

CHAPTER 137

REGISTRATION OF OLD DEEDS AND INSTRUMENTS

Ordinance No. 35 of 1947.

AN ORDINANCE TO PROVIDE FOR THE REGISTRATION OF INSTRUMENTS AFFECTING LAND WHICH WERE EXECUTED PRIOR TO THE YEAR 1864 AND TO RESTRICT THE RECEPTION IN EVIDENCE OF UNREGISTERED INSTRUMENTS IN PROOF OF TRUSTS OR FIDEICOMMISSA.

[2nd July, 1947.]

Short title.

1. This Ordinance may be cited as the Registration of Old Deeds and Instruments Ordinance.

(2) The provisions of subsection (1) shall apply to any instrument executed or made prior to the 2nd day of February, 1840, notwithstanding that such instrument may have been registered under the *Sannases* and Old Deeds Ordinance.

Inadmissibility in evidence of unregistered instrument to prove trust or fidei-commissum.

2. (I) On and after the 1st day of January, 1948, no instrument affecting any land, which was executed or made at any time prior to the 1st day of January, 1864, shall unless—

(3) The Ordinances referred to in paragraphs (a) and (b) of subsection (1) are —

(a) it was, at the date of the commencement of this Ordinance, duly registered under any of the Ordinances specified in subsection (3); or

The Registration of Documents Ordinance,

The Land Registration Ordinance, No. 14 of 1891,\*

(b) it is referred to in any other instrument which was, at the date of the commencement of this Ordinance, registered under any of the Ordinances specified in subsection (3) as an instrument affecting that land ; or

The Land Registration Ordinance, No. 5 of 1877,

The Land Registration Ordinance, No., 8 of 1863.

(c) it is registered in accordance with the provisions of this Ordinance,

3. (1) An instrument affecting land which was executed or made prior to the 1st day of January, 1864, may be presented for registration in accordance with the provisions of this Ordinance at any time before the 1st day of January, 1948 :

Conditions as to presentation and registration of instruments.

be of any force or avail or be received in evidence in any court as against any person claiming any interest in such land upon valuable consideration or any other person claiming under any such person, for the purpose of proving the land to be subject to a trust or fideicommissum.

Provided, however, that if an application is, prior to the 1st day of January, 1948, made under section 4 or section 5 for an order authorizing or directing the presentation of any instrument for registration, and an order is made under either of those sections, such instrument may be presented for registration within two months of the date of such order.

In this subsection " interest" means an interest created or arising whether before or after the date of the commencement of this Ordinance.

\* Repealed by Ordinance No. 23 of 1927.

(2) No instrument shall be registered as provided by this Ordinance unless it is duly presented for registration within the time prescribed in that behalf by subsection (1):

Provided, however, that no such instrument shall be registered as provided by this Ordinance at any time after the 31 st day of December, 1953.

(3) No will executed or made prior to the 1st day of January, 1864, shall be registered in accordance with the provisions of this Ordinance unless the probate of such will is also presented for such registration.

Order authorizing presentation for registration of instruments executed before 2nd February, 1840.

4. (1) No instrument affecting land, executed or made prior to the 2nd day of February, 1840, which was not registered under the *Sannases* and Old Deeds Ordinance, may be presented for registration in accordance with the provisions of this Ordinance or accepted for the purposes of registration, unless application is, prior to the 1st day of January, 1948, made to a District Court as hereinafter provided for an order authorizing the presentation of that instrument for registration and an order in that behalf has been made by the court.

(2) Such application shall be made by way of petition to the District Court having jurisdiction in the place where the land or any of the lands to which the instrument relates is situated.

(3) No order authorizing the presentation of any instrument for registration shall be made under this section, unless it is proved to the satisfaction of the court that the instrument was not registered under the *Sannases* and Old Deeds Ordinance owing to the absence from Ceylon or the minority or unsoundness of mind of any person who was required by section 2 of that Ordinance to produce the instrument for the purposes of registration.

