

AD-23
Ct No.16
05.05.2026
TN

SAT 62 of 2026
IA No: CAN 1 of 2026

Mrityunjay Majumdar
Vs.
Smt. Dipti Karmakar and others

Mr. Kushal Chatterjee,
Mr. Koushik Panja,
Mr. Shibjit Mitra

.....for the appellant

1. The present second appeal has been preferred against a judgment whereby the First Appellate Court affirmed the dismissal of the plaintiff/appellant's suit for declaration that a sale deed executed by defendant nos. 3 and 4 in favour of defendant nos. 1 and 2 is void and inoperative and the consequential relief of permanent injunction.
2. Learned counsel appearing for the appellant argues that both the appellant and the defendants/respondents nos. 3 and 4 are Class-I heirs of the original owner of the subject property.
3. Learned counsel submits that since the appellant, as such first class heir, has a right of prior purchase under Section 22 of the Hindu Succession Act, 1956 in consonance with the same, the plaintiff/appellant filed the suit for declaration of the sale deed executed by the defendant nos. 3 and 4/co-sharers in favour of third parties (defendant nos. 1 and 2) as void and inoperative. However, both the courts failed to appreciate the nature of rights conferred under

Section 22 in dismissing the suit on the premise that there is no bar in a co-sharer transferring his share of the property to third parties.

4. It is further argued that the First Appellate Court went into the question of applicability of Section 44 of the Transfer of Property Act, 1882, which is not attracted in the present case at all.
5. Learned counsel cites a coordinate Bench judgment of this Court in the matter of *Smt. Arati Das vs. Bharati Sarkar & Ors.*, reported at *AIR 2009 Cal 8*, in support of the proposition that it is not necessary for a co-sharer to file an application under Section 22 of the Hindu Succession Act, 1956 to assert his rights under the said provision but the appropriate remedy is a suit seeking declaration that the sale deed executed in favour of a third party is void.
6. However, we are unable to accept the contention of the appellant.
7. On a careful perusal of *Smt. Arati Das (supra)*, it is clear that the scope of Section 22 of the Hindu Succession Act was being discussed therein, in which context the coordinate Bench concurred with the view of the Kerala High Court to the extent that the petitioner therein (co-sharer) ought to have filed a suit instead of a miscellaneous case for enforcing his right of preemption.
8. In the said judgment, relevant portions of the Kerala High Court judgment were quoted to the effect that it will appear from the provisions of Section 22 that by

sub-section (1) a right is conferred but there is nothing in that sub-section to indicate what procedure is to be followed in the matter of enforcement of that right. Sub-section (2) provides for cases where the parties fail to agree on the amount of consideration to be paid for the transfer of the property and lays down the procedure for having the amount of consideration determined by the Court on an application being made to it. Thus, it was held that under sub-section (2) an application may be made to the Court but the scope of that application is quite limited and may be made only for the purpose of determination of the amount of consideration and not for the purpose of enforcing the right conferred by sub-section (1). In cases where any statute creates a right, it was held, without specifying the procedure for enforcement of the right, the person intending to enforce such right shall have to resort to the procedure contained in the Code of Civil Procedure for enforcement of his right and accordingly the right conferred by Section 22 can be enforced only by the institution of a regular suit.

9. In such context, it was further observed that an alienation by co-sharers, being Class-I heirs, in favour of third parties at best can be voidable at the instance of the sharer who institutes the suit for enforcement of his right under sub-section (1) and subject to the said limited contingency the sale would be operative and binding. It was further observed that the prayers incorporated in the petition for a declaration of

invalidity of the sale effected by the first respondent in favour of respondent nos. 2 to 4 in the said case and for a direction for transfer of the 1st respondent's share in favour of the petitioner as a further relief consequential to such a declaration were totally outside the scope of an application under Section 22(2) of the Act.

10. Thus, the sub-text of the cited report was that for enforcement of a preferential right conferred under Section 22(1) of the Hindu Succession Act, 1956, a suit may be filed, in which a consequential relief of declaration that the sale deed in favour of the third party is void can be sought.
11. However, such prayer for declaration of the sale deed in favour of a third party as void, in isolation, without any foundational prayer for enforcement of preferential right of purchase under Section 22(1) of the Hindu Succession Act, does not come within the ambit of the said provision at all. The relief of declaration of such sale deed as void can only be claimed as a relief which is incidental and consequential to the primary relief of preemption under Section 22 (1) to come within the ambit of the said provision.
12. In the present case, the plaintiff/appellant merely sought for a decree of declaration that the sale deed executed by defendant nos. 3 and 4/co-sharers in favour of the defendant nos. 1 and 2/third parties was void and inoperative and sought for a consequential

relief of permanent injunction restraining the defendant nos. 1 and 2/purchasers from transferring the suit property to any person and/or creating disturbance in the peaceful possession of the suit property. The prayer asserting preferential right of purchase under Section 22(1) of the Hindu Succession Act, 1956 was, however, conspicuous by its absence in the plaint of the suit filed by the present plaintiff/appellant.

13. The learned Trial Judge was thus justified in dismissing the suit on the ground that there was otherwise no bar in law in a co-sharer transferring his share of a joint property in favour of third parties. Thus, the suit was not maintainable *per se* in the absence of any prayer under Section 22 (1) of the Hindu Succession Act.
14. The Appellate Court, although traversing a different trajectory of Section 44 of the Transfer of Property Act, which was entirely irrelevant in the context, in the same breath, also affirmed the findings of the learned Trial Judge on merit to the effect that there was no bar to a co-sharer transferring his share in a joint property to a third party.
15. Although agreeing with the proposition that such transfer is attended and circumscribed by the right of preferential purchase under Section 22(1) of the Hindu Succession Act, in view of the plaintiff/appellant having not asserted such preferential right at all, we must hold that the suit as

it stood was not maintainable and was rightly dismissed by the courts below.

16. Accordingly, there is no substantial question of law involved.
17. SAT 62 of 2026 is thus dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
18. CAN 1 of 2026 is also dismissed accordingly.
19. There will be no order as to costs.
20. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Biswaroop Chowdhury, J.)