

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

In the matter of the Last Will of the late
Mary Anunciata Rosalyn Church formerly
of 81/3, Isipathana Mawatha, Colombo 05.

Jayampathi Palipana,
81/3, Isipathana Mawatha,
Colombo 05.

SC Appeal 118/2016

PETITIONER

High Court Colombo:
WP/HCCA/COL/394/05(F)

Vs.

District Court Colombo:
35681/T

1. J. Lenard Bandara Gunathilake,
7, Grama Sanwardana Mawatha,
Boralesgamuwa.

2. Bernard Gunathilake,
Sri Lanka High Commission,
Beijing 100600,
Republic of China.

Presently at
18/141, Mohandiram E. D. Dabare
Mawatha,
Colombo 05.

3. Lilani Amarasinghe,
502, Udumulla Road,
Battaramulla.

4. Lesley Fernando,
39, Lake Crescent,
Beach Borough, 6063,
Western Australia.

5. Sherine Cowell,
6B, Alexander Street,
Wimberley, 6014,
Western Australia.
6. Patricia Pereira,
C/o. Postmaster,
Meegahakiula,
Badulla.
7. Ian Gunathilake,
39, Katawalamulla Road,
Dematagoda,
Colombo 09.
8. Ananda Gunathilake,
3A 214, Rukmalgama Housing
Scheme,
Pannipitiya.
9. Carman Gunathilake,
26/12/A, Old Kottawa Road,
Mirihana,
Nugegoda.
10. Mercia Bertha,
67/30, Woodland Avenue,
Kalubowila,
Dehiwala.
11. Ruby Gunathilake,
07, Grama Sanwardana Mawatha,
Boralesgamuwa.

12. Shiela Gunathilake,
3A, 214, Rukmalgama Housing
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13. Mineli Fernando,
39, Lake Crescent,
Beach Borough, 6063,
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RESPONDENTS

AND

Jayampathi Palipana,
81/3, Isipathana Mawatha,
Colombo 05.

PETITIONER-APPELLANT

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RESPONDENTS-RESPONDENTS

And now

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RESPONDENTS-
RESPONDENTS-RESPONDENTS

Before: **Justice A.L. Shiran Gooneratne**
 Justice Dr. Sobhitha Rajakaruna
 Justice Menaka Wijesundera

Counsel: Sumedha Mahawanniarachchi with Nishan Balasooriya
 instructed by Madhavi Gunasiri **Plaintiff-Appellant-**
 Appellant

Hiran de Alwis with Randhini Fernando instructed by Yoshani
Demuni for the **2nd Respondent-Respondent-Respondent**

Argued on: **24/03/2026**

Decided on: **09/07/2026**

A.L. Shiran Gooneratne J.

By Petition and Affidavit dated 23/10/2001, the Petitioner-Appellant instituted Action No. D.C. Colombo 35681/T in the District Court of Colombo and sought, inter alia, a declaration that Last Will No. 107 dated 27/04/2001, the challenged Last Will of the late Mary Anunciata Rosalyn Church, was duly proved. The Petitioner also sought probate to be granted to him as the executor named in the said Will.

The Respondents filed their statement of objections dated 21/03/2003 and denied the validity of the Last Will No. 107. They took up the position that the document was fraudulent, that it had been executed under duress, and that the deceased was not in a fit physical or mental condition to execute the said Will. The Respondents also moved that the 7th Respondent be appointed administrator of the estate of the deceased.

At the conclusion of the inquiry, the learned District Judge delivered judgment dated 14/12/2005, dismissing the Petitioner-Appellant's application. The Court held

that Last Will No. 107 was not the act and deed of the deceased. The Court also granted letters of administration to the 7th Respondent.

Being aggrieved by the said judgment, the Petitioner-Appellant preferred an appeal to the Civil Appeal High Court. By judgment dated 11/09/2014, the Appellate Court dismissed the appeal and affirmed the judgment of the District Court.

The Petitioner-Appellant thereafter came before this Court. By order dated 08/06/2016, the Court granted leave to appeal on the following questions of law:

1. Did the District Court err in law by appointing the 7th Respondent as administrator?
2. Should the Court, at the conclusion of the trial, have exercised its powers under section 149 of the Civil Procedure Code and raised an issue with regard to the validity of Will No. 490.

