



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

**CIVIL PROCEDURE CODE
(AMENDMENT)**
ACT, No. 14 OF 1993

[Certified on 31st March, 1993]

(Printed on the Orders of Government)

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Civil Procedure Code (Amendment)

Act. No. 14 of 1993

[Certified on 31st March, 1993]

L.D.—C. 51/91.

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. 14 of 1993) and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette*.

Short title
and
date of
operation.

2. Section 338 of the Civil Procedure Code (hereinafter referred to as the "principal enactment") is hereby amended by the repeal of paragraph (b) thereof, and the substitution therefor of the following paragraph:—

Amendment
of section
338 of
Chapter 101.

'(b) "legal representative" means an executor or administrator or in the case of an estate below the value of five hundred thousand rupees, the next of kin who have adiated the inheritance.'

Provided however, that in the event of any dispute arising as to who is the legal representative the provisions of section 397 shall, *mutatis mutandis*, apply.'

3. Section 394 of the principal enactment is hereby amended by the repeal of the definition of "legal representative" in subsection (2) thereof, and the substitution therefor of the following definition:—

Amendment
of section
394 of the
principal
enactment.

"legal representative" means an executor or administrator, or in the case of an estate below the value of five hundred thousand rupees, the next of kin who have adiated the inheritance.'

4. Chapter XXXVIII of the Civil Procedure Code is hereby repealed and the following Chapter is substituted therefor:—

Replacement
of Chapter
XXXVIII
of the
principal
enactment.

CHAPTER XXXVIII

TESTAMENTARY ACTIONS

Deposit of
will of
deceased.

516. When any person shall die leaving a will in Sri Lanka, the person in whose keeping or custody it shall have been deposited, or who shall find such will after the testator's death, shall produce the same to the District Court of the district in which such depository or finder resides, or in the District Court of the district in which the

testator shall have died, within three months after the finding of the will, and he shall also make oath or affirmation, or produce an affidavit in Form No. 81 in the First Schedule verifying the time and place of death, and stating (if such is the fact) that the testator has left property within the jurisdiction of that or any other, and in that event what court, and the nature and value of such property ; or, if such is the fact, that such testator has left no property in Sri Lanka.

The will so produced shall be numbered and initialled by the Probate Officer and deposited and kept in the record room of the District Court.

**Application
for probate
or adminis-
tration.**

517. (1) When any person shall die leaving a will under or by virtue of which any property in Sri Lanka is in any way affected, any person appointed executor therein may apply to the District Court of the district within which he resides, or within which the testator resided at the time of his death, or within which any land belonging to the testator's estate is situate, within the time limit and in the manner specified in section 524, to have the will proved and to have probate thereof granted to him ; any person interested, either by virtue of the will or otherwise, in having the property of the testator administered, may also apply to such court to have the will proved and to obtain grant to himself of administration of the estate with copy of the will annexed.

(2) If any person who would be entitled to administration is absent from Sri Lanka, a grant of letters of administration with or without the will annexed, as the case may require, may be made to the duly constituted attorney of such person.

**Probate or
adminis-
tration com-
pulsory when
there is
a will.**

518. In every case where a will is deposited in court after the coming into operation of this Chapter, and no application has been made by any person to have the will proved and probate granted in respect

thereof, the court shall, in accordance with the procedure set out in respect of the grant of probate or letters of administration on application made thereto, proceed to grant probate of the will, to the executor or executors named in such will, or letters of administration with or without the will annexed, as the case may require, to some person who by the provisions of the last preceding section is competent to apply for the same, or to some other person who, in the opinion of the court, by reason of consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, is a proper person to be appointed administrator and in every such case letters of administration may be limited or not in manner hereinafter provided, as the court thinks fit.

When
Public
Trustee
may be
appointed.

519. Where there is no person fit and proper in the opinion of the court to be appointed administrator in the manner provided, in the last preceding section or no such person is willing to be so appointed, and not in any other case, the court shall appoint the Public Trustee as administrator.

Security.

520. In every case in which it is found necessary, whether by reason of such executor as aforesaid not applying for probate, or by reason of there being no executor resident in Sri Lanka competent and willing to act, or by reason of no person who is competent under section 517 to apply for letters of administration, so applying, that any such person as is mentioned, in section 518 should be appointed administrator, the court shall take from such person security for the due administration of the estate, and shall for this purpose require such person to enter into a Bond with two good and sufficient sureties in Form No. 90 in the First Schedule, for the due administration of the deceased person's property, and it shall not in any case be competent for the court to dispense with such security.

Application
for
adminis-
tration by
the Public
Trustee.

521. (1) Whenever the Public Trustee applies for letters of administration, it shall be sufficient if the petition presented for the grant of such letters states—

- (a) the time and place of the death of the deceased to the best of the knowledge and belief of the petitioner;
- (b) the names and addresses of the heirs of the deceased, if known;
- (c) the full and true particulars of the property left by the deceased as far as he has been able to ascertain the same;
- (d) particulars of the liabilities of the estate, if known.

(2) The Public Trustee shall not be required to file accounts of the property of the deceased unless the court otherwise directs.

Duties of
Public
Trustee in
administering
estates.

522. Whenever the Public Trustee has obtained probate in respect of a will or grant of letters of administration in respect of the estate of a deceased person, he shall as far as practicable, comply with the provisions of this Chapter relating to the administration of estates:

Provided that the Public Trustee shall not be required—

- (a) to take oath as executor or administrator;
- (b) to furnish any bond or security, but shall be subject to the same liability and dues as if he had given such bond or security;
- (c) to affix stamps on any document at or about the time of the making of such document; but shall eventually make such payment as required by the Stamp Duty Act, No. 43 of 1982;
- (d) unless the court otherwise directs, to tender final accounts.

