

PARLIAMENT OF CEYLON

2nd Session 1971-72



Abolition of Fideicommissa and Entails Act, No. 20 of 1972

Date of Assent : May 12, 1972

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Abolition of Fideicommissa and Entails
Act, No. 20 of 1972

L. D.—O. 7/72.

AN ACT TO ABOLISH FIDEICOMMISSA, ENTAILS, SETTLEMENTS AND RESTRAINTS ON ALIENATION; TO REGULATE AND PROVIDE FOR TITLE TO PROPERTY NOW SUBJECT TO FIDEICOMMISSA, ENTAILS, SETTLEMENTS AND RESTRAINTS; TO LIMIT THE CREATION OR OPERATION OF INTERESTS IN REMAINDER OR REVERSION; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

amended by
Law No. 13/1972

[Date of Assent: May 12, 1972]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Abolition of Fideicommissa and Entails Act, No. 20 of 1972.

Short title.

2. From and after the date on which this Act shall come into operation, no provision contained in any will, deed or other instrument shall have the effect of creating any fideicommissum, entail, settlement or restraint on alienation of property, or have the effect of limiting or curtailing the rights of the person to whom property has been disposed by such will, deed or other instrument, in such a manner that upon the happening of some future event, whether such event is certain to happen or not, or upon the expiry of some period of time, rights in such property become vested in any other successor.

Prohibition on creation of fideicommissa, &c.

3. Where any will, deed or other instrument executed after the coming into operation of this Act, contains any provision that creates or purports to create or has the effect of creating any disposition of property which is in conflict or inconsistent with the provisions of section 2 of this Act, such property shall, notwithstanding such provision, be held absolutely free of any fideicommissum, entail, settlement, restraint on alienation, limit or curtailment, and no other successor, whether named or described therein or not, shall have or be deemed to have any right or title to such property under the terms of such disposition.

Restrictions created in instruments executed after the date of operation of this Act.

Restrictions existing in instruments executed prior to the date of coming into operation of the Act.

4. Where under the terms of any will, deed or other instrument, executed prior to the date of coming into operation of this Act, any fideicommissum, entail, settlement, restraint on alienation, limit or curtailment exists, the property in question shall from the date of the coming into operation of this Act be and for all purposes be deemed to be vested absolutely, free of any fideicommissum, entail, settlement, restraint on alienation, limit or curtailment, in the person in whom the title to such property is on the aforesaid date vested subject to such fideicommissum, entail, settlement, restraint on alienation, limit or curtailment and no other successor, whether named or described therein or not, shall be deemed to have any right or title to such property under the terms of such disposition.

In the case of successive beneficiaries under a trust, the interest of the present beneficiary to be deemed to be absolute.

5. Where under the terms of any trust, whether created before or after the commencement of this Act, there is provision for the succession to the interest of a beneficiary by any other succeeding beneficiary, whether by way of remainder or reversion, upon the happening of some future event, whether such event is certain to happen or not, or upon the expiry of some period of time, then, the interest of the beneficiary in whom the beneficial interest is vested shall be and for all purposes shall be deemed to be absolute, and no other succeeding beneficiary shall have any right to succeed thereto by way of remainder or reversion to such interest:

Provided, however, that the preceding provisions of this section shall not apply to charitable trusts as defined in the Trusts Ordinance and to Muslim charitable trusts or wakfs as defined in the Muslim Mosques and Charitable Trusts or Wakfs Act, No. 51 of 1956, or to property held in trust under the provisions of the Buddhist Temporalities Ordinance or any trust under which the beneficiary in whom the beneficial interest is, on the date of coming into operation of this Act, vested, is—

- (a) a person of unsound mind;
- (b) a mentally deranged person;
- (c) a mentally deficient person; or
- (d) a person who is incapacitated due to old age or mental or bodily infirmity or disease.

6. Where the title to any property or any interest in property is or is deemed to be vested in any person by virtue of the operation of this Act, then such person shall have absolute power to dispose of such property or interest:

Persons vested with title by virtue of this Act, to have absolute disposing power.

Provided, however, that a person who but for the provisions of this Act would have succeeded to such property or interest shall, if he has effected necessary or useful improvements to the property in the hope or expectation of succeeding thereto, be entitled to compensation for such improvements, in accordance with the law relating to such compensation, from the person in whom such property or interest is or is deemed to be vested under the provisions of this Act.

