

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.193 of 2013

Smt. Kaushalya Devi

... .. Appellant/s

Versus

Ramnandan Singh & Anr.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ram Sevak Choudhary
For the Respondent/s :

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL ORDER

13 03-10-2018

Seen the office note and record.

From perusal of office note, it appears that the proposed legal heir no. 1 of deceased appellant is already on record as respondent no. 2. Proposed legal heir nos. 1 and 3 of said deceased appellant have appeared in the case and notice sent upon proposed legal heir no. 1(iv) has been received by her daughter-in-law. By filling affidavit, the appellant has stated that the aforesaid proposed legal heir is living with her daughter, hence service of notice upon the proposed legal heir no. 1(iv) is deemed valid.

The record further indicates that the appellant has filed this miscellaneous appeal under Section 299 of the Indian Succession Act for setting aside the contested judgment dated 27.09.2011 passed by learned Additional District & Sessions



Judge, F.T.C. IV, Lakhisarai in Title Suit No. 18 of 1998 (probate case).

Division Bench of this Court in the case of ***Kusheshwar Purbe vs. Shri Shri 108 Ram Janaki Jee and others*** reported in **2017 (3) PLJR 791** has been pleased to rule that the appeals filed under Section 299 of the Indian Succession Act in a contentious proceeding as envisaged under Section 295 shall be treated as First Appeal and would be governed by the procedure prescribed for such an appeal.

In view of the aforesaid decision of this Court, this miscellaneous appeal filed against the judgment passed in contested probate case is not maintainable rather First appeal is maintainable against the same.

Hence, appellant is directed to take step for conversion of this miscellaneous appeal into First Appeal within one week after Durga Puja holiday.

(Prakash Chandra Jaiswal, J)

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