To whom
grant
should
be made.

523. In the case of a conflict of claims to have the will proved and probate or letters of administration granted, the claim of an executor or his attorney shall be preferred to that of all others, and the claim of a creditor shall be postponed to the claim of a residuary legatee or devisee under the will. And in the like case of a conflict of claims for grant of administration where there is intestacy, the claim of the widow or widower shall be preferred to all others and the claim of an heir to that of a creditor:

Provided, however that the court may for good cause supersede the claim of the widow or widower.

Mode of
application
for probate
and proof
of will.

524. (1) Every application to the District Court to have the will of a deceased person proved, shall be made within a period of three months from the date of finding of the will, and shall be made by way of petition and affidavit and such petition shall set out in numbered paragraphs—

- (a) the fact of the making of the will;
- (b) the details and the situation of the deceased's property;
- (c) the grounds upon which the petitioner is entitled to have the will proved; and
- (d) the character in which the petitioner claims (whether as creditor, executor, administrator, residuary legatee, legatee heir or devisee).

(2) If the will is not already deposited in the District Court in which the application is made, it must either be appended to the petition or must be brought into Court and identified by affidavit, with the will as an exhibit thereto, or by parole testimony at the time the application is made.

(3) Every person making or intending to make an application to a District Court under this section to have the will of a deceased person proved, which will is deposited in

another District Court, is entitled to procure the latter Court to transmit the said will to the Court to which application is to be made, for the purpose of such application and such application must be supported by sufficient evidence either by way of affidavits of facts, with the will as an exhibit thereto, or the oral testimony, proving that the will was duly executed according to law and establishing the character of the petitioner according to his claim.

(4) The petitioner shall tender with the petition—

- (a) proof of payment of charges to cover the cost of publication of the notice under section 529; and
- (b) the consent in writing of such respondents as consent to his application.

(5) If the petitioner has no reason to suppose that his application will be opposed by any person, he shall file with his petition an affidavit to that effect and may omit to name any person in his petition as respondent.

Duty to report where person dies leaving property exceeding five hundred thousand rupees in value.

525. When any person shall die in Sri Lanka without leaving a will, it shall be the duty of the widow, widower, or next of kin of such person, if such person shall have left property in Sri Lanka amounting to or exceeding in value five hundred thousand rupees, within one month of the date of his death to report such death to the District court of the district in which he shall have so died, and at the same time to make oath or affirmation or produce an affidavit verifying the time and place of such death, and stating if such is the fact, that the intestate has left property within the jurisdiction of that or any other, and in that event what court, and the nature and value of such property.

Who may apply for letters of administration.

526. When any person shall die without leaving a will or where the will cannot be found, and such person shall have left property in Sri Lanka—

- (a) any person interested in having the estate of the deceased administered may apply for the grant to himself of letters of administration ; or
- (b) any heir of the deceased may apply for the issue of certificates of heirship to each of the heirs entitled to succeed to the estate of the deceased.

Such application shall be made in accordance with section 528 to the District Court of the District within which the applicant resides, or within which the deceased resided at the time of his death, or within which any land belonging to the deceased's estate is situate

Adminis-
stration comp-
ulsory where
estate is
over five
hundred
thousand
rupees in
value.

527. In case no person shall apply for the grant of letters of administration or for the issue of certificates of heirship, as the case may be and it appears to the court necessary or convenient to appoint some person to administer the estate or any part thereof, it shall be lawful for the court in its discretion, and in every such case where the estate amounts to, or exceeds in value, five hundred thousand rupees, the court shall in accordance with the procedure set out in this Chapter appoint some person, whether he would under ordinary circumstances be entitled to take out administration or otherwise, to administer the estate, and the provisions of sections 518 to 521, both inclusive, shall apply, so far as the same can be made applicable, to any such appointment.

Mode of
application
for letters
of adminis-
tration or
certificates
of heirship.

528. (1) Every application to the District Court for grant of administration or for the issue of certificates of heirship shall be made within three months from the date of death, and shall be made by way of petition and affidavit, and such petition shall set out in numbered paragraphs—

- (a) the fact of the absence of the will ;
- (b) the death of the deceased ;
- (c) the heirs of the deceased to the best of the petitioner's knowledge ;

- (d) the details and the situation of the deceased's property;
- (e) the particulars of the liabilities of the estate;
- (f) the particulars of the creditors of the estate;
- (g) the character in which the petitioner claims and the facts which justify his doing so;
- (h) the share of the estate which each heir is entitled to receive, if agreed to by the heirs.

(2) The application shall be supported by sufficient evidence to afford *prima facie* proof of the material averments in the petition, and shall name the next of kin of the deceased as respondents. If the petitioner has no reason to suppose that his application will be opposed by any person, he shall file with his petition an affidavit to that effect.

(3) The petitioner shall tender with the petition—

- (a) proof of payment of charges to cover the cost of publication of the notice under section 529;
- (b) the consent in writing of such respondents as consent to his application.

Publication
of notice
relating
to application
under sec-
tions 524
and 528.

529. (1) Every application to a District Court under section 524 or 528 shall be received by the Probate Officer of the District Court, and shall be registered in a separate register to be maintained for that purpose by the Probate Officer who shall thereafter cause the required publications to be made in terms of subsection (2).

(2) The Probate Officer of a District Court shall, on any day of the week commencing on the third Sunday of every month cause a Notice in Form No. 84 in the First Schedule to be published in a prescribed local news-

paper in Sinhala, Tamil and English incorporating the information relating to—

- (i) every application under section 524 or 528 received by that District Court in the preceding one month ; and
- (ii) every application under section 524 or 528 received by that District Court and incorporated for the first time in the notice published in respect of such District Court in the previous month,

so however that the information in respect of every application under section 524 or 528 received by every District Court is published on two separate occasions in two consecutive months.

