



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

CIVIL PROCEDURE (AMENDMENT)
ACT, No. 6 OF 1990

[Certified on 6th March, 1990]

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**Civil Procedure Code (Amendment)
Act, No. 6 of 1990**

[Certified on 6th March, 1990]

L.D.—O 15/88

AN ACT TO AMEND THE CIVIL PROCEDURE CODE

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

1. This Act may be cited as the Civil Procedure Code (Amendment) Act, No. 6 of 1990.

2. The following new section is hereby inserted immediately after section 14 of the Civil Procedure Code (Chapter 191) (hereinafter referred to as the "principal enactment") and shall have effect as section 14A of that enactment:—

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Substitution where person against whom a right to any relief is alleged to exist dies and the right to sue for relief survives.

14A. (1) Where, a person against whom the right to any relief is alleged to exist is dead and the right to sue for such relief survives, the person in whom such right is alleged to exist, may make an application by way of summary procedure supported by affidavit to the court in which an action for the same may be instituted, in the following manner:—

(a) where such person has died intestate leaving an estate, specifying the name, description, and place of abode of any person whom he alleges to be the legal representative, as defined in section 394 (2), of the deceased and whom he desires to be made the defendant in the proposed action in place of the deceased. Such application shall also specify the name, description, and place of abode of the person or persons whom the applicant alleges to be the other heir or heirs of the deceased; or

(b) where probate of the will or letters of administration to the estate of the deceased has not been issued or its issue is likely to be unduly delayed, specifying, the name, description, and place of abode of any person whom he alleges to be the person to whom probate of the will or letters

Short title.

Insertion of new section 14A in Chapter 101.

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of administration to the estate of the deceased would ordinarily be issued and whom he desires to be made the defendant in the proposed action in place of the deceased. Such application shall also specify the name, description, and place of abode of the person or persons whom the applicant alleged to be the heir or heirs of the deceased.

(2) Upon receipt of an application under paragraph (a) of subsection (1), and the court where it is satisfied that there are grounds therefor, and, after the issue of notice on the representative named in such application and such other persons, if any, and after causing notice of such application, (in the form No. 2A in the First Schedule) to be advertised in a local newspaper to be selected by the court, or by such other mode of advertisement in lieu of such publication as to the court seems sufficient, and after such inquiry as the court may consider necessary and upon such terms as it thinks fit, the court may order that such representative or such other person as the court may consider fit be appointed in place of the deceased, for the institution of such action :

Provided, that the person to be so appointed in place of the deceased may object that he is not the legal representative of the deceased or that he should not be appointed in place of the deceased.

(3) Upon receipt of an application under paragraph (b) of subsection (1), the court may, where it is satisfied that probate of the will or letters of administration to the estate of the deceased has not been issued or is likely to be unduly delayed, and, after the issue of notice on the person alleged in such application to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued and such other persons, if

any, causing notice of such application, (in the form No. 2A in the First Schedule) to be advertised in a local newspaper to be selected by the court or by some other mode of advertisement in lieu of such publication as to the court seems sufficient, and after such inquiry as the court may consider necessary and upon such terms as it thinks fit, order that the person, who appears to the court to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued, be appointed in place of the deceased, for the institution on such action :

Provided, that the person to be so appointed may object that he is not the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued or that he should not be appointed in place of the deceased.

(4) Notwithstanding the provisions of subsection (2) or subsection (3), the court may make an order under any one of those subsections, only where—

(a) it is satisfied that the delay in the institution of the action would render such action not maintainable by reason of the provisions of the Prescription Ordinance ; or

(b) a period of six months had lapsed after the death of the deceased.