(4) Any person who is aggrieved by the refusal of the District Court to make an order under this section authorizing the presentation of any instrument for registration may, before the expiry of a period of fourteen days from the date of such refusal, make application to the Supreme Court\* for the revision of the decision of the District Court, and the Supreme Court\* may, if it thinks fit, make order authorizing the presentation of the instrument for

registration. The decision of the Supreme Court\* shall be final. The Supreme Court\* may, generally or in any particular case, prescribe the procedure to be followed in the case of any application to the court under this subsection.

(5) Every application made under this section to a District Court or to the Supreme Court\* shall bear a stamp of ten rupees. No further stamp duty shall be payable in respect of any proceedings upon any such application.

(6) Notwithstanding anything in subsection (1), no order under the preceding provisions of this section shall be required to authorize the presentation for registration of any instrument affecting land (executed or made prior to the 2nd day of February, 1840) in any case where such instrument is a will, or a grant of administration to the estate of any person, or a judgment or order of any court.

5. (1) Where any person, at any time prior to the 1st day of January, 1948, makes application in that behalf, supported by an affidavit declaring that he is entitled to any interest in any land under or by virtue of any instrument affecting the land (executed or made prior to the 1st day of January, 1864) and that such instrument is in the possession of any other specified person, the District Court having jurisdiction in the place in which the land is situated, may, in its discretion after such inquiry, if any, as it may consider necessary, issue a summons directing such other person to produce the instrument to the court on or before a specified date.

Power of court to order production of instruments.

(2) Where any person on whom a summons under subsection (1) has been served fails to comply with the summons the court may order him to be arrested and brought before the court.

(3) Where any person on whom a summons under subsection (1) has been served, or who is arrested and brought before the court as provided in subsection (2), fails to produce the instrument referred to in the summons, the court may require him on oath or affirmation to answer any question which the court may put or allow respecting the instrument alleged to be in his possession,

\* This is a reference to the Supreme Court constituted by the now repealed Courts Ordinance.

## Cap. 137] **REGISTRATION OF OLD DEEDS AND INSTRUMENTS**

and the refusal to take such oath or make such affirmation or to answer such question shall be punishable in the same manner as the like refusal by a witness in a civil case is punishable by that court under the Civil Procedure Code.

Where such person, by affidavit or in evidence given upon oath or affirmation, denies that the instrument is in his possession or control, the proceedings commenced upon the application under subsection (1) shall terminate.

(4) Where any person on whom a summons under subsection (1) has been served produces the instrument to the court, the court shall hold an inquiry for the purpose of determining whether the instrument should be presented for registration under this Ordinance, and where it so determines shall, subject as hereinafter provided, make an order directing that the instrument shall be retained in the court for the purpose of being so presented:

Provided that where the instrument is one to which the provisions of section 4 (1) apply, no order shall be made under this subsection unless the court is satisfied that the case is one in which an order may be made under the aforesaid section 4 authorizing the presentation of the instrument for registration ; and in any such case no further order under that section shall be required in relation to that instrument.

(5) The court shall not, except with the consent of the person producing the instrument, permit such instrument to be inspected by or on behalf of the applicant for the summons, unless the court is satisfied, after examination of the instrument and consideration of such evidence as the court may deem necessary, that the applicant has reasonable grounds for alleging that he is entitled to any interest in the land under or by virtue of the instrument.

(6) Where an order is made under subsection (4), the person producing the instrument may appeal to the Supreme Court\* against such order, and where the

court refuses to make such an order the applicant for the summons may appeal to the Supreme Court\* against such refusal. Such appeal shall be preferred before the expiry of a period of fourteen days from the date of the order or refusal.

The provisions of the Civil Procedure Code and of any other written law relating to appeals to the Supreme Court\* against orders or decrees of District Courts in civil actions shall *mutatis mutandis* apply in the case of any appeal under this subsection.

(7) Where an order directing the presentation of any instrument for registration is made under this section by District Court or by the Supreme Court\* upon appeal, the instrument shall forthwith be presented for registration by the secretary+ of the District Court, and shall thereafter be returned to the secretary + for the purpose of being delivered to the person by whom it was produced to the court.