(3) The notice published under subsection (2), shall call upon persons having objections to the making of an order declaring any will proved, or the grant of probate or of letters of administration with or without the will annexed, or the issue of certificates of heiresship to any person to whom the notice relates, to submit their written objections, if any, supported by affidavit, before such date as is specified in the notice, being a date not earlier than sixty days and not later than sixty seven days from the date of the first publication referred to in subsection (2).

(4) Copies of such objections if any, shall be forwarded by the person making the same to the person making the application under section 524 or 528 as the case may be, and shall also be served on the other parties named in such objections.

Appointment
of Guardian
or Manager.

530. If any of the heirs, legatees or beneficiaries named in such notice is a minor without a natural guardian, or person of unsound mind, without a guardian, steps shall be taken for the appointment of a guardian or manager, upon the making of an application to the District Judge, which application shall be heard in Chambers.

Order on application made under sections 524 and 528.

531. (1) If no objections are received in relation to any application received under section 524 or 528 in response to a notice published under section 529, on or before the date specified in such notice in respect of such application, the Court shall—

- (a) in the case of an application under section 524, if the Court is satisfied that the evidence adduced is sufficient to afford *prima facie* proof as to the due making of the will and the character of the petitioner, it shall make order declaring the will to be proved and if the applicant claims—
 - (i) as the executor or one of the executors of the will, and asks that probate thereof be granted to him, the order shall declare that he is executor, and shall direct the grant of probate to him accordingly, subject to the conditions hereinafter prescribed; or
 - (ii) in any other character than that of executor, and asks that the administration of the deceased's property be granted to him, then the order shall include a grant to the applicant of a power to administer the deceased's property according to the will with a copy of the will annexed; or
- (b) in the case of an application under section 528—
 - (i) make order for the grant of letters of administration to the

petitioner subject to the conditions hereinafter prescribed ; or

(ii) make order for the issue of a certificate of heirship in Form No. 87A in the First Schedule, to each of the heirs mentioned in the application, stating also the share of the estate which each heir is entitled to receive, if agreed to by the heirs ;

(c) in the case of an application under section 528 for the issue of certificates of heirship, make order for the grant of letters of administration, instead, to some person entitled to take out administration, subject to the conditions hereinafter prescribed, if in the opinion of court it is necessary to appoint some person to administer the estate.

(2) The certificates of heirship issued under subsection (1) (b) (ii) above shall be sufficient proof of the true heirs of the deceased referred to therein, and may be produced for the purpose of claiming any share in respect of any right, title or interest, accruing upon intestacy.

(3) For the purpose of making an order under subsection (1), the Probate Officer shall submit all papers, relevant to the application in question, to the District Judge in Chambers on the day following the date specified in the notice published under section 529, in respect of such application and the court shall forthwith make an appropriate order.

Procedure
where there
are objections
to applica-
tions under
section
524 or 528.

532. (i) If any objections are received in relation to any application under section 524 or 528 in response to a notice published under section 529, on or before the date specified in such notice in respect of such application,

the Court shall proceed to hear try and determine such application in accordance with the procedure herein provided and may for such purpose name a day for final hearing and disposal of such application and may, in addition, make such order as it may consider necessary under section 541 hereof.

(2) For the purpose of making an order under subsection (1), the Probate Officer shall submit all papers, relevant to the application in question, to the District Judge in Chambers on the day following the date specified in the notice published under section 529.

Effect of acting in pursuance of a certificate of heirship.

532A. Where upon the production of a certificate of heirship issued by a District Court, under section 531(1) (b) (ii), any money, movable property or certificate is handed over or transferred in pursuance of such certificate, by any Bank or institution to any heir entitled to the same, such handing over or transfer shall be deemed to be in discharge of an obligation to the deceased in respect of whose estate the certificate of heirship is so issued.

At final hearing court to frame issues.

533. If on the day appointed under section 532 (1) for final hearing, or on the day to which it may have been duly adjourned the persons filing objections satisfies the court that there are grounds objecting for to the application, such as ought to be tried on *viva voce*, evidence, then the court shall frame the issues which appear to arise between the parties, and shall direct them to be tried on a day to be appointed for the purpose under section 386.

Orders that may be made on final hearing.

534 (1) If at the final hearing, or on the determination of the issues thus framed it shall appear to the court—

(a) that the *prima facie* proof of the material averments in the application have not been rebutted, the court

shall forthwith make order for the grant of probate or letters of administration with the will annexed or grant of administration only subject to the conditions hereinafter prescribed, or for the issue of certificates of heirship, as the case may be ; or

- (b) that the *prima facie* proof of the material averments in the petition have been rebutted then the court shall dismiss the petition, and in the event of any person who has filed objections having at such hearing, or trial of issues, established his right to have probate or administration of the deceased's estate granted to him instead of to the petitioner, then the court shall further make an order to that effect in his favour subject to the conditions hereinafter prescribed ; or
- (c) that any person listed in the petition as an heir is not in fact an heir, or that any other person not listed in the petition as an heir has established his right to be recognised as an heir, then the court shall make an order accordingly ; or
- (d) that, in the case of an application for the issue of certificates of heirship to the heirs of any deceased, that letters of administration ought to be granted instead, for the administration of the estate of such deceased, then the court shall make order for the grant of administration in accordance with the provisions of this Chapter, subject to the conditions hereinafter prescribed.

(2) The dismissal of any petition shall not be a bar to a renewal of the application by the petitioner as long as grant either of probate of the deceased's will, or of administration of his property, shall not have been

made, either on the occasion of this application or subsequently thereto, to some person other than the petitioner.

Procedure
where
corporation
is appointed
administrator
or executor.