When this matter came up for hearing on 19/05/2022, the learned Counsel for the Respondents informed Court that the 7th Respondent, to whom letters of administration had been granted by the District Court, had passed away. Having considered the submissions made by both learned Counsel, the Court noted that the questions of law contained two aspects, the first regarding the validity of the Last Will and the second, the appointment of the 7th Respondent as administrator.

When the case was resumed on 16/02/2023, on the question of substitution of the 7th Respondent, the Court observed that the Petitioner-Appellant was required to take steps to substitute the 7th Respondent, to proceed with the hearing before this Court. The Court also observed that *“The Respondents before this Court are free to go before the appropriate court and make an application to appoint an Administrator”*. The Court further observed that the two questions of law, as noted earlier, need to be taken up separately.

Validity of the impugned Last Will No. 107

The evidence in this case shows that the deceased was a woman with considerable wealth, married to a British national. They had no children. At the time of her

death, she was separated from her husband, who predeceased her. The deceased lived on the upper floor of house bearing No. 81/3, Isipathana Mawatha, Colombo 5. The house was gifted to a nephew of the deceased and was subsequently purchased by the Petitioner-Appellant.

The Petitioner-Appellant, having met the deceased in 1984, came into occupation of the lower floor of the said premises as a tenant. According to his evidence, the Petitioner-Appellant described his close relationship with the deceased, similar to that of a mother and son. Although the Petitioner-Appellant referred to a distant family relationship between him and the deceased, the Respondents denied such a relationship.

The evidence also shows that the Petitioner-Appellant appointed the deceased as a shareholding director of a film producing company in which the Petitioner-Appellant also held the position of a director. In addition, he had been involved with the deceased in several social service projects.

The deceased passed away at a private hospital on 23/07/2001, five days after her admission to the hospital.

At the inquiry before the District Court, the Petitioner-Appellant testified and led the evidence of Notary Premachandra Epa, Notary Dharmawardana Jayasinghe, the two attesting witnesses to the challenged Will, Dr. Anula Wijesundara, a representative of Sampath Bank, Rohan Amerasinghe, (a nephew of the deceased), and a police officer attached to the Narahenpita Police. The Respondents did not testify or summon witnesses in support of their case.

The deceased passed away approximately three months after the execution of the Last Will. According to the evidence led on behalf of the Petitioner-Appellant, Last Will No. 107 dated 27/04/2001, attested by Premachandra Epa, Notary Public, marked P1, was executed while the deceased was in hospital. The document bears the thumb impression of the deceased.

The Petitioner-Appellant also produced several previous Last Wills, No. 192 marked P2, No. 299 marked P3, and No. 490 marked P4. All three previous Last

Wills had been attested by Dharmawardana Jayasinghe, Notary Public. In all previous Last Wills, the deceased had placed her signature. It is also in evidence that Rohan Amerasinghe, a nephew of the deceased, lodged a complaint with the Narahenpita police alleging that the Petitioner-Appellant may have poisoned the deceased. The investigations, however, proved inconclusive.

The onus of proving a Last Will

A Last Will must be proved as genuine before the grant of a probate. The application of the Petitioner-Appellant had to be supported by sufficient evidence to establish due execution, testamentary capacity, knowledge and approval of the contents of the will. I will now consider the evidence as evaluated by the District Court and the Civil Appellate High Court.

The evidence reveals that Notary Epa was enrolled as an Attorney-at-Law in 1995. He resided near the deceased's residence and had known the deceased since 1984, long prior to his enrolment as an Attorney-at-Law. He had also handled several business matters on behalf of the Petitioner-Appellant. It is also in evidence that one of the attesting witnesses to the impugned will was the father of the Petitioner-Appellant's wife, whilst the other was an employee of the film company. The evidence also discloses that the former visited the Petitioner-Appellant at his residence shortly after the execution of the will. Notwithstanding these circumstances, the Petitioner-Appellant maintained that he was unaware of the existence of the Will.

According to the consulting physician, Dr. Anula Wijesundara, the document marked P13 shows that the deceased was admitted to the hospital on 23/04/2001 and remained there for four to five days. The challenged Will was executed on 27/04/2001 while she was in hospital. During that period, she had been physically and mentally sound. She was also in a good state of mind and had no physical or speech impairment. At the time of discharge from the hospital, the consulting physician was of the view that she was in a sufficiently sound physical condition to be discharged.