(5) Where after an order appointing a representative in place of the deceased has been made under subsection (2) or subsection (3) and an action instituted against such person in place of such deceased, an executor of the will, or, an administrator of the estate, as the case may be, of such deceased, is appointed in proceedings instituted under Chapter XXXVIII. of this Code, such

executor or administrator shall, on the application by way of summary procedure, supported by affidavit, made by the plaintiff or any other party to such action or by such executor or administrator, be substituted in place of the person appointed under subsection (2) or subsection (3), and the action shall thereupon proceed in the same manner as if such executor or administrator had originally been made a defendant, and had been a party to the previous proceedings in the action.

3. Section 192 of the principal enactment is hereby repealed and the following section substituted therefor :—

At what
rate may
interest on
money be
decreed.

192. (1) When the action is for a sum of money due to the plaintiff, the court may, in the decree order interest according to the rate agreed on between the parties by the instrument sued on, or in the absence of any such agreement at the legal rate, to be paid, on the principal sum adjudged from the date of action to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the action, with further interest at such rate on the aggregate sum so adjudged from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.

Replacement
of section
192 of the
principal
enactment.

(2) For the purposes of this section, "the legal rate" means the rate *per centum* per annum determined by the Monetary Board established by the Monetary Law Act, by Notification published in the *Gazette*, having regard to current rates of bank interest.

(3) Where such decree is silent with regard to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate action therefor shall not lie.”.

4. Section 398 of the principal enactment is hereby repealed and the following section substituted therefor:—

"Of substitution of legal representatives of deceased defendant.

398. (1) If there be more defendants than one and any of them die before decree, and the right to sue on the cause of action does not survive against the surviving defendant or defendants alone and also in case of the death of a sole defendant, or sole surviving defendant where the right to sue survives, the plaintiff may—

(a) make an application to court by way of summary procedure, supported by affidavit, specifying the name, description and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead ; or

(b) where probate of the will or letters of administration to the estate of the deceased defendant has not been issued or its issue is likely to be unduly delayed, make an application to court by way of summary procedure supported by affidavit specifying the name, description and place of abode of any person whom he alleges to be the person to whom probate of the will or letters of administration to the estate of the deceased defendant would ordinarily be issued, and whom he desires to be made the defendant in place of the deceased defendant. Such application shall also specify the name, description and place of abode of the person or persons whom the plaintiff alleges to be the heir or heirs of the deceased ; or

Replacement
of section
398 of the
principal
enactment.

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(c) where such defendant has died intestate, make an application to court by way of summary procedure supported by affidavit specifying the name, description and place of abode of any person whom he alleges to be the legal representative of the deceased, and whom he desires to be made the defendant in his stead. Such application shall also specify the name, description, and place of abode of the person or persons whom the applicant alleges to be the heir or heirs of the deceased.

(2) Upon receipt of an application under paragraph (a) of subsection (1), the court may being satisfied that there are grounds therefor, enter the name of such representative on the record in the place of such defendant, and shall issue summons, (in the Form No. 71 in the First Schedule) to such representative to appear on a day to be ther-in mentioned to defend the action, and the case shall thereupon proceed in the same manner as if such representative had originally been made defendant and had been a party to the former proceedings in the action :

Provided however, that the person so made defendant may object that he is not the legal representative of the deceased defendant, or make any defence appropriate to his character as such representative.

(3) Upon receipt of an application under paragraph (b) of subsection (1), the court may, where it is satisfied that probate of the will or letters of administration to the estate of the deceased defendant have not been issued or that its issue is likely to be unduly delayed, and after the issue of notice on the person alleged in such application to be the person to whom probate of the will

or letters of administration to the estate of the deceased defendant would ordinarily be issued and such other persons if any, and after causing notice of such application, (in the form No. 71A in the First Schedule) to be advertised in a local newspaper to be selected by the court or by such other mode of advertisement in lieu of such publication as to the court seems sufficient, and after such inquiry as the court may consider necessary and upon such terms as it thinks fit, order, that the name of the person who appears to the court to be the person to whom probate of the will or letters of administration to the estate of the deceased defendant would ordinarily be issued, be entered in the record in place of the deceased defendant and the case shall thereupon proceed in the same manner as if such person had originally been made a defendant and had been a party to the former proceedings in that action :

Provided however, that such order may be made only after a period of six months has elapsed after the death of the deceased defendant and the person to be so made defendant may object that he is not the person to whom probate of the will or letters of administration to the estate of the deceased defendant would ordinarily be issued or that he should not be made defendant in place of the deceased defendant, and may, upon his name being entered in the record in place of the deceased defendant, make any defence appropriate to his character as representative of the deceased defendant.