535 (1). Where a Corporation is appointed executor under a will either alone or jointly with another person, the court may grant probate to such Corporation either solely or jointly with such other person as the case may require, and the Corporation may act as executor accordingly.

(2) Letters of administration may be granted to any Corporation either solely or jointly with another person and the Corporation may act as administrator accordingly.

(3) Any officer, authorized for the purpose by such Corporation, may swear affidavits, take the oath of office, give security, and do any other act or thing, which the court may require, on behalf of the Corporation and the acts of such officer shall be binding on the Corporation.

Who may
file Caveat.

536. At any time after the notice published under section 529 and before the final hearing of the petition, it shall be competent to any person interested in the will or in the deceased person's property or estate, though not a person specified in the petition, to intervene, by filling in the same court a caveat as set out in Form 93 in the first Schedule against the allowing of the petitioner's claim or a notice of opposition thereto, and the Court may permit such person to file objections, if any, and may adjourn the final hearing of the petition.

Power to
recall
revoke or
cancel probate
administra-
tion or cer-
tificate of
heirship.

537. In any case where a certificate of heirship has issued, or probate of a deceased person's will or administration of a deceased person's property has been granted it shall be competent to the District Court to cancel the said certificate, or recall the said probate or grant of administration, and to revoke the grant thereof, upon being satisfied that the certificate should not have been issu-

ed or that the will ought not to have been held proved, or that the grant of probate or of administration ought not to have been made; and it shall also be competent to the District Court to recall the probate or grant of administration, at any time upon being satisfied that events have occurred which render the administration hereunder impracticable or useless.

**Transitional
for recall
&c.**

538. All applications for the cancellation, recall or revocation of certificates or heirship, probate or grant of administration shall be made by petition, in pursuance of the rules of summary procedure, and no such application shall be entertained unless the petitioner shows in his petition that he has such an interest in the estate of the deceased person as entitles him in the opinion of the court to make such application.

**Inventory
and
valuation.**

539. (1) In every case where an order has been made, by a District Court, declaring any person entitled to have probate of a deceased person's will, or administration of a deceased person's property granted to him it shall be the duty of the said person, executor or administrator, in whose favour such order is made, to take within fifteen days of the making of such order, the oath of an executor or administrator as set out in Form No. 92 in the First Schedule, and thereafter to file in court within a period of one month from the date of taking of the oath, an inventory of the deceased person's property and effects, with a valuation of the same as set out in Form No. 92 in the First Schedule and the court shall forthwith grant probate or letters of administration, as the case may be.

(2) Upon the making of an order under section 531(1)(b)(ii) declaring any person entitled to have issued to him a certificate of heirship, the court shall forthwith issue such certificate to such person.

**Limited
probate or
administra-
tion.**

540. It is competent to the District Court to make a grant of probate or a grant of administration, limited, either in respect to

its duration, or in respect to the property to be administered thereunder, or to the power of dealing with that property which is conveyed by the grant, in the following cases :—

- (a) When the original will of the deceased person has been lost since the testator's death, but a copy has been preserved, probate of that copy may be granted, limited until the original be brought into court.
- (b) In the like event, and with the like limitation, if no copy has been preserved, probate of a draft will may be granted, or if in addition no draft is available, then probate of the contents or of the substance and effect of the will, so far as they can be established by evidence, may be granted.
- (c) When the original will is in the hands of some person residing out of Sri Lanka, who cannot be compelled to give it up to the executor, and if the executor produces a copy, then probate of that copy may be granted, limited until the original be brought into Court, if, however, the will has been duly proved out of Sri Lanka, probate may be granted, to the executor on a proper exemplification of the foreign probate without any limitation in the grant.
- (d) If the sole executor of a will does, or if there are more executors than one and all the executors reside, out of Sri Lanka, or such of the executors as reside in Sri Lanka decline to act, then the court may grant administration, with copy of the will annexed to any person within Sri Lanka, as attorney of the executor or of the executors, who shall be appointed for that purpose by power of attorney, the grant so made being

limited for the use and benefit of the principal until the executor or one of the executors comes in and obtains probate for himself. If the document admitted to proof in this case be a copy of, or substitute for the original on account of the original itself not being forthcoming by reason of one of the just-mentioned causes, the grant shall further be limited until the original is brought into court:

Provided also, that if the person applying for the grant is not the attorney of all the executors, where there are more than one, the grant of administration shall not be made to him until the remaining executors have declined to act.

- (e) In the case of a will, and there being no executor within Sri Lanka willing to act, grant of administration with copy of the will annexed may be made to the attorney of an absent residuary legatee, or heir limited until the principal shall come in and obtain administration for himself; or in the like case, the grant may be made to the guardian of a minor residuary legatee, within Sri Lanka, limited during the minority, or to the manager of the estate of a residuary legatee who is of unsound mind, within Sri Lanka, limited during the unsoundness of mind.
- (f) In the case of intestacy, grant of administration of the deceased person's property may be made, limited in like manner to the guardian of a minor heir or to the manager of the estate of an heir who is of unsound mind.

(g) The Court may grant probate or administration limited to any particular property or for any particular purpose, in any case where it considers that a larger grant is unnecessary.

In all the foregoing cases, the material and relevant facts necessary to justify the court in making the limited grant must be set out in the petition of application, and must be established by *prima facie* evidence before the order is made.

