CASE NO.:
Appeal (civil) 6060 of 2001

PETITIONER:
BIRENDERA KUMAR DUBEY AND ANR.

RESPONDENT:
GIRJA NANDAN DUBEY AND ORS.

DATE OF JUDGMENT: 31/08/2001

BENCH:
SYED SHAH MOHAMMED QUADRI & S.N. PHUKAN

JUDGMENT:
JUDGMENT

2001 supp(2) SCR 473

The following Order of the Court was delivered :

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., v. Umesh Chandra
Goswami and Ors., [1997] 4 SCC 713; Kshitesh Chandra Parkait v. Santosh
Kumar Parkait and Ors., [1997] 5 SCC 438; The Tehsildar and Ors. v. G. V.
Gopalakrishnappa and Ors. disposed of on 25.9.2000 and Dyamappa H. Gondar
v. 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.