

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.1151 of 2017**

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Prem Kumar Tiwari

.... .... Appellant/s

Versus

Ram Janam Tiwari & Ors

.... .... Respondent/s

=====

**Appearance :**

For the Appellant/s : Mr. Sudhir Kumar Singh

For the Respondent/s : Mr.

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

04 09-10-2018

Heard the parties.

From perusal of the record, it appears that the appellants have filed this miscellaneous appeal under Section 299 of the Indian Succession Act for setting aside the judgment and order dated 18.10.2017 passed by Additional District Judge-VII, East Champaran at Motihari in contested Probate Case No. 12 of 1997.

The 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, appellants are directed to take step for conversion of this miscellaneous appeal into First Appeal within one week after Durga Puja Holidays.

**(Prakash Chandra Jaiswal, J)**

Trivedi/-

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