Notary Epa stated in evidence that he received instructions to prepare the Last Will from the deceased while she was in hospital. He further stated that, at the time such instructions were given, the deceased was in a proper state of mind. The Notary also testified that, at the time of execution of the Last Will, the deceased indicated that she was unable to place her signature. He then caused her thumb impression to be placed on the Last Will instead of her signature.

The Notary was subjected to extensive cross examination regarding a rectification in the attestation relating to the thumb impression. The said rectification appeared to have been effected by using a different typewriter.

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(එම නොතාරිස් සහතිකය වෙනස්යතුරුලියනයකින් යතුරුලියනය කොට ඇති බවට අධිකරණයේ අවධානයට යොමු කරවයි.)

Vide page 286 of the appeal brief

The Respondents challenged the genuineness and validity of the will. In such an instance, the burden is on the propounder of a will to prove the fact of execution, the testator's mental competency, the testator's knowledge and approval of the contents of the Will. If suspicion arises in relation to any of these matters, the propounder must remove such circumstances. This principle is reflected in ***Andrado v Silva and others* [22 NLR 4]** and ***Kanagaratnam v Ananthathurai* [46 NLR 302]**. Accordingly, where the genuineness of a Will is put in issue, the initial burden rests on the propounder of the Will to prove its validity.

Medical evidence establishes that, at the time of execution, the deceased was of sound and disposing mind. It also indicates that she was in control of her physical faculties. The Notary likewise testified that the deceased had the necessary mental

capacity. It is in evidence that, upon the instructions of the deceased, the Last Will had been prepared two days before its execution.

The evidence of Notary Epa establishes that he had known the deceased since 1984, both personally and in relation to her business affairs. The Notary stated that the deceased was not in a position to place her signature on the Will, but was capable of placing her thumb impression. He stated that he therefore proposed that she place her thumb impression on the Will. However, in evidence in chief, the Notary stated that the deceased herself said that she was unable to place her signature, and that he then decided that her thumb impression should be placed.

In all the above circumstances, a question arises as to whether the decision not to place her signature on the Will was made by the deceased herself or by the attesting Notary. The learned District Judge considered this matter in the light of the decisions of this Court in ***Fernando v De Silva* [(2002) 2 SLR 121]** and ***Sithamparanathan v Mathuranayagam* [73 NLR 53]**. In the above cases, the court was of the view that the evidence of the proctor who prepared the Will was not conclusive on the mental capacity of the testator. The court held that the judge must consider whether the mental faculties of the testatrix retained sufficient strength to fully comprehend the testamentary act about to be done.

In the present case, the trial Court concluded that sufficient evidence had not been led regarding the mental or physical condition of the deceased at the time of signing the Last Will.

In ***Rajasuriar v Rajasuriar* [39 NLR 494]**, the Court considered the proof required where a Will is executed by a mark rather than by signature. Where a Will is executed by a thumb impression, it must be clearly established that the mark was affixed by the testator with the intention of giving effect to the Will. The validity of the execution does not depend only on the presence of a mark but also depends on proof that the testator knew and approved the contents of the document. That was one of the main contradictions considered by the trial Judge related to the attesting witnesses.

According to the Notary's evidence, he met the attesting witnesses at the hospital when the document was taken there to obtain the deceased's signature. He also stated that he did not know the witnesses until he went to the hospital. However, the Notary had also testified that he typed the entire Last Will, including the names of the witnesses, before the document was taken to the hospital for execution. This contradicted his position that he did not know the witnesses until he came to the hospital. The witnesses had signed soon after the deceased placed her thumb impression.

The contradiction becomes more significant when considered together with the rectification of the attestation clause. The Notary stated that the attestation had to be rectified because the Last Will had been typed before it was taken to the hospital for execution. It is clear that the rectification was performed after the deceased had placed her thumb impression.

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උ : මේ වෙනස් කිරීම කර තිබෙන්නේ වර්ථ මහත්මිය අත්සන් කළාට පස්සෙයි.

ප්‍ර : මෙම අන්තිම කැමැති පත්‍රය සියළු පාර්ශවයන් අත්සන් කළාට පස්සේ මහත්මිය කාර්යාලයට යොමු කරලා යතුරුලියනය කිරීම මගින් වෙනස් කර තිබෙනවා?

උ : නෝතරිස් සහතිකය වෙනස් කර තිබෙනවා.

ප්‍ර : මහත්මිය පිළිගන්නවාද, නෝතරිස් සහතිකය අන්තිම කැමැති පත්‍රයට අයත් දෙයක් කියා?

