inquiry prayed for and any such costs certified by the Government Agent to have been properly incurred for the purposes of the inquiry and to have been duly paid shall be deemed to be costs in the action.

(5) It shall be the duty of any commissioner or commissioners appointed for the purpose of any such inquiry to render a report in terms of subsection (3) hereof within such time as shall be specified for the purpose by the Government Agent, or within such further time as he may from time to time authorize.

(6) The report shall be Filed in the office of the Government Agent, and the petitioners and the trustee shall be entitled, on payment of the usual copying charges, to be furnished with a copy thereof.