(8) Where a summons is issued by the court as provided in subsection (1) or an order for the arrest of any person is made as provided in subsection (2), the provisions of Chapter XVII of the Civil Procedure Code shall apply in like manner as though the summons or order were issued or made under that chapter in civil proceedings before the court in the exercise of its ordinary jurisdiction.

6. (1) The provisions of the Registration of Documents Ordinance and of the regulations made thereunder shall, where not inconsistent with the provisions of this Ordinance, apply in relation to the presentation of instruments for registration as provided by this Ordinance and to the registration of such instruments, and the provisions of sections 36 to 39 of the Registration of Documents Ordinance shall apply in the case of instruments presented for registration or registered as provided by this Ordinance.

Registration of Documents Ordinance to apply for purposes of registration,

(2) A fee of ten rupees shall be payable upon the presentation of any instrument for registration as provided by this Ordinance.

\* This is a reference to the Supreme Court constituted by the now repealed Courts Ordinance.

+ This is a reference to the Secretary of the District Court prior to the change of designation to Registrar.

# REGISTRATION OF OLD DEEDS AND INSTRUMENTS [Cap. 137]

Description of land affected by instrument and order by court for registration.

7. (1) Nothing in section 13 of the Registration of Documents Ordinance shall apply where any instrument is presented for registration as provided by this Ordinance.

(2) Every instrument presented for registration as provided by this Ordinance shall be accompanied—

- (a) by a certified copy of such instrument, and
- (b) by a written description of the land claimed to be affected thereby, its boundaries, extent and situation, the district and village, pattu, korale or other division of the district in which the land is situated and, where the land is situated in a town, the name if any of the street in which it is situated.

If the land consists of a divided portion of any land or allotment, such portion shall be clearly and accurately defined by its particular boundaries and extent.

If the land consists of an undivided share in a land, the proportion which the share bears to the entire land shall be stated and a written description of the entire land shall be given as required by the preceding provisions of this subsection.

(3) Where the land claimed to be affected by any instrument presented for registration as provided by this Ordinance is, to the knowledge of the person presenting the instrument for registration, affected by any other instrument registered under any of the Ordinances mentioned in subsection (3) of section 2 of this Ordinance, the instrument presented for registration shall be accompanied by a reference to the volume and folio in which such other instrument is registered if such reference is known to the person presenting the instrument.

(4) Where the Registrar of Lands is not satisfied that the land claimed to be affected by such instrument is affected thereby, the Registrar may, with the prior approval of the Registrar-General, refuse to register the instrument.

Notice of such refusal shall be sent by registered post to the person presenting the instrument for registration.

(5) The person presenting any instrument for registration, if aggrieved by the refusal of the Registrar to register the instrument, may within one month, from the date of the communication of such refusal to him, make an application to the District Court for an order directing the Registrar to register the instrument. The Registrar-General shall be named respondent to such application.

Upon such application being made, the District Court may, after such inquiry as the court may consider necessary and after notice to such persons as may appear to the court to be interested, make order directing the Registrar to register the instrument as an instrument affecting the land claimed by the applicant to be affected thereby or may refuse to make such order.

No appeal shall lie against any order made by the District Court under this subsection or against the refusal of the District Court, to make any such order.

(6) Every application to the District Court under this section, shall bear a stamp of ten rupees. No further stamp duty shall be payable in respect of any proceedings upon such application.

(7) Where the secretary\* of a District Court is required by section 5 to present an instrument for registration, the copy, statements and particulars referred to in subsections (2) and (3) of this section shall be furnished to the secretary\* by the person at whose instance the instrument was produced to the court, and such copy, statements and particulars shall be transmitted by the secretary\* to the Registrar together with the instrument presented for registration.

In any such case notice of the refusal to register the instrument shall be given under subsection (4) to the person at whose instance the instrument was produced to the court, and an application under subsection (5) may be made by that person.

\* This is a reference to the Secretary of the District Court prior to the change of designation to Registrar.

(8) The making of an order under this section by a District Court directing the registration of any instrument as an instrument affecting any land shall not be taken or construed in any way to be *res adjudicata* upon any question arising in any other proceedings.

registration, as against any other such instrument duly registered in accordance with the provisions of this Ordinance.