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Vide page 288 of the appeal brief

On a consideration of the above matters, the concern whether the impugned Last Will was proved according to law is not confined to one isolated fact. The execution of Last Will No. 107 must be considered with the surrounding circumstances. Although the previous Last Wills had been signed by the deceased, the impugned will executed in the hospital had a thumb impression. The Notary's evidence

regarding the reason for using the thumb impression was not entirely consistent. There was a rectification in the attestation clause. There was also uncertainty regarding the attesting witnesses and their names being typed before or after the execution of the document.

These matters created circumstances of suspicion. Once suspicion arises, it is for the Petitioner-Appellant, as the propounder of the Will, to remove it. The fact that the Respondents did not call evidence will not shift that burden to the Respondents. The Petitioner-Appellant still had to satisfy the Court that the document marked P1 was the true and conscious testamentary instrument of the deceased.

In my view, the evidence led on behalf of the Petitioner-Appellant did not sufficiently remove the suspicious circumstances surrounding the execution of Last Will No. 107. Therefore, the District Court was correct to hold that the said Will was not duly proved, and the Civil Appellate High Court did not err in affirming that conclusion.

Accordingly, I answer the first question of law in the negative.

Second Question of Law

The second question of law necessitates an examination as to whether the learned District Judge ought to have invoked the power vested in him under section 149 of the Civil Procedure Code to frame an additional issue concerning prior Last Will No. 490.

Section 149 of the Civil Procedure Code provides as follows:

“The court may, at any time before passing a decree, amend the issues or frame additional issues on such terms as it thinks fit”

The use of the word “may” shows that the power under section 149 is discretionary. Judicial discretion must be exercised according to law, and with proper regard to the real dispute between the parties. The appellate court will not interfere merely because it may have taken a different view. Such interference

may only be justified where the discretion has not been exercised legally or where the court has failed to take into account a material consideration.

In *Wijewardena vs. Lenora* [60 NLR 457] the Court of Appeal set out the applicable principle in the following terms:

*“The mode of approach of an appellate Court to an appeal against an exercise of discretion is regulated by well established principles. It is not enough that the Judges composing the appellate Court consider that, if they had been in the position of the trial Judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion. It must appear that the Judge has acted illegally, arbitrarily or **upon a wrong principle of law** or allowed extraneous or irrelevant considerations to guide or affect him, or that he has mistaken the facts, **or not taken into account some material consideration**. Then only can his determination be reviewed by the appellate Court.”* (emphasis is mine)

The same approach was adopted in *Rohana v Shyama Attygala and Others*, (1999) 3 SLR 381 and Others, **when discussing section 18 of the Civil Procedure Code**, where the Court stated:

“The words ‘The Court may . . . in such terms as the court think just’ in section 18 create a discretionary power which must be exercised according to the principles applicable to the exercise of such a power. Vide Roberts v. Hopwood at 613. So long as the court has exercised its discretion judicially this court sitting in appeal cannot and will not disturb and interfere with such an order. On the other hand, this court may do so if it appears that some error has been made in exercising the discretion and that the Judge has acted illegally, arbitrarily or upon a wrong principle of law...”

Accordingly, the question for determination is not whether this Court would have framed the issues differently, but whether the learned District Judge failed to consider a matter that was necessary for the proper adjudication and

determination of the case. The existence and the legal effect of the previous Last Will No. 490 was a matter for consideration.

The Supreme Court in ***Kose Mohamed Sulaiha Umma v Ahamed Lebbe Assanar***, SC Appeal No. 174/2011, decided on 04/10/2023, explained the scope and limits of section 149 in the following manner:

“Section 149 of the Civil Procedure Code does not preclude a District Judge from framing a new issue after the parties have concluded their respective cases and at the time of the judgment is read out in open Court. On the contrary, it allows the District Judge to amend or frame additional issues before passing a decree.”