(4) Upon receipt of an application under paragraph (c) of subsection (1), the court being satisfied that there are grounds therefor, and, after the issue of notice on the representative named in such application and such other persons, if any, and after causing notice of such application (in the form No. 71A in the First Schedule) to be

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advertised in a local newspaper to be selected by the court or by such other mode of advertisement in lieu of such publication as to the court seems sufficient, and after such inquiry as the court may consider necessary and upon such terms as it thinks fit, the court may order, that the name of such representative or such other person as the court may consider fit be entered of record in place of the deceased defendant and the case shall thereupon proceed in the same manner as if such person had originally been made a defendant, and had been a party to the former proceedings in the action :

Provided, however, that such order may be made only after a period of six months has elapsed after the death of the deceased defendant and the person to be so made defendant may object that he is not the legal representative of the deceased defendant, or that he should not be appointed in place of the deceased defendant and may, upon his name being entered in the record in place of the deceased defendant, make any defence appropriate to his character as representative of the deceased defendant.

(5) The legal representative of a deceased defendant may apply to have himself made a defendant in place of a deceased defendant and the provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings resulting from such an application.

(6) Where after an order has been made under subsection (2) or subsection (3) of this section, an executor or administrator is appointed in proceedings instituted under Chapter XXXVIII of this Code, such executor or administrator shall be substituted in place of the person appointed under subsection

(2) or subsection (3), on the application by way of summary procedure supported by affidavit made by the plaintiff or any other party to the action or by such executor or administrator himself, and the action shall thereupon proceed in the same manner as if such executor or administrator had originally been made a defendant and had been a party to the former proceedings in the action.

5. Section 405 of the principal enactment is hereby amended by the substitution for the words and figures "application under section 398 may be made", of the words and figures "application under paragraph (a) of subsection (1) of section 398 may be made".

Amendment
section 405 of
the principal
enactment .

6. The following new sections are hereby inserted immediately after section 705 of the principal enactment and shall have effect as sections 705A and 705B of that enactment:—

Insertion of
sections
705A and
705B in the
principal
enactment.

Summons
to be
served by
registered
post.

705A. (1) The summons shall ordinarily be served by registered post.

(2) (a) In the case of a corporation, the summons may be delivered to the registered office or if there is no registered office, the principal place of business of such corporation or body.

(b) Where the defendant is a public officer, court may send summons by registered post to the head of the department in which the defendant is employed, and it shall be the duty of such head of department to cause the summons to be served personally on the defendant.

(c) Where the court is *prima facie* satisfied that the defendant is in the employment of another person, the court may send the summons to the employer at his usual place of business or, where the employer is

a company or corporation, to any secretary, manager or other like officer of the company or corporation, and it shall be the duty of such employer or officer, as the case may be, to cause the summons to be served personally on the defendant.

(3) In every case in which the summons are sent by registered post to a person other than the defendant, the court shall also forward a duplicate of such summons, and it shall be the duty of the head of department, employer or officer, as the case may be, to return such duplicate to the court forthwith with an acknowledgement of the summons by the defendant or with a statement of the service endorsed thereon and signed by the person effecting the service and countersigned by the person to whom the summons had been forwarded by court if he has not himself effected the service.

(4) Where a defendant appears in court in person on summons being served on him in the manner referred to above, he shall produce his national identity card or a valid passport, as the case may be, and it shall be the duty of the judge to satisfy himself that the person who has appeared before him and the person on whom summons have been served in the manner aforesaid, is one and the same person.

