

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.656 of 2016**

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Nunu Pathak, Alias Mani Kant Pathak

... .. Appellant/s

Versus

Kamni Devi and Ors.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr.Jyotindra Pratap Singh  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE S. KUMAR**  
**ORAL ORDER**

5      13-08-2019                      Heard the parties.

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 and order dated 21.04.2016 passed by learned Sixth Additional District Judge, Vaishali at Hajipur in Probate Case No. 25 of 2006.

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 within four weeks.

**(S. Kumar, J)**

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