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SLP(C)No. 17268 OF 2000

ITEM No.204

Court No. 8

SECTION XVII  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.17268/2000

(From the judgement and order dated 16/05/2000 in SA 353/93  
of The HIGH COURT OF PATNA)

BIRENDRA KUMAR DUBEY & ANR.

Petitioner (s)

VERSUS

GIRJA NANDAN DUBEY & ORS.

Respondent (s)

( With Appln(s). for c/delay in filing SLP )  
( For Final Disposal )

Date : 31/08/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SYED SHAH MOHAMMED QUADRI  
HON'BLE MR. JUSTICE S.N. PHUKAN

For Petitioner (s) Mr.Atul K.Sinha,Adv.  
Mr. Devendra Singh,Adv.

For Respondent (s) Mr. S.K. Sinha,Adv.

UPON hearing counsel the Court made the following  
O R D E R

.....L....I.....T.....T.....T.....T.....T.....J....J  
.SP2

Delay is condoned.

Leave is granted.

The appeal is allowed in terms of the signed order.

There shall be no order as to costs.

.SP1

[Naresh Kumar]  
Court Master

[Kanwal Singh]  
Court Master

[Reportable signed order is placed on the file.]

.PA  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6066 OF 2001

(Arising out of SLP(C) No. 17268/2000)

Birendera Kumar Dubey and Anr.

...Appellant (s)

Versus

Girja Nandan Dubey and Ors.

...Respondent (s)

O R D E R

Heard the learned counsel for the parties.

Delay is condoned.

Leave is granted.

This appeal is directed against the judgment and decree of the High Court of Patna in Second Appeal No. 353/1993 dated May 16, 2000. By the impugned judgment, the High Court set aside the judgment and decree of the first Appellate Court and restored that of the Trial Court.

A perusal of the judgment shows that the High Court has not framed any substantial question of law before proceeding to dispose of the Second Appeal. This Court has in Panchugopal Barua and Ors. Vs. Umesh Chandra Goswami and Ors. ( 1997 (4) SCC 713); Kshitesh Chandra Purkait Vs. Santosh Kumar Parkait and Ors. ( 1997 (5) SCC 438); The Tehsildar and Ors. Vs. G.V. Gopalakrishnappa and Ors. ( disposed of on 25.9.2000) and Dyamappa H. Gondar Vs. Ganeshappa S. Sudambi and Anr. ( disposed of on 28.9.2000), held that having regard to the provisions of Sections 100 and 101 C.P.C., the High Court can entertain the Second Appeal only when a substantial question of law arises from the judgment of the first Appellate Court. As the High Court has not framed such a question but decided the Second Appeal on fact and reversed the first Appellate Court s judgment and decree, we have no option except to set aside the judgment and decree under appeal and remand the case to the High Court for fresh disposal according to law.

The judgment and decree, under appeal, are set aside, the Second Appeal is restored to the file of the High Court. The High Court will now consider whether any substantial question of law arises from the judgment of the first Appellate Court and if so, to frame the question and dispose of the appeal on that question. The appeal is accordingly allowed. There shall be no order as to costs.

.....J.  
(SYED SHAH MOHAMMED QUADRI)

.....J.  
(S.N. PHUKAN)

New Delhi,  
August 31, 2001.