(5) Where a defendant is represented by a registered attorney, the attorney shall in the proxy tendered on behalf of the defendant, state the number of the identity card or the passport, as the case may be, of the defendant and shall also make an endorsement thereon certifying the identity of such defendant. Where a proxy is tendered on

behalf of a company or a body corporate it shall be tendered under the seal of such company or the body corporate, as the case may be.

(6) In this section—

“head of department”—

- (a) when used with reference to a member of any unit of the Sri Lanka Army, Navy or Air Force, means the Commanding Officer of that unit;
- (b) when used with reference to a person employed in a local authority, if the local authority is a Municipal Council, means the Municipal Commissioner of that Council; if the local authority is an Urban Council or a Pradeshiya Sabha, means the Chairman of that Council or Sabha;
- (c) when used with reference to any other public officer, means the head of the department of Government in which such person is employed; and

“national identity card” when used with reference to any person, means the identity card issued to such person under the Registration of Persons Act, No. 32 of 1968.

Personal
service.

705B. (1) The court shall, where the summons having been so served and the defendant fails to appear, direct that such summons be served personally on the defendant by the delivering or tendering to him the said summons through any process officer of court or in any case where the plaintiff is a lending institution

within the meaning the Debt Recovery (Special Provisions) Act, No. 2 of 1990, through the Fiscal or other officer authorized by court. In the case of a corporation summons may be served personally by delivering or tendering it to the secretary or like officer or a director or the persons in charge of the principal place of business of such corporation.

(2) If the service referred to in the preceding provisions of this section cannot by the exercise of due diligence be effected, the Fiscal or other authorized officer shall affix the summons to some conspicuous part of the house in which the defendant ordinarily resides or in the case of a corporation or unincorporate body, to the usual place of business or office of such corporation or such body and in every such case the summons shall be deemed to have been duly served on the defendant.'

Sinhala
text to
prevail in
case of
inconsis-
tency.

Amendment
of First
Schedule
to the
principal
enactment.

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

8. The First Schedule to the principal enactment is hereby amended as follows:—

(1) by the insertion immediately after Form 2 of the following new Form which shall have effect as Form 2A of that Schedule:—

"No. 2A (Section 14A)

FORM OF NOTICE OF AN APPLICATION THAT A PERSON BE APPOINTED IN PLACE OF A DECEASED DEFENDANT AS A DEFENDANT IN A PROPOSED ACTION

(Title)

Whereas application has been made to this court by the abovenamed (plaintiff) desiring that _____, of _____, be appointed place of _____, of _____, deceased, for the institution by the abovenamed (plaintiff) in this court of an action against the said _____, in place of the said _____, deceased, for (state particulars of claim)

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Any person interested in the property of the said_____, deceased, as an executor, administrator or heir of the said deceased, is hereby required to appear before this court on the _____ day of _____, 19____ at _____ o'clock in the forenoon and show cause, if any, why such application should not be granted.

This _____ day of _____ 19____.

By Order of Court

Registrar."; and

- (2) by the insertion immediately after Form 71 of the following new Form which shall have effect as Form 71A of that Schedule :—

"No. 71A (Section 398)

FORM OF NOTICE OF AN APPLICATION THAT A PERSON BE APPOINTED IN PLACE OF A DECEASED DEFENDANT

(Title)

Whereas the above-named _____, has as plaintiff, instituted the above-named action in this court against the above-named _____, who has since deceased, and has made an application to the court desiring that _____ of _____, be made defendant in his stead.

Any person interested in the property of the said_____, deceased as an executor, administrator or heir of the said deceased, _____ is hereby required to appear before this court on the _____ day of _____ 19____ at _____ o'clock in the forenoon and show cause, if any, why such application should not be granted.

This _____ day of _____ 19____.

By Order of Court

Registrar.".

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