The Supreme Court then added the following qualification:

“However, a careful consideration of the provisions of the said Code shows that section 149 of the Code cannot be considered in isolation. Hence, the said section should be considered along with the other sections applicable to framing of issues and be interpreted in harmony with them. The analysis of the said provisions in the Civil Procedure Code show that the power conferred on the District Court by section 149 of the said Code to amend the issues before passing a decree is subject to the other restrictions imposed by the Code. When the sections relating to such matters are considered together the cumulative effect is that the discretion conferred by section 149 of the Civil Procedure Code on the District Court should be exercised subject to the following;

(a) a new issue cannot be framed which will have the effect of converting an action of one character into another,

(b) the issues shall not be altered or raise new issues to change the scope of the action and thus, deprive a party from obtaining reliefs already pleaded in the case,

(c) raising new issues shall not be prejudicial to a party to an action,

(d) it should be necessary to decide the real issue between the parties,

(e) it should be necessary to raise further issues in the interest of justice to adjudicate the dispute/s between the parties, and

(f) none of the parties should be taken by surprise and thereby it will adversely affect their respective cases.”

The framing of an additional issue in the present case would not have altered the fundamental character of the proceedings. The dispute was already testamentary in nature and, once the validity of the challenged Last Will was decided against the Petitioner, the status and legal effect of the immediately preceding Last Will necessarily became material to the determination of the case.

The court cannot presume that an earlier Last Will remains valid and operative merely because the subsequent Will is disproved. It must determine if the earlier Will was duly executed and proved in accordance with the law. Only upon a proper examination of these matters can the court determine whether the earlier Last Will represents the deceased's last valid testamentary disposition.

The need to consider the previous Last Will becomes clearer when the Prevention of Frauds Ordinance is examined.

Section 6 provides:

*“No Will, testament or codicil or any part thereof, shall be revoked otherwise than by the **marriage of the testator or testatrix or by another Will, testament or codicil** executed in manner herein before required or **by some writing declaring an intention to revoke the same** and executed in the manner in which a Will, testament or codicil is herein before required to be executed or **by the burning, tearing or otherwise destroying the same** by the testator or testatrix or by some person in his or her presence and by his or her direction, with the intention of revoking the same.”* (emphasis is mine)

Section 9 provides:

“Every Will, testament or codicil executed in manner herein before required shall be valid without any other publication thereof:

*Provided always that every such Will, testament or codicil shall, after the decease of the testator or testatrix, **be duly proved and recorded in the District Court** empowered by law to grant probate or administration in such case, according to such general rules of practice as may now or hereafter be made by the Judges of the Supreme Court.”* (emphasis is mine)

Section 6 recognizes only specific modes by which a Will may be revoked. Accordingly, an earlier Will may be revoked by a later Will only where the latter has been executed in the manner prescribed by law or where revocation has been effected through other legally recognized manner.

In those circumstances, once the validity of the challenged Last Will was displaced, it became incumbent upon the court to consider the legal status of the immediately preceding Last Will. This is particularly so because the existence of the earlier Wills were already before the court and formed part of the evidentiary record. Without such an inquiry, the court could not properly determine the true testamentary disposition of the deceased.

The primary objective of testamentary proceedings is to ascertain and give legal effect to the testamentary intention of the deceased, provided that such intention has been expressed in a manner recognised by law.

The resolution of these questions were indispensable to a proper adjudication of the testamentary issues arising in this case. It is for these reasons that the framing of an additional issue under section 149 of the Civil Procedure Code was both necessary and warranted.

The importance of framing such an issue is also supported by *Seylan Bank Ltd v Clement Charles Epasinghe* [SC CHC Appeal No. 39/2006, decided on **01.08.2017, at p. 7**]. The Court recognized that section 149 may be used even at the stage of judgment but emphasized that fairness may require an opportunity to lead evidence and make submissions. The Court stated:

“In this regard, in instances where a trial judge frames additional issues while the parties are in the process of presenting their evidence, the parties will have notice

of these additional issues and will have the opportunity to lead evidence on the additional issues and make submissions regarding them. But, the position will be different where a trial judge decides to frame additional issues only at the stage of writing the judgment, which is after the parties have closed their cases. In such instances, the parties will be denied that opportunity, unless the Court temporarily suspends the preparation of the judgment and affords the parties an opportunity to lead evidence on the additional issues and make submissions thereon, before the trial judge resumes preparing his judgment.”

In the present case, the issue concerning the prior Last Will involved both questions of fact and law. Its determination would have required an inquiry into the due execution of that Will and whether it had been duly proved before the District Court, and the legal effect, if any, on the subsequent testamentary instrument.

The parties should have been afforded an opportunity to address these matters fully. If necessary, they should also have been permitted to adduce further evidence relevant to those issues. The failure to frame an additional issue in that regard deprived the court of the proper factual and legal foundation upon which the true testamentary position of the deceased could have been determined.

