

IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A. No. 441 of 2019

1. Surendra Kumar Sharma @ Surendra Sharma, aged about 60 years, son of Late Mehilal Sharma, resident of Bhandani Nagar, Near Pawan Krus School, Bhurkunda, P.O.-Bhadani Nagar, P.S.-Bhurkunda, District-Hazaribagh
2. Sanjeev Kumar Sharma, aged about 46 years, son of Basudeo Sharma, resident of Guru Nanak Colony, Belwatikar, P.O.-Daltonganj, P.S.-Daltonganj, District-Palamau

... .. **Appellants**

Versus

- 1.(i) Shakuntala Kunwar, W/o Late Kanhai Sharma
- 1.(ii) Uday Sharma
- 1.(iii) Prakash Sharma
Both S/o Late Kanhai Sharma
- 1.(iv) Kiran Devi, W/o Manoj Sharma, D/o Late Kanhai Sharma
- 1.(v) Khusboo Devi, W/o Sunil Kumar Vishwakarma, D/o Late Kanhai Sharma
All residents of Mohalla Gurunanak Colony, Belwatika, P.O.-Daltonganj, P.S.-Medininagar, District-Palamau (Jharkhand)
2. Shyam Bihari Sharma, S/o Nanhku Mistry, resident of Mohalla Belwatikar, P.O. & P.S.-Daltonganj, District-Palamau
3. Collector of the District Palamau, P.O. & P.S.-Daltonganj, District-Palamau

... .. **Respondents**

CORAM: HON'BLE MR.JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants	: Mr. Kundan Kumar Ambastha, Advocate
	: Md. Abdul Wahab, Advocate
For the Respondents	: Mr. Akhouri Prakhar Sinha, Advocate
	: Mr. Ratnesh Kumar, S.C. (L&C)-I

Order No.22/ Dated: 29th October, 2025

Mr. Akhouri Prakhar Sinha, learned counsel appearing for the respondents has made a preliminary objection with respect to the maintainability of this Letters Patent Appeal as according to him this appeal arises out of order passed in Misc. Appeal No.15 of 2004 under Section 299 of the Indian Succession Act and therefore, the present appeal is not maintainable. In such context he has referred to an order passed in L.P.A. No. 552 of 2023 dated 17.01.2024.

2. Mr. Kundan Kumar Ambastha, learned counsel for the appellants has submitted that the present Letters Patent Appeal is maintainable and he has referred to the judgment in the case of *“Subal Paul v. Malina*

Paul” reported in (2003) 10 SCC 361.

3. This Letters Patent Appeal is directed against the order dated 29.01.2019 passed by the learned Single Judge in Misc. Appeal No. 15 of 2004 whereby and where under the appeal preferred by the appellants under Section 299 of the Indian Succession Act against the order refusing to grant probate has been dismissed.

4. Mr. Kundan Kumar Ambastha has relied on the case of “*Subal Paul v. Malina Paul* (Supra) and the same has been considered by a Division Bench of this Court in L.P.A. No. 552 of 2023 and the relevant reads as follows:-

“10. In LPA No. 208 of 2011, a coordinate Bench of this Court has held that after incorporation of section 100-A, intra-court appeal against the order of a learned Single Judge passed under section 299 of the Indian Succession Act shall not lie and, that, the judgment in “*Subal Paul*” shall not apply to the proceedings under section 299 of the Indian Succession Act after the amendment in the Code of Civil Procedure.

11. In LPA No. 208 of 2011, this Court has held as under:

“This was a case under special statute where the proceeding originated under a special act and appeal was also provided in that wherein no further appeal was provided and objection was that instead of approaching the Supreme Court the party should approach first to the Division Bench of the High Court by preferring an appeal as LPA which objection has been rejected by the Hon'ble Supreme Court for the reason mentioned above which we have narrated indicating that in special statute where appeal is provided by that very statute to the Single Bench of the High Court and the provision of intra court appeal in Letters Patent remains, by virtue of Section 100A C.P.C., the right of appeal under Letters Patent has been taken away. In view of the above legal position, the argument of the learned counsel for the appellant that only appeals which have been provided by the C.P.C. under the provisions of Section 96, 100 or 43 Rule 1 etc. are the matters where the L.P.A. is not maintainable, has no force.

The same view has been taken by the Hon'ble Supreme Court in the case of Geeta Devi & Anr. (Supra) wherein appeal arising out of the Award passed by the Motor Accident Claims Tribunal under Special Statute, the Motor Vehicles Act Hon'ble Supreme Court held that the

Division Bench of the High Court rightly dismissed the appeal holding it not maintainable.

In the case of Mohd. Saud and Another (Supra) also the Hon'ble Supreme Court has considered the scope of 100A C.P.C.. However, that was matter arising out of an order passed under section 43 Rule 1 CPC subject to appeal under order and C.P.C. against which the L.P.A. was preferred and in that situation the Hon'ble Supreme Court held that the appeal was barred. However, this judgement is not relevant for our purpose because of the reason that learned counsel for the appellant has not disputed nor this is a controversy involved in this case where any order which is appealable under the Code of Civil Procedure before the High Court then the intra court appeal is not maintainable because of the bar u/s 100A C.P.C.

In view of the above reasons, we are of the considered opinion that the appeal preferred by the appellant is not maintainable, hence dismissed.”

12. In “Mohd. Saud and Another v. Dr. (Maj.) Shaikh Mahfooz and Others” (2010) 13 SCC 517 section 100-A of the Code of Civil Procedure has been considered. The Hon'ble Supreme Court has held as under:

“7. The Full Bench by the impugned judgment has held that after the introduction of Section 100-A with effect from 1-7-2002, no letters patent appeal shall lie against the judgment or order passed by a learned Single Judge in an appeal. The Full Bench has held that the decision of the Division Bench of the High Court in Birat Chandra Dagra v. Taurian Exim (P) Ltd. [(2006) 11 Ori LR 344 (Ori)] (vide p. 5) does not lay down good law while the decision of the Division Bench in V.N.N. Panicker v. Narayan Patil [(2006) 102 CLT 479 (Cut) : (2006) 2 Ori LR 349 (Ori)] lays down the correct law. The Full Bench has further held that after the amendment of Section 100-A w.e.f. 1-7-2002, no LPA shall lie against the order or judgment passed by a learned Single Judge even in an appeal arising out of a proceeding under a special Act.”

13. The aforesaid judgment in LPA No. 208 of 2011 is binding on us and our attention has not been drawn to any contra judgment of this Court to refer this matter to a larger Bench for an authoritative pronouncement on this question. Moreover, the issue of whether or not the present Letters Patent Appeal shall lie is covered by the judgment of the Hon'ble Supreme Court in “Mohd. Saud”.

5. On consideration of the aforesaid order dated 17.01.2024 we find justification in the preliminary objection raised by the learned counsel for the respondents and consequently we dismiss this appeal as being not maintainable.

6. Pending I.A.'s if any stands disposed of.

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

29.10.2025
Basant/Arpit