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**MANGALIKA**  
**vs.**  
**SUGANDI FERNANDO AND OTHERS**

COURT OF APPEAL.  
WIJAYARATNE, J AND  
SRISKANDARAJA, J.  
CALA 446/2003.  
DC MARAWILA 219/P.  
FEBRUARY 10, 2005.

*Civil Procedure Code, sections 524, 534, 534(2) and 754(2) - Testamentary proceedings - Intervient petitioner producing last will - Application dismissed - Last will a forgery - Letters granted - Order or judgment?*

On a preliminary objection taken whether the order is an interlocutory order or a judgment,

**HELD:**

- (1) The application of the intervenient petitioner is one under section 524 and Court made order dismissing the application in terms of section 534.
- (2) The order has the effect of a final judgment in as much as it deals with the question of proof of last will and the entitlement of the intervenient petitioner to have the probate granted.
- (3) The order finally disposed the matter of last will and the application of the intervenient petitioner for probate thereof. It is a judgment. Appeal lies.

**APPLICATION** for leave to appeal from judgment of the District Court of Marawila.

*Mahinda Ralapanawa* for intervenient-petitioner.

*S. F. A. Cooray* for petitioner-respondent.

*Cur.adv.vult.*

August 01, 2005.

**WIJAYARATNE, J.**

The petitioner-respondent instituted testamentary proceedings to administer the intestate estate of deceased Warnakulasooriya George Henry Moraes Fernando in the District Court of Marawila. The intervenient-petitioner intervened in those proceedings producing Last Will purported to have been left by the deceased and claiming probate to himself on the said Last Will which is marked P1 or X. The learned District Judge after inquiry into such application and the objections shown, dismissed the claim of the intervenient-petitioner holding that the purported Last Will submitted was a forgery. Aggrieved by such order the Intervenant-petitioner made this application for leave to appeal. The petitioner-respondent objected to leave being granted on the ground that the intervenient-petitioner has no right to make a leave to appeal application in terms of section 754(2) of the Civil Procedure Code because the order appealed from rejecting to admit the purported Last Will is a final judgment having the effect of a final judgment made by the Court.

The application of the intervenient-petitioner is one made in terms of section 524 of the Civil Procedure Code and Court made order dismissing the application in terms of section 534 and granted letters of administration to the petitioner-respondent. This order has the effect of a final judgment in as much as it deals with the question of proof of Last Will and the entitlement of the intervenient-petitioner to have the probate granted. In terms of section 534(2) of the Civil Procedure Code, since the letters of administration has been granted to the petitioner-respondent, the intervenient-petitioner is not entitled to renew his application. Accordingly this order finally disposed of the matter of Last will and the application of the intervenient-petitioner for probate thereof as between the parties. Therefore the proper procedure would be to prefer an appeal and not make an application for leave to appeal.

I uphold the preliminary objection raised on behalf of the petitioner-respondent and dismiss the application of the intervenient-petitioner for leave to appeal with costs fixed at Rs. 5,000/-

**SRISKANDARAJAH, J.** — *I agree.*

*Preliminary objection upheld.  
Application dismissed.*