

IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 139 of 2025

Tinku Kumar		...	...	Appellant
	Versus			
Munshi Modi and Ors.		...	...	Respondents

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant : Mr. Saibal Mitra, Advocate
For the Respondents :

09/28.11.2025

Learned counsel for the appellant is present.

2. Learned counsel for the appellant has submitted that the present 1st appeal filed under the provisions of section 299 of Indian Succession Act, 1925 arising out of Original Suit No. 2 of 2023 is maintainable in view of the observation of the Hon'ble Division Bench of this Court vide order dated 07.10.2021 in F.A. No. 186 of 2019. He has referred to paragraph 38 of the said order which is quoted as under:

“38. Having considered the rival submissions and the discussions made above, the view of this Court is summarized as under:

(I) The proceeding under Sections 272 and 273 read with Section 276 and 278 as well as Section 295 and 299 of the Indian Succession Act, 1925 is not a regular suit in substance, though it may be for procedural purpose, as the institution of suit is not on presentation of plaint as per the requirement under Section 26 of the Code of Civil Procedure rather its presentation is on a petition or application.

(II) The orders passed finally by the competent authority granting probate or administration or refusing the same in a contentious case.

may be judgment under Section 2(9) of the Code of Civil Procedure but not a decree stricto sensu.

(III) Therefore, there shall be no requirement of preparation of a decree in such type of proceeding under Indian Succession Act and even if the decree is prepared, it would be immaterial as there is no requirement for doing that.

(IV) In view of the provisions of appeal, the nomenclature would be of no value, real issue is as to appeal is to be filed under which provisions of law. Therefore, the nomenclature

may remain a First Appeal but to be filed under Section 299 of the Indian Succession Act and for the procedural purposes the provisions of Code of Civil Procedure would be applicable, as is applicable for filing of appeal.

(V) It cannot be termed as an appeal under Section 104(1) of the Code of Civil Procedure.”

3. Learned counsel for the appellant submits that the present 1st appeal is maintainable.
4. Considering the aforesaid submissions and the judgement of the Hon’ble Division Bench, the present 1st appeal is held to be maintainable.
5. **Admit.**
6. Call for the records from the learned court concerned.
7. Issue notice to the respondents under ordinary process as well as speed post for which requisites etc. be filed within two weeks.
8. Office to track speed post delivery and prepare appropriate office note with regard to service of notice.
9. Post this case on 22nd January 2026.
10. Let this order be communicated to the learned court concerned through ‘FAX/email’.

(Anubha Rawat Choudhary, J.)

Pankaj