**Administra-
tion
*pendente
lite***

541. (1) Where any legal proceeding touching the validity of the will of a deceased person or for obtaining, recalling or revoking grant of probate or letters of administration or for obtaining certificate of heirship is pending, the court may, either on the ground of undue delay or for any sufficient cause—

(i) grant letters of administration to the estate of the deceased, to an administrator limited for the duration of such proceeding, such administrator shall be subject to the immediate control of the court and act under its direction and shall not have the right of distributing the estate; or

(ii) if it become necessary to sell any property of the estate of a deceased person prior to the grant of probate or letters of administration the court may grant letters limited for the purpose of selling such property in which event the property shall then be specified in the grant and such grant shall expressly state that the letters are issued subject to the following conditions:—

- (a) that the sale shall be if by private treaty, at the price fixed by court or if by public auction either at an upset price or otherwise;
- (b) that the net proceeds of the sale shall be deposited in court within such time as the court may prescribe;
- (c) that the administrator to whom the letters are issued is not empowered to execute any deed of conveyance of immovable property, prior to the confirmation of sale by the court; and
- (d) any other stipulation the court may in the circumstances deem fit to impose.

(2) Before making an order for grant of letters under this section, the respondents to the original petition for probate or letters of administration, or certificates of heirship shall be given notice of the application and they or any other person interested in the estate shall be heard in opposition unless they or any of them shall have signified their assent to such sale.

Power of administration when not limited.

542. If no limitation is expressed in the order making the grant, then the power of administration, which is authenticated by the grant of probate, or is conveyed by the grant of letters of administration, extends to every portion of the deceased person's property, movable and immovable, within Sri Lanka, other than such property as is deemed under section 554A not to be the property of the deceased, or so much thereof as is not administered, and endures for the

life of the executor or administrator or until the whole of the said property is administered, according as the death of the executor or administrator, or the completion of the administration, first occurs.

**Issue of
Letters
ad
*Colligenda.***

543. If any person shall die leaving property in Sri Lanka, the Judge of the court of any district in which such property shall be situate shall, on the facts being verified to his satisfaction and it being made to appear that there is not some next of kin or other person in Sri Lanka, entitled to administration of the estate of the person so dying, issue letters *ad colligenda* in the Form No. 91 in the First Schedule to one or more responsible persons to take charge of such property until the same shall be claimed by some executor or administrator lawfully entitled to administer the same, or by any heir to whom a certificate of heirship shall have been issued.

Nomination.

544. (1) Any person over sixteen years of age who has—

- (a) moneys in any account, other than a current account in any licensed Commercial Bank within the meaning of the Banking Act, No. 30 of 1988 ;
- (b) any share in a company as defined in the Companies Act, No. 17 of 1982 ;
- (c) any life insurance policy issued by the Insurance Corporation of Sri Lanka, established by the Insurance Corporation Act, No. 2 of 1961, or by any Corporation incorporated under the Insurance (Special Provisions) Act, No. 22 of 1979, or by any company registered under the Control of Insurance Act, No. 25 of 1982, as being authorised to transact insurance business ;

(d) any money in deposit in any finance company registered under the Finance Companies Act, No. 78 of 1988;

(e) any other movable property in any vault in any licensed commercial bank, within the meaning of the Banking Act, No. 30 of 1988,

may nominate a person (hereinafter referred to as the "nominee"), to whom, such monies share or other movable property lying to the credit of, or in the name of, such first-mentioned person, (hereinafter referred to as "nominator") or moneys payable under such insurance policy, shall be paid or transferred upon his death.

(2) A nomination made under subsection (1) shall have effect upon the death of the nominator notwithstanding anything in his last will to the contrary.

(3) Any nomination made under subsection (1) shall be deemed to be revoked by the death of the nominee in the lifetime of the nominator or by written notice of revocation signed by the nominator in the presence of a witness (who shall attest the signature of the nominator) or by any subsequent nomination made by the nominator.

(4) No money, certificates or other movable property shall be handed by the Bank or institution as the case may be, to any nominee unless the nominee satisfies the Bank or institution as to his true identity.

(5) The handing over, or transferring of, any money, share certificate or deposit certificate or other movable property to any nominee of a nominator who has died, shall be a complete discharge of the obligations of the Bank or institution, in respect of the money, or other movable property, lying to the credit of, or in the name of, such nominator, or under such insurance policy.

No action
maintenable
in certain
cases.

545. No person shall—

- (a) maintain any action for the recovery of any property; or
- (b) effect any transfer of any property,

movable or immovable, in Sri Lanka, belonging to, or included in, the estate or effects of any person dying testate or intestate in or out of Sri Lanka within twenty years prior to the institution of action or the effecting of the transfer, unless grant of probate has been issued in the case of a person dying testate or letters of administration or certificates of heirship have been issued, in the case of a person dying intestate and leaving an estate amounting to, or exceeding, five hundred thousand rupees in value.

Probate
when
executor is
appointed for
a limited
period.

546. When a person is appointed executor of a will for a particular purpose only of the will, and not executor of the will generally, probate will be granted to him limited for that purpose only.

Fresh
grant, when
allowed.

547. When a sole executor or a sole surviving executor to whom probate has been granted, or a sole administrator or a sole surviving administrator to whom a grant of administration has been made, dies leaving a part of the deceased's property unadministered, then a fresh grant of administration may be made in respect of the property left unadministered according to the rules hereinbefore prescribed for a first grant.

Rectification
of errors.

548. Errors in names and descriptions, or in setting forth the time and place of the deceased's death or the purpose in a limited grant, may be rectified by the court, and probate, letters of administration or certificates of heirship so granted or issued may be altered and amended accordingly.

Compensa-
tion of
executors
and adminis-
trators.

549. Compensation shall be allowed to executors and administrators by way of commission as well on property not sold but retained by the heirs, as on property sold by such executors and administrators, at such rate not exceeding three *per centum*, and on cash found in the estate and on property specially bequeathed, at such rate not exceeding one and a half *per centum*, as the court shall, after taking into consideration the circumstances of each particular case with reference to the trouble incurred by such executors or administrators, determine. In no case shall a larger sum than five thousand rupees be allowed to any executor or administrator as such compensation, unless it shall be made apparent to the court that such unusual trouble has fallen upon him as to entitle him, in the opinion of the court, to receive further remuneration.

