

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No. 546 of 2016

Dumani Soren and others	V e r s u s	 Appellants
Kapre Besra and others		 Respondents

CORAM: HON'BLE MR. JUSTICE DR S. N. PATHAK

For the Appellant	: Mr. J.P. Jha, Sr. Advocate Mr. Aishwarya Prakash, Advocate
For the Respondents	: xxx

07/22.09.2022 Concurrent finding of the Court has been challenged in this second appeal.

It has been argued by Mr. J.P. Jha, learned Sr. Counsel appearing on behalf of the appellant assisted by Mr. Aishwarya Prakash that he is conscious of the fact that the Court seldom interferes in the case of concurrent finding of the Courts below. However, learned Sr. Counsel submits that while coming to the conclusion, the Courts below have erred in law and have failed to consider Order IX Rule 8 and Order IX Rule 11 Code of Civil Procedure. Learned Sr. Counsel further argues that Section 114 of the Evidence Act has also not been considered. Learned Sr. Counsel places heavy reliance in the Judgment reported in **AIR 2007 SC 2025** and **AIR 1927 PRIVY COUNCIL 230**.

This Second Appeal is admitted by framing the following substantial question of law:

- (I) *Whether any case of defendant nos. 4 and 5 through their written statement can be accepted, as has been done by the learned Courts below in the absence of any oral or documentary evidence regarding accepting or denying the case of the plaintiffs through their written statement?*
- (II) *Whether for non-adducing any evidence by the defence and for not cross-examining the witness of the plaintiffs by the defendants, an adverse inference could have been drawn by the learned Court below disbelieving the defendant's case?*
- (III) *Whether the learned Courts below have failed to frame an issue in the case as to whether in absence of any evidence oral or documentary and making any pairvi by the defendants, the case of the plaintiffs was deemed to have*

been accepted and clear admission by the defendants and whether the suit should have been decreed ex-parte?

Any other substantial question of law will be considered at the time of hearing.

Call for lower court records.

Issue notice to respondent nos. 1 to 6 for which requisites etc. under registered process with A/D as well as under ordinary process must be filed by the appellants within three weeks after Durga Puja holidays.

Put up this case in usual course.

(Dr. S.N. Pathak, J.)