(3) Where any instrument has been registered under this Ordinance, and any person in any proceedings claims any interest in any land under or by virtue of that instrument, the burden of proving that such land is land affected by that instrument shall be on such person.

Return of registered instruments and custody of certified copies.

8. (1) Upon the registration of any instrument as provided by this Ordinance, the Registrar shall—

- (a) return such instrument to the person by whom it was presented for registration; and
- (b) retain and preserve in his custody the certified copy thereof which accompanied the application for registration.

(2) No certified copy retained and preserved by the Registrar under subsection (1) shall be delivered out of the custody of the Registrar, except upon an order made by any court in that behalf in any proceedings in which the court requires the production of the instrument.

10. Nothing in section 7 of the *Sannases* and Old Deeds Ordinance shall apply to any instrument which is registered as provided by this Ordinance.

Application of section 7 of *Sannases* and Old Deeds Ordinance modified.

11. In this Ordinance "instrument affecting land" means any instrument referred to in paragraph (a) of section 8 of the Registration of Documents Ordinance, and includes any *sannas* or *ola*.

Meaning of "instrument affecting land".

12. (1) During the period commencing on the 1st day of January, 1948, and ending on the 31st day of December, 1953, nothing in section 2 of this Ordinance shall apply in the case of any instrument affecting land which was executed or made at any time prior to the 1st day of January, 1864, if the court before which that instrument is sought to be produced in evidence is satisfied—

Transitory provisions.

Effect of registration as provided by this Ordinance.

9. (1) The registration as provided by this Ordinance of any instrument affecting land shall not cure any defect in the instrument or confer upon it any effect or validity which it would not otherwise have.

(2) Notwithstanding anything in section 7 of the Registration of Documents Ordinance—

- (a) no instrument registered under any of the Ordinances mentioned in subsection (3) of section 2 of this Ordinance shall gain any priority by reason of prior registration as against any instrument executed or made before the 1st day of January, 1864, which is duly registered in accordance with the provisions of this Ordinance;
- (b) no instrument executed or made before the 1st day of January, 1864, which is duly registered in accordance with the provisions of this Ordinance shall gain any priority by reason of prior

that-

- (i) such instrument had , been presented for registration in accordance with the provisions of this Ordinance before the 1st day of January, 1948, and proceedings under this Ordinance for; ,;the registration thereof are pending whether before the Registrar or any court; or
- (ii) an application for an order authorizing the presentation of such instrument had been made under section 4 before the 1st day of January, 1948, and proceedings upon such application or any subsequent proceedings under this Ordinance for the registration

- of such instrument are pending before the Registrar or any court; or
- (iii) an application for an order under section 5 in respect of that instrument had been made before the 1st day of January, 1948, and proceedings upon such application or any subsequent proceedings under this Ordinance for the registration of such instrument are pending before the Registrar or any court; and
- (b) that notice of the presentation of such instrument for registration or of the application under section 4 or section 5, as the case may be, has been duly registered under subsection (2) as a notice affecting the land in which an interest is claimed under the instrument..
- (2) Any person presenting an instrument for registration as provided by this Ordinance or making any application under section 4 or section 5 in respect of any instrument, may at any time before the 1st day of January, 1948, make application to the Registrar to enter notice of such presentation or application as a notice affecting the land claimed to be affected by such instrument. The Registrar shall thereupon register such notice under the Registration of Documents Ordinance as though it were an instrument affecting the land claimed by the applicant to be affected thereby.
- (3) No fee shall be payable for the registration of any notice under subsection (2).
- (4) It shall be the duty of the Registrar-General, on at least three occasions prior to the 1st day of January, 1948, to publish in the Gazette and in at least three daily newspapers notices calling attention to the provisions of section 2 and to the fact that no instrument referred to therein can be registered as provided by this Ordinance unless it is presented for such registration prior to the 1st day of January, 1948.
- The form of notices under this subsection shall be such as the Registrar-General may in his discretion determine.