For these reasons, the second question of law relating to section 149 must be answered in the affirmative. The learned District Judge should have considered the framing of an additional issue relating to the previous Last Will.

Consequential Relief

Having answered the questions of law, it is now necessary to determine the appropriate relief that should follow.

When this matter was taken up for argument on 24/03/2026, the learned Counsel informed this Court that steps had been taken in relation to the appointment of a new administrator. Having considered the submissions of learned Counsel, this Court called upon the respective counsel to inform Court on the present status of the estate of the deceased and the steps taken before the District Court.

The parties thereafter tendered post-argument written submissions dated 30/04/2026 apprising Court of the proceedings in the District Court of Colombo in Case No. DTS 387/2022, where a fresh grant had been made to the substituted administrator of the deceased's estate.

The material placed before this Court shows that an application had been filed in the District Court of Colombo for letters of administration in respect of the estate of the deceased. In that Application, the petitioner stated that the previous administrator, Mr. Ian Goonetilleke, passed away on 21/09/2021 and that presently a part of the estate of the deceased remained unadministered. The petition further disclosed the pendency of the present proceedings before this Court.

The documents submitted further indicated that the Application before the District Court had proceeded after due publication of notices. **No objections were filed by any party**, including the Petitioner-Appellant. Thereafter, the District Court appointed Mr. Bernard Gunathilake, the 2nd Respondent in the appeal before this Court, as administrator of the estate. It is further stated that the distribution of assets was completed, final accounts were filed, and the testamentary proceedings were terminated on 18th November 2024 with the consent of the parties before court.

These developments do not alter the answers to the questions of law before this Court. Nor do they remove the duty of the District Court, at the relevant time, to have considered whether an additional issue should have been framed under section 149 of the Civil Procedure Code in relation to the immediately preceding Last Will.

In *Nonohamy v Punchihamy* [31 NLR 220] it was held that the administration proceedings had been regularly concluded after the filing of the inventory and accounts. A later claimant then sought to reopen the administration proceedings on the basis that she was entitled to a share of the estate as an heir. The Supreme Court rejected that course and held as follows:

“Where a final account has been filed in administration proceedings and the estate declared closed, the Court has no power to reopen proceedings in order to entertain a claim to a share of the estate on the ground that the claimant is an heir.”

Lyall Grant J. further stated:

“In the present case the case was undoubtedly finally settled on the footing that the administratrix was the sole heir and no question arises of any amount not included in the estate, of debts not collected, or of shares not distributed to persons admittedly entitled to them.

The proceedings have been regularly conducted and regularly concluded on the footing that the administratrix was sole heir.

I can see nothing in the Code which entitles the Court to reopen such proceedings for the purpose of examining fresh claims nor do any of the cases cited support such a contention.”

However, these subsequent developments have a material bearing on the nature of the relief that may now be granted. Usually, where a material issue has not been tried or determined, an order of remittal may be the appropriate course. The present case, however, no longer stands in that position.

The administration of an estate cannot remain indefinitely unsettled and the purpose of a testamentary proceeding is to allow the estate to be lawfully administered. Where later proceedings have already addressed the administration of the estate, and where those proceedings were not objected to by the parties, it would be neither reasonable nor practical to remit the matter merely for a further inquiry on an issue that should have been framed at the inquiry stage.

I therefore take the view that, although the second question of law must be answered in the affirmative, the appropriate relief is not to send the matter back to the District Court.

I must emphasize that this conclusion is confined to the particular facts and circumstances of the present case. It should not be understood as diminishing the duty of a District Court, in an appropriate case, to frame an additional issue under section 149 of the Civil Procedure Code where the validity or the enforcement of an earlier Last Will becomes necessary for the proper determination of testamentary proceedings.

This judgment should not be construed as establishing a general rule that subsequent administration proceedings will invariably preclude an order of remittal. The conclusions reached in the present case are founded on the surrounding circumstances now before this Court, namely, the death of the original administrator, the considerable lapse of time, the subsequent uncontested proceedings before the District Court, the appointment of a new administrator, the filing and approval of final accounts, the distribution of the assets of the estate, and the termination of proceedings. It is the cumulative effect of these circumstances that renders remittal neither practical nor conducive to the proper administration of justice.

Accordingly, although the questions of law are answered in the manner set out above, the appeal is dismissed.

Appeal dismissed. No costs ordered.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree

Judge of the Supreme Court