7. (1) Where a fiduciary interest in property which was subject to fideicommissum has been transferred in pursuance of a sale or a donation prior to the commencement of this Act, the property in question shall from the date of the coming into operation of this Act be and for all purposes be deemed to be vested absolutely, free of the fideicommissum in the transferee of such fiduciary interest or in any person deriving title from him to such fiduciary interest:

Right of repurchase or revocation.

Provided, however, that the person who but for such transfer would have been entitled to such fiduciary interest under the terms of the fideicommissum shall have—

- (i) where the transfer was in pursuance of a sale, the right to repurchase, and obtain an execution of the conveyance of, the property from the person in possession of it, upon paying to the possessor the price paid by such possessor for such interest and the cost of any necessary or useful improvements effected by such possessor; or
- (ii) where the transfer was in pursuance of a donation, the right to revoke the donation and recover the property from the person in possession upon paying to the possessor the cost of any necessary or useful improvements effected by him,

such right of repurchase or of revocation being exercisable within six months of the date of coming into operation of this Act.

(2) The provisions of subsection (1) shall not apply where the person in possession of the property at the time when this Act comes into operation, derives title to any property which may have been subject to fideicommissum by a title adverse to and independent of any fiduciary under such fideicommissum, or is himself a bona fide possessor of such property without notice of the fideicommissum, or derives title from such a possessor.

Power of
fiduciary vested
with
ownership
under this Act
to transfer
property to
fideicommissary.

8. (1) Where any property vests or is deemed to vest absolutely in any person by virtue of the operation of this Act free of the interest of any other person or persons, natural or juristic, who but for the operation of this Act would have had an expectation of succeeding thereto as fideicommissary or fideicommissaries, such first-mentioned person may, within six months of the date of the coming into operation of this Act, execute a transfer of the whole or any part or share of such property, if he has not already sold or otherwise alienated such property, to such other person or persons or any one or more of them, without the payment of stamp duty or gifts tax upon such transfer:

Provided, however, that any such transfer shall be subject to any encumbrance created by the transferor prior to such transfer.

In this proviso "encumbrance" means any mortgage, usufruct, servitude, life interest, trust, lease (including a lease at will for a period not exceeding one month) or any interest however arising, other than any interest arising out of any fideicommissum, entail, settlement or restraint on alienation of property referred to in section 2 or the interest of any other succeeding beneficiary referred to in section 5.

(2) Any property transferred under the provisions of subsection (1) shall not—

(a) be deemed to form part of the estate of the transferor for the purposes of the Estate Duty Ordinance; or

(b) be subject to the provisions of the Estates (Control of Transfer and Acquisition) Act, No. 2 of 1972, and the Tea and Rubber (Control of Fragmentation) Act, No. 2 of 1958.

9. Nothing contained in this Act shall be construed to affect the creation or the continued validity of any trust, other than a trust of the nature referred to in section 5, or of any usufruct or other personal servitude of a like nature which a person may enjoy in property belonging to another.

Saving of simple trusts, usufructs and personal servitudes.

10. (1) The Entail and Settlement Ordinance is hereby repealed.

Repeal of Entail and Settlement Ordinance.

(2) (a) Notwithstanding the provisions of subsection (1), where any moneys have been deposited in court to which any fideicommissary would have become later entitled but for the provisions of this Act, and such moneys are, on the date of commencement of this Act, in deposit in such court, the fiduciary may apply to such court for the payment of such moneys to him.

repealed & substituted by S. 2, Law No. 1

(b) Before a court makes any payment of any money under paragraph (a) of this subsection, the court shall give public notice of the application made by the fiduciary in such manner as the court may deem fit and make its order of payment only after hearing all persons who may appear before such court in response to such notice. The costs of such public notice shall be borne by such fiduciary.

11. Subject to the provisions of the Interpretation Ordinance, the provisions of this Act shall have effect notwithstanding anything to the contrary in any other law:

This Act to prevail over any other law.

Provided, however, that nothing in this Act shall in any way affect any right, title or interest whether in expectancy, reversion, remainder or otherwise created or arising by or under the provisions of the Land Development Ordinance, the Crown Lands Ordinance, the River Valleys Development Board Act, the Tourist Development Act, No. 14 of 1968, or by virtue of the provisions of section 10 of the Estate Duty Ordinance.

12. In this Act "instrument" includes any written law or court order.

Interpretation.