

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.794 of 2012

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Rama Shankar Dubey

.... Appellant/s

Versus

Dinbandhu Pandey & Ors.

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL ORDER

13 30-10-2018

Heard learned counsel for the appellant.

From perusal of the record, it appears that the appellant has filed this miscellaneous appeal under Section 299 of the Indian Succession Act for setting aside the judgment dated 24.09.2011 and decree dated 15.10.2011 passed by the 6th Additional District Judge, Rohtas at Sasaram in contested Probate Case bearing Title Suit No. 05 of 2003.

A 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 steps for conversion of this miscellaneous appeal into First Appeal during course of the day.

(Prakash Chandra Jaiswal, J)

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