

CHAPTER 80

ABOLITION OF FIDEICOMMISSA

Act No. 20 of 1972, Law No. 13 of 1972,

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.

[12th May. 1972.]

Short title.

1. This Act (may be cited as the Abolition of Fideicommissa and Entails Act.

4. Where under the terms of any will, deed or other instrument, executed prior to the commencement of this Act, any fideicommissum, entail, settlement, restraint on alienation, limit or curtailment exists, the property in question shall from the commencement 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 at the commencement of this Act 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.

Restriction! existing in instruments executed prior to the commencement of the Act.

Prohibition on creation of fideicommissa, &c.

2. From and after the commencement of this Act 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.

Restrictions created in instruments executed after the commencement of this Act.

3. Where any will, deed or other instrument executed after the commencement 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,

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:

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

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, 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 commencement 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.

- (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,

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

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:

Provided, however, that a person who but for the provisions of this Act would have succeeded to such property or interests 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.

Right of repurchase or revocation.

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 commencement 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:

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—

such right of repurchase or of revocation being exercisable within six months of the commencement of this Act.

(2) The provisions of subsection (1) shall not apply where the person in possession of the property at the time of commencement of this Act, 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.

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 commencement 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:

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

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 the Estate Duty Act; or
- (b) be subject to the provisions of the Estates (Control of Transfer and Acquisition) Act and the Tea and Rubber (Control of Fragmentation) Act.

**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.

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

(2) (a) Notwithstanding the provisions of subsection (1), where, on the date of commencement of this Act, any moneys have been invested in the Loan Board in pursuance of the provisions of section 7 of the Entail and Settlement Ordinance, any person who is or becomes entitled to such moneys in consequence of the provisions of this Act or of any transfer executed under section 8 of this Act, may apply to court for an order of payment of such moneys to him.

(b) Subject to the provisions of paragraph (e), where, upon an application made under paragraph (a), a court makes any order for payment of moneys which are invested in the Loan Board, the Loan Board

shall pay, in respect of each entail case, the money so ordered to be paid in respect of that case, in the following manner:—

- (i) where the total amount invested in the Loan Board in respect of that case does not exceed one hundred thousand rupees, the full amount within one year of the date of the first order of payment (hereinafter referred to as the "relevant date"), in respect of that entail case,
- (ii) where the total amount invested in the Loan Board in respect of that case exceeds one hundred thousand rupees but does not exceed two hundred thousand rupees, the first one hundred thousand rupees within one year of the relevant date and the balance sum within two years of the relevant date,
- (iii) where the total amount invested in the Loan Board in respect of that case exceeds two hundred thousand rupees but does not exceed four hundred thousand rupees, the first one hundred thousand rupees within one year of the relevant date, the second one hundred thousand rupees within two years of the relevant date, and the balance sum within three years of the relevant date, and
- (iv) where the total amount invested in the Loan Board in respect of that case exceeds four hundred thousand rupees, the first one hundred thousand rupees within one year of the relevant date, the second one hundred thousand rupees within two years of the relevant date, the next sum of two hundred thousand rupees within three years of the relevant date, and the balance sum within four years of the relevant date.

(c) Notwithstanding the provisions of subsection (1), where, on the date of commencement of this Act, any moneys have been invested in Government securities

Saving of simple trusts, usufructs and personal servitudes.

Repeal of Entail and Settlement Ordinance and payment of moneys invested in the Loan Board and in Government securities. (§2. Law 13 of 1972.]

\* Sec List of Enactments omitted from the Revised Edition.

in pursuance of the provisions of section 7 of the Entail and Settlement Ordinance, any person who is or becomes entitled to such securities in consequence of the provisions of this Act or of any transfer executed under section 8 of this Act, may apply to court for an order of assignment of such securities to him.

(d) Before a court makes an order of payment or an order of assignment under this section, the court shall give public notice of the application made by the applicant in such manner as the court may deem fit and make its order of payment or assignment 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 the applicant.

(e) (i) The court shall not make an order of payment under paragraph (6) until the applicant produces a certificate from the Commissioner-General of Inland Revenue hereinafter referred to as the "Commissioner-General", stating whether or not any sum of money is due or is likely to become due, under any written law from such applicant to the Commissioner General, and if any sum is due or is likely to become due, the amount of such sum.

(ii) Where such certificate states that no sum of money is due to the Commissioner General from the applicant, the court may make an order of payment in favour of the applicant in the manner set out in paragraph (b).

(iii) Where such certificate states that any sum is due to the Commissioner-General from the applicant, the court shall make an order that such sum shall be paid by the Loan Board to the Commissioner-General and that the balance sum shall be paid to the applicant in the manner set out in paragraph (b).

(iv) Where such certificate states that any sum is likely to be due to the Commissioner-General from the applicant, the court shall make an order that the Loan Board shall deposit in court such sum to the credit of the entail case and pay the balance sum to the applicant in the manner set out in paragraph (b); after the final determination of the sum due to the Commissioner-General from the applicant is communicated to court, the court shall pay such sum to the Commissioner-General and pay the balance sum to the applicant in the manner set out in paragraph (b).

(v) A certificate issued by the Commissioner-General under this paragraph may be produced in court without the Commissioner-General being called, and such certificate shall be prima facie evidence of the truth of the statements contained therein.

**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 State Lands Ordinance, the River Valleys Development Board Act, the Tourist Development Act, or by virtue of the provisions of section 10 of the Estate Duty Ordinance.\*

**12.** In this Act—

Interpretation.

" commencement ", in relation to this Act, means the 12th day of May 1972;

" instrument " includes any written law or court order.

\* See List of Enactments omitted from the Revised Edition.