

# SUPREME COURT OF INDIA

Birendera Kumar Dubey

Vs.

Girja Nandan Dubey

(S.M. Quadri and S.N. Phukan JJ.)

31.08.2001

## ORDER

1. Heard the learned counsel for the parties.
2. Delay is condoned.
3. Leave is granted.
4. 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.
5. A perusal of the judgment shows that the High Court not framed any substantial question of law before proceeding to dispose of the Second Appeal. This Court has in Panchugopal Barug and Ors. Vs. Umesh Chandra Goswami and Ors. ; shiresh Chandra Purkait Vs. Santosh Kumar Parkait and Ors. ; 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 Section 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.
6. 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 of that question. The appeal is accordingly allowed. There shall be no order as to costs.