

**IN THE COURT OF APPEAL**  
**OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

N.Thilakaratna  
No.4, Pragathi Mawatha,  
Borelesgamuwa  
**Petitioner-Appellant**

**Vs**

Withanage Don Somaratne  
73, Kesbewa Road,  
Borelesgamuwa  
**Deceased 2<sup>nd</sup> Respondent-Respondent**

S.Srimathi Dias Vithanage  
No.73, Kesbewa Road, Borelesgamuwa  
**Substituted 2<sup>nd</sup> Respondent-Respondent**

**C.A.No.260/96 (F)**  
**D.C.MT.LAVINIA CASE NO.478/T**

W.Dona Ariyawathie  
No.14, Kesbewa Road, Borelesgamuwa

W.Dona Siriyawathie  
No.2/16, Kesbewa Road, Borelesgamuwa  
**1<sup>st</sup> and 3<sup>rd</sup> Respondent-Respondents**

**BEFORE** : **K.T.CHITRASIRI, J**

**COUNSEL** : Ms.J.R.Rajapakse for the Petitioner-Appellant.

Gamini Marapane P.C.with Keerthi Sri  
Gunawardane, Navin Marapana and Harshula  
Seneviratne for the substituted 2<sup>nd</sup> Respondent-  
Respondent

**DECIDED ON** : **04.03.2014**

**CHITRASIRI, J.**

Parties to the appeal bearing No.CA 25/94 are same as the parties to this appeal which bears the No.CA 260/96(F). Both these appeals are in relation to issuance of Probates consequent upon the execution of Last Wills of the mother of the parties to both these actions, namely Alice Perera. When the appeal bearing No.25/94 was taken up in this Court on 05.09.2013, the following minute has been recorded and it reads thus:-

*“At this stage both Counsel admit that in the event the appeal filed in the case bearing No.C.A.25/94(F) is allowed then the C.A.No.26/96(F) will have no effect and it will become redundant. If it happens in such a way Ms.Rajapakse agrees to withdraw the appeal in C.A.260/96(F)”.*

Today this Court made an order allowing the appeal bearing No.CA 25/98 by which the decision of the learned District Judge in the case 399/SPL recalling the Probate, was set aside. Accordingly, the Probate issued in the name of W.Don Somaratne, [2<sup>nd</sup> respondent-respondent in this appeal] in that case 399/SPL was made valid. When a probate had been issued to administer the properties of an estate of a deceased person is in existence, no other Probate can be issued to administer the properties of the same estate. Hence, this appeal which was filed to have the probate issued to administer the estate of the deceased Alice Perera need not be looked into since it is also in relation to an issue of probate to administer the properties contained in the same estate

of the late Alice Perera. In the circumstances, this appeal will have to be dismissed without considering the merits.

Moreover, the minute made on 05.09.2013 in the appeal CA 25/98 referred to above, the learned Counsel for the Appellant has informed Court that she would be withdrawing this appeal in the event the appeal in the case bearing C.A.No.25/94(F) filed by the 2<sup>nd</sup> respondent-respondent namely W.D.Somarathna, is allowed.

Having considered all those circumstances, this Court makes an order dismissing this appeal filed to challenge the judgment dated 03.06.1996 wherein the learned District Judge refused to accept the execution of the Last Will of Alice perera which was in the name of Nanawathie Thilakaratne who is the appellant in this case. I make no order as to the costs of this appeal.

*Appeal dismissed without costs.*

JUDGE OF THE COURT OF APPEAL