Compensation
of several
executors.

550. Each executor or administrator shall be entitled to the full compensation allowed by law to a sole executor or administrator, unless there are more than three, in which case the compensation to which three would be entitled shall be apportioned among them all according to the services rendered by them respectively, and a like apportionment shall be made in all cases where there shall be more than one executor or administrator. But where the will provides a specific compensation for an executor or administrator, he shall not be entitled to any allowance other than that so provided, unless he files in court a written renunciation of the specific compensation.

Filing of
accounts.

551. Every executor and administrator shall file in the District Court, on or before the expiration of twelve months from the date upon which probate or grant of administration issued to him, or within such further time as the court may allow, a true and final account of his executorship or administration, as the case may be, verified on

oath or affirmation, with all receipts and vouchers attached, and may at the same time pay into court any money which may have come to his hands in the course of his administration to which any minor or minors may be entitled:

Provided that where the parties consent, the filing of such account and payment shall be dispensed with on payment of the stamp duty that would have been otherwise payable on the filing of such account, and the proceedings shall then be closed.

Executor or administrator failing to administer within one year liable for interest.

552. If any executor or administrator shall fail to pay over to the creditors, heirs, legatees, or other persons the sums of money to which they are respectively entitled within one year after probate or administration is granted, such executor or administrator shall be liable to pay interest out of his own funds for all sums which he shall retain in his own hands after that period, unless he can show good and sufficient cause for such detention.

Offences.

553. (1) Any person who wilfully conceals the existence of a will or knowingly fails to comply with the provisions of section 516 shall be guilty of an offence and shall be liable to a fine equivalent to the value of the estate dealt with in the will.

(2) Any person who wilfully—

(a) fails to disclose the existence of any heirs of the deceased ; or

(b) makes a false statement regarding any heir of the deceased ; or

(c) makes a false statement regarding the property, the creditors or debtors of the deceased ; or

(d) makes any other false statement relating to any matter which is required to be set out,

in any application made under section 524 or 528, shall be guilty of an offence and be liable to a fine equivalent to the value of the share or shares devolving on the heir or heirs who have not been disclosed or the value of the property with regard to which the false statement has been made, as the case may be.

Transitional provisions.

554. (1) Where a person has died without leaving a will in Sri Lanka prior to the date on which this Chapter comes into operation, and testamentary proceedings have not commenced in respect of the estate of such person, the provisions of this Chapter shall apply to the administration of such estate.

(2) Where an application has been made to any District Court prior to the date on which this Chapter comes into operation, for the issue of probate of a will or the grant of letters of administration in respect of an estate the value of which is over rupees five hundred thousand, and an *order nisi* has not been made, such application shall be deemed to be an application made under section 524 or 528 as the case may be, and shall be heard and disposed of in accordance with the provisions of this Chapter.

(3) Where an application has been made to any District Court prior to the date on which this Chapter comes into operation, for the grant of letters of administration, in respect of an estate the value of which is less than rupees five hundred thousand, and an *order nisi* has not been made, such application shall be terminated on the coming into operation of this law:

Provided however, if it appears to court that it is necessary or convenient to grant letters of administration or certificates of heirship as the case may be to any person interested in having the estate of such deceased person administered, or where any heir of such deceased person is interested in obtaining certificates of heirship in respect of such estate, the Court may in its discretion, permit the continuation of such action.

Interpre-
tation

554A. (1) In this Chapter, "Probate Officer" means the Registrar of the District Court and includes any other officer generally or specially authorized by the court to exercise the powers and perform the duties of a Probate Officer, in testamentary proceedings.

(2) For the purpose of proceedings under this Chapter "estate" and "property" of any deceased person shall be deemed not to include—

(a) any money or other movable property lying in any Bank to the credit of such deceased at the time of his death;

(b) the moneys represented by any share certificates and deposit certificates issued by any institution and remaining in the name of such deceased at the time of his death;

if he had made a nomination in respect thereof under subsection (1) of section 544; and

(c) the moneys payable under a contract of insurance entered into by the deceased and subsisting on the date of his death whether any nomination in respect thereof had been made under subsection (1) of section 544, or not.'

5. Section 554Y of the principal enactment is hereby amended as follows:—

- (1) in paragraph (a) of that section by the substitution for the words and figures "required by section 538 ;", of the words and figures "required by section 539 ;"; and
- (2) in paragraph (b) of that section by the substitution for the words and figures "required by section 553 ;", of the word and figures "required by section 551 ;".

Amendment
of section
554Y of the
principal
enactment

6. Section 724A of the principal enactment is hereby amended in subsection (1) of that section by the substitution for the words and figures "prescribed by section 553.", of the words and figures "prescribed by section 551.".

Amtndmtn
of section
724A of the
principal
enactment

7. The First Schedule to the principal enactment is hereby amended by the omission therefrom of Form Nos. 81, 82, 83, 84, 84A, 84B; 85, 86, 87, 88, 89, 90, 91, 92 and 93 and the substitution therefor of the following new Forms:—

Amendment
of the
First
Schedule
to the
principal
enactment

(Section 510)

"No. 81

**FORM OF AFFIDAVIT TO BE PRODUCED
WITH WILL**

(Formal parts as in No. 75)

1. I knew and was well acquainted with A. B. of _____, who died on the _____ day of _____ 19____ at _____.

2. The said A. B. duly executed his last will dated the _____ day of _____ 19____.

3. The said A. B. deposited his said will in my custody (or if the case is so, state the circumstances under which the deponent found the will).

