

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.218 of 2019

Shrimati Ramjhadi Devi @ Ramjadi Devi,

... .. Appellant/s

Versus

The Estate of the Deceased

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Kumar, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

3 21-11-2024 Learned counsel appearing for the appellant is heard on the point of maintainability. He submits that the instant appeal has been filed under section 299 of the Indian Succession Act, 1925 which reads as :-

“299. Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals.”

2. In respect of maintainability of this appeal as being first appeal, learned counsel has placed reliance upon the judgment of this Court passed by the Hon’ble Division Bench in the reference matter having arisen out of a batch of first appeal No. 633/1998 and analogous appeals and the relevant paragraph upon which the reliance has been placed is being reproduced for



ready reference:-

“We have not been persuaded to take a different view than that taken in Pressy Pinto (supra). We respectfully agree to the view expressed by the Bench in the said case. Thus we come to the conclusion that the issue in Most. Kewala Devi (supra) regarding classification of an appeal under Section 299 of the Indian Succession Act has not been correctly decided. Accordingly, we answer the reference by holding that an appeal under Section 299 of the Indian Succession Act finally disposing of a contentious proceeding, as envisaged under Section 295, shall be treaded as regular First Appeal and would be governed by the procedure prescribed for such an appeal. It is further held that an appeal filed under Section 384 (2) of the Indian Succession Act shall be treated as Misc. Appeal and would be governed by the procedure prescribed for such an appeal.”

3. Having perused the provisions of section 299 of the Indian Succession Act, 1925 and in the light of the observations made by the Hon’ble Division Bench of this Court in the above mentioned referred case and in the First Appeal No. 39/2022, the law is well settled that an appeal filed under section 299 of the Indian Succession Act against a final order passed in non-contentious probate proceeding should be treated as Miscellaneous Appeal. In this matter, the impugned order shows



that the same was passed *ex parte* and there was no one to contest the probate case before the trial court, so, the instant appeal in the form of regular First Appeal is not maintainable and the same ought to have been filed as Miscellaneous Appeal. As such, the Stamp Reporting Section has rightly pointed out the defect concerned to the maintainability of this appeal. Accordingly, the instant appeal is not maintainable as a First Appeal, however, the appellant is given a liberty to convert the same as Miscellaneous Appeal and for this purpose, two weeks' time is granted to the appellant's counsel to take necessary steps and after converting the same, the appellant's Miscellaneous Appeal be listed before appropriate bench.

(Shailendra Singh, J)

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