

IN THE HIGH COURT OF JHARKHAND AT RANCHI
LPA No.21 of 2024

Sunder Ram Raut aged about 85 year, S/o Late Sakhi Chand Ram Raut, R/o Village Matwari, P.O. & P.S. Sadar, District- Hazaribagh, Jharkhand

... .. **Appellant**

Versus

Ajay Kumar Choubey, S/o Late Nandlal Choubey, R/o Neel Kamal Bhawan, Matwari, P.O. – Sadar, P.S.- Sadar (Korrah), District – Hazaribagh

... .. **Respondent**

CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellant

: In person

For the Respondent

:

Order No.4 / Dated 15th April, 2024

This Letters Patent Appeal has been filed against the writ court's order dated 29th September 2023.

2. Before the writ court, a challenge was laid to the order dated 13th March 2019 in Title Suit No.185 of 2015 passed by the Civil Judge (Senior Division-I) at Hazaribagh; the writ petition was filed under Article 227 of the Constitution of India.

3. It is well settled that even if the writ petition was filed under Article 226 of the Constitution of India such labeling is irrelevant and liable to be ignored, in view of the judgment rendered in "*State of Jharkhand v. Surendra Kumar Srivastava and others*" (2019) 4 SCC 214. There the Hon'ble Supreme Court observed that had an objection to labeling of the writ petition was raised the same could have been corrected by the writ petitioner by amending the cause title of the writ petition under Article 227 of the Constitution of India.

4. In "*Surendra Kumar Srivastava*" the Hon'ble Supreme Court observed as under:

“6.1. With respect to the first submission of the learned counsel for the appellants that the writ petition filed by Respondents 1 to 3/plaintiffs for a

writ of *certiorari* to quash the order dated 7-4-2015 passed by the Civil Judge (Junior Division) and the order dated 21-4-2015 passed by the District Judge was not maintainable in view of the judgment of the three-Judge Bench in *Radhey Shyam v. Chhabhi Nath*, there cannot be any dispute to the law laid down by this Court in *Radhey Shyam v. Chhabhi Nath*, but in the facts of the present case, we do not propose to unsettle the judgment of the High Court on the above ground due to two reasons, firstly, in the High Court, the appellants, who were respondents in the writ petition, did not challenge the maintainability of the writ petition under Article 226 of the Constitution of India, and secondly, had the appellants raised the above objection regarding maintainability of the writ petition, the course open for plaintiffs/Respondents 1 to 3 was to amend the cause-title of the writ petition under Article 227 of the Constitution, and such a writ petition under Article 227 would have been clearly maintainable.”

5. This is also quite a settled proposition that against the order passed under Article 227 of the Constitution of India, a Letter Patent Appeal shall not lie. The proposition in law to this effect has been elucidated by the Hon’ble Supreme Court in “*Ram Kishan Fauji v. State of Haryana*” (2017) 5 SCC 533 wherein the Hon’ble Supreme Court held as under:

“41. We have referred to these decisions only to highlight that it is beyond any shadow of doubt that the order of the civil court can only be challenged under Article 227 of the Constitution and from such challenge, no intra-court appeal would lie and in other cases, it will depend upon the other factors as have been enumerated therein.”

7. While so, LPA No.21 of 2024 is held not maintainable and disposed of as such.

(Shree Chandrashekhar, A.C.J.)

(Navneet Kumar, J.)

R.Kumar