4. The said testator has left property within the jurisdiction of this (or any other, as the case may be) court of the nature and value shown in the Schedule hereto annexed (or has left no property in Sri Lanka.)

5. I produce the said will.

(Formal conclusion)

(The Schedule)

(Section 517/524)

No. 82

FORM OF APPLICATION FOR PROBATE OR
FOR ADMINISTRATION WITH THE WILL ANNEXED

In the matter of the will of A. B. deceased.

C. D. of _____ petitioner.

Vs.

(For respondent, name any person likely or competent to oppose the application.)

(Formal parts as in No. 65.)

1. A. B., late of _____ died on the _____ day of _____
19 _____. .

2. The said A. B. duly executed his last will dated the _____ day of _____ 19 ____ (now deposited in this court, or and the said will is appended hereto, or as the case is _____ see section 524).

3. To the best of your petitioner's knowledge the heirs of the said A. B., deceased, are:

4. Full and true particulars of the property left by the deceased, so far as your petitioner has been able to ascertain the same, are contained in the Schedule hereto annexed.

5. Your petitioner claims as (executor, creditor, &c., as the case is).

Your petitioner therefore humbly prays for an order declaring the said will proved, and that he may be declared executor of the said will, and that probate thereof may be issued to him accordingly (or, where the case is so, for a grant of administration with copy of the will annexed, &c.). (If a limited grant is asked for, set out to that effect.)

(Formal conclusion)

(The Schedule)

(Support paragraphs 2 and 5 by affidavit or oral evidence. Where no respondent is named, state the reason to be that no opposition is apprehended, and support with an affidavit; and if the testor died out of Sri Lanka, state that the applicant has obtained an order appointing the court to have sole testamentary jurisdiction.)

(Section 526/528)

No. 83

FORM OF APPLICATION FOR ADMINISTRATION WHERE THERE IS NO WILL, OR FOR CERTIFICATES OF HEIRSHIP

(Formal parts)

(Proceed as in last form, substituting a statement that the will cannot be found, or that there is none, for paragraph 2.)

Your petitioner therefore humbly prays for an order declaring that he is entitled as such (creditor, or as the case is) to administer the estate of the said intestate and directing that letter of administration of the said estate or certificate of heirship there to be granted to him accordingly. (if a limited grant is asked for, set out to that effect.).

(Formal conclusion.)

(Section 529(2))

No. 84

FORM OF NOTICE TO BE PUBLISHED BY THE PROBATE OFFICER

Notice under section _____ of the Civil Procedure Code.

It is hereby notified that the following applications have been made for the proof of will/probate/grant of letters of administration/issue of certificates of heirship; in respect of the estates of the deceased persons described in the Schedule hereto.

Any person having objections to the making of an order declaring a will proved or the grant of probate or letters of Administration with or without a will annexed or the issue of a certificates of heirship to the persons specified in column 5 hereto, is required to file such objection in writing (supported by affidavit) on or before the day of 19.....

SCHEDULE

Column I	Column II	Column III	Column IV	Column V	Column VI
District Court Registration No.	Name of Deceased	Whether deceased left Will	Names and address of Applicant	Names of beneficiaries or heirs, and relationship to deceased	Consenting Heirs

Date :

Signed Probate Officer
District Court of

No. 85

(Section 531)

**FORM OF ORDER DECLARING WILL
PROVED**

This mater comming on for final determination before me,.....on in the presence of (and the affidavits of having been read and the evidence of taken), (and all parties heard) :

It is ordered (that the order of this court made on the..... day of 19, that probate of the will of be issued to (or as the case may be).

(And it appearing to this court that (respondent) has established his right thereto, it is further ordered that (probate, administration, certificate of heirship as the case may be) be issued to the said accordingly.)

(Signed)

(When the grant is to be limited, say so, and how far).

No. 86

(Section 531, 534)

FORM OF PROBATE

(Title.)

In the District Court of.....

Be it known to all men that on the day of, 19....., the last will and testament of....., deceased, a copy of which hereunto annexed was exhibited, read, and proved before this court, and administration of all the property and estate, rights and credits, of the deceased was and is hereby committed to (name and designation), the executor in the said last will and testament named; the said..... being first (sworn or affirmed) faithfully to execute the said will by paying the debts and legacies of the deceased testator as far as the property will extend and the law will bind, and also exhibit into this court a true, full, and perfect inventory of the said property on or before the day of..... 19...., and to file a true and just account of executorship, on or before the day of 19.....

Given under my hand and the seal of the court this day of....., 19.....

(Signed) _____
District Judge

(When probate is limited, insert the limitation)

(Section 531/534)

No. 87

**FORM OF LETTERS OF ADMINISTRATION
(WITH THE WILL ANNEXED AND OTHERWISE)**

In the District Court of

To (widow, widower, next of kin, secretary of the court, creditor, &c., as the case may be)

Whereas of, deceased, lately departed this life (leaving a will which as been duly proved in this court, a copy whereof is hereunto annexed ; and whereas no executor is named in that will, or without leaving any will) :

Your are therefore fully empowered and authorized by these presents to administer and faithfully dispose of the property and estate, rights and credits, of the said deceased, and to demand and recover whatever debts may belong to the said estate, and to pay whatever debts the said deceased did owe (and also the legacies contained in the said will), so far as such property and estate, rights and credits, shall extend, you having been already sworn (or affirmed) well and faithfully to administer the same and to render a true and perfect inventory of all the said property and estate, rights and credits, to this court, on or before the day of 19..... And you are therefore by these presents deputed and constituted administrator (with a copy of the will annexed) of all the property and estate, rights and credits, of the said deceased (You are nevertheless hereby prohibited from selling any immovable property of the estate unless you shall be specially authorized by the court so to do).

(Signed &c.)

