

October 20, 1930. AKBAR J.—

This is an application for probate by the petitioner who is a daughter of the deceased Mathes. The will it is true is an old one dated March 28, 1875, but I think it has been satisfactorily proved that the petitioner was ignorant of the existence of the will probably due to the fraud committed by her own mother with the connivance of the executors mentioned in the will.

The District Judge has refused probate purporting to follow the case of *Re Last Will and Testament of A. Hendricks and S. Hendricks*¹ on the ground that the application is stale and that prescriptive rights have been acquired to the properties which had been dealt with on the footing of an intestacy. As a matter of fact there is no evidence to prove that any such prescriptive rights have been so acquired.

The case of *Re Last Will and Testament of A. Hendricks and S. Hendricks* (*supra*) was followed in the case of *Re Estate of Usuph Lebbe and his wife Serja*² and *De Silva v. Mendishamy*,³ and these cases seem to show that the Court looks upon applications for probate from a different standpoint to applications for letters of administration. Whether this is so or not does not affect this case because those cases clearly show that probate is allowed for whatever it is worth if it is satisfactorily proved to the Court that the petitioner had ample grounds to account for the delay. As I have stated this has been very satisfactorily proved in this case and there is no reason why probate should not be allowed. As a matter of fact there is a partition case pending and there is no reason why this question of prescription should not be decided in each case as it arises. It may be that there are some properties which have not been dealt with on the footing of an intestacy.

There is another point in this case which cannot be decided offhand in this application for probate, viz., that all

¹ 4 N. L. R. 24.

² 6 N. L. R. 194.

³ 3 *Brown's Reports* 103.

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Present : Akbar J. and Jayewardene A.J.

CAROLINE v. EDDIE *et al.*

150—D. C. (*Inty.*) Galle, 6,496.

Probate—Stale application—Delay satisfactorily explained.

An application for probate will not be refused on the ground that it is stale, where the delay has been satisfactorily explained.

A PPEAL from an order of the District Judge of Galle.

Ranawaka, for appellant.

Rajapaksa, for respondent.

the properties seem to have been given subject to a life interest in favour of the widow of the deceased, and it has been proved that this widow died three years ago, and a Court may therefore be prepared to hold that no question of prescription can arise as prescription can only begin to run on the death of the person having a life interest in the properties.

For these reasons I think the District Judge was wrong in disallowing the application for probate. I would therefore allow the application with costs in this Court and in the Court below.

JAYEWARDENE A.J.—I a gree.

Application allowed.