(Section 531)

No. 87A

CERTIFICATES OF HEIRSHIP

In the District Court of

Whereas it has been verified to this Court that, late of died leaving property within the (jurisdiction)

2. By petition dated the day of 19.... application was made by to have certificates of heirship issued to the following who were averred to be the heirs of the late who died on the day of 19 without having left a last will.

1. of (relationship to deceased and share if agreed to).
2. of (relationship to deceased a share if agreed to).
3. of (relationship to deceased and share if agreed to).

3. By notice published in the (name of newspaper) of the... day of 19..... and the day of 19.. .. objections were called for against the issue of certificates of heirship to the heirs aforementioned.

4. No objections have been filed against the issue of certificates to the heirs aforementioned.

5. Now therefore in terms of section 531 you are granted this certificate of heirship.

(Signed/District judge).

No. 88

(Section 539(1)).

FORM OF OATH BY EXECUTOR OR ADMINISTRATOR

REFERRED TO IN THE PRECEDING FORMS

You swear (or the form of affirmation) that you believe the writing now produced to you, bearing date and marked, to be the last will and testament of deceased. (That you are the executor named therein, whether case is so.) That you will faithfully execute the said will (or that you will administer and faithfully dispose of the property and estate, rights and credits of deceased) by paying the debts (and legacies) of the deceased as far as the property will extend and the law bind, and by demanding and recovering whatever debts may belong to estate. That you will exhibit into this court a true, full, and perfect inventory of all property, movable and immovable, and all the rights and credits of the deceased, on or before the day of 19..... and that you will file a true account of your executorship (or administration) on or before the day of 19.....

(Section 525).

No. 89

FORM OF AFFIDAVIT WHERE DECEASED IS INTESTATE

(Formal parts as in No. 75)

1. I am (widow, next of kin, etc.) of, late of deceased, and knew and was well acquainted with the said..... during his lifetime.

2. The said died on the day of 19.... at, without having made a will, and leaving property within the jurisdiction of court of the nature and value shown in the Schedule hereto annexed.

(Formal conclusion.)

(Section 520)

No. 90

**FORM OF SECURITY BOND TO BE GIVEN BY
EXECUTOR OR ADMINISTRATOR WHEN REQUIRED**

In the District Court of.....

know all men by these presents that we (executor or administrator), and..... and (sureties), are held and firmly bound unto, Secretary of the District Court of (or to the Secretary of the District of..... for the time being), the said in the sum of rupees, and the said and in the sum of rupees each, to be paid to the said (Secretary or Secretary for the time being), for which payment well and truly to be made we and each of us do hereby bind ourselves, our heirs, executors, and administrators firmly by these presents, hereby renouncing

Whereas by order of the said court of the day of 19...., it is ordered that (probate of will or letters of administration of the property and state of, deceased) be granted to the said (executor or administrator) on his giving security for the due (execution or administration) thereof:

And whereas the estate of the said deceased has been appraised and valued at the sum of rupees:

Now the condition of this obligation is such, that if they above bounden (executor or administrator) do render into this court a true and perfect inventory of all the property and estate, rights and credits, of the said deceased which have or shall come to the possession or knowledge of the said....., or of any other person for him, on or before the day of.... 19...., and shall well and truly administer the same, that is to say, shall pay all and singular the debts of the said deceased which (he) did owe at (his) decease fairly and justly according to their respective degrees or in equal proportion if the estate should prove insufficient to satisfy all the debts in full (and shall then pay the legacies contained in the said will annexed to the said letters of administration) so far as the said property will extend and the law charge (him) and further shall render to this court a true and just account of (his) said administration on or before the day of, 19 and shall deliver and pay over the rest and residue of the said property and estate, rights and credits, which shall be found remaining upon the said administration, to the person or persons lawfully, entitled to the same: Then this obligation to be void and of none effect, otherwise to remain in full force.

(Dated and signed by all the obligors.)

No. 91

(Section 543)

**FORM OF LETTERS "AD BONA
COLLIGENDA"**

In the District Court of To and

Whereas it has been verified to this court that late of, died leaving property within (jurisdiction). You and each of you are hereby empowered and authorized to take, collect, demand and receive all and every the said property. and

the rents, issues, and profits thereof, and solely to keep the same until administration thereof, be granted in due form of law to such person or persons as shall appear entitled to the same, or until you receive further orders from this court in the premises.

By order of court,
Secretary.

The day of 19....

No. 92

Section 539 (1))

**FORM OF VERIFICATION OF INVENTORY
AND VALUATION**

I, A. B., of, executor of the last will of, deceased (or administrator of the estate, &c., if so,) make oath and say (or solemnly, sincerely, and truly affirm and declare) as follows :—

1. To the best of my knowledge, information, and belief the above, written inventory contains a full, true, and correct account of all the property, movable and immovable, and rights and credits of the said, deceased, so far as I have been able with due diligence to ascertain the same.
2. I have made a careful estimate and valuation of all the property, the particulars of which are set forth and contained in the said inventory, and to the best of my judgment and belief the several sums respectively set opposite to the several items in the said inventory fully and fairly represent the present values of the items to which they are so respectively set opposite.

(Section 536)

No. 93

FORM OF "CAVEAT"

In the District Court of

Let nothing be done in the estate and effects of late of, deceased, who died on the day of, 19...., at, unknown to (Mr., of, registered attorney for parties having interest, or as the case may be). (Signed by the party, and dated.)".

Repeal of
sections 18.
20, 25 to 41
of Act
No. 79
of 1988.

Sinhala text
to prevail
in the
event of
inconsistency.

8. The Civil Procedure Code (Amendment) Act, No. 79 of 1988, is hereby amended by the repeal of sections 18, 20, 25 to 41 (both inclusive), of that Act.

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