

01.04.2026
Item No.07 (DL)
Court No.06
AJ.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 857 of 2026

**Sri Subrata Chanda
-Vs-
Sri Sankar Prasad Bhuniya**

Mr. Gopal Chandra Ghosh, Sr. Adv.,
Mr. Tapas Sinha,
Ms. Tina Biswas
....for the petitioner.

Ms. Malyasree Miaty,
Mr. Nishant Kumar

....for the opposite party.

1. Affidavit of service filed in Court today is taken on record.

2. This revisional application is directed against an order dated February 09, 2026 passed by the learned Civil Judge (Junior Division), 2nd Court-cum-J.M., Tamluk, Purba Medinipur whereby the petitioner's application under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 has been dismissed.

3. The opposite party has filed a suit for preemption under Section 8 read with Section 9 of the West Bengal land Reforms Act, 1956. In the plaint, the opposite party has referred to the sale deed whereby the vendor of the petitioner

has sold the subject plot of land to the petitioner.

4. The petitioner filed an application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 asserting that it will be apparent from the sale deed that has been referred to in the plaint that the vendor of the petitioner has sold the entire share of her land in the subject plot to the petitioner. It was therefore contended that since the entire share of land had been sold, therefore, the proceeding for preemption was barred by law.

5. The learned Trial Court has rejected such application by the order impugned by concluding that on a reading of the plaint it does not appear that the entire share of the vendor of the petitioner has been sold by her to the petitioner.

6. Mr. Ghosh, learned senior Advocate appearing for the petitioner submits that the order impugned has been passed without taking into consideration the settled position of law that documents referred to in the plaint ought to be considered at the time of examining the plaint upon an application under Order VII Rule 11 of the Code for rejection of plaint being filed. It is submitted that if the sale deed of the petitioner's

vendor would have been looked into by the learned Trial Court, the learned Trial Court would have certainly come to the conclusion that the entire share of the petitioner's vendor has been sold to the petitioner by such vendor.

7. Learned Advocate appearing for the opposite party, contends that there is no such clause in the deed wherefrom it would appear that the entire share of the petitioner's vendor has been sold to the petitioner. It is further contended that the opposite party has sought for preemption on the ground of contiguity as well and that being so, even if the entire share of the petitioner's vendor had been sold by her to the petitioner, the plaint could not have been rejected under Order VII Rule 11(d) of the Code as the proceeding would not be barred by law.

8. Relying on a judgment of the Hon'ble Supreme Court in the case of ***Popat And Kotecha Property -Vs- State of Bank of India Staff Association*** reported at ***AIR Online 2005 SC 1032***, it is submitted that mixed questions of law and fact cannot be decided under Order VII Rule 11 of the Code and the same should await trial.

9. Mr. Ghosh, learned Senior Advocate submits in reply that the claim of preemption on

the ground of contiguity cannot be made by the opposite party because the opposite party has claimed contiguity only in respect of one of the plots of land sold through a single deed.

10. It is further submitted that in the written objection filed by the opposite party to the petitioner's application under Order VII Rule 11 (d) of the Code, the opposite party has himself admitted that the petitioner has purchased the entire share of his vendor by the subject deed of conveyance.

11. Having heard the learned Advocates appearing for the respective parties and having considered the material-on-record, this Court is of the view that the order impugned cannot be sustained. The learned Trial Court has rejected the petitioner's application under Order VII Rule 11 of the Code merely on the ground that the statements made in the plaint did not reveal that the vendor of the petitioner had sold entirety of her share to the petitioner. While it is well settled that while considering as to whether plaint should be rejected under Order VII Rule 11 of the Code or not the Court should confine only to the averments made in the plaint, it is equally well settled that documents referred to in the plaint should be treated as

part of the plaint, if the same forms the basis of the plaint and should therefore be looked into for the purpose of arriving at a conclusion as to whether by way of clever drafting any illusion of cause of action has been created in the plaint or not.

12. In this connection useful reference may be made to the judgment of the Hon'ble Supreme Court in the case of ***Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) & Ors.*** reported at ***(2020) 7 SCC 366.***

13. In so far as the judgement of the Hon'ble Supreme Court in ***Popat And Kotecha Property*** (supra) is concerned, the proposition laid down therein is salutary but the same would not be of any help to the petitioner at this stage. The learned Trial Court has outrightly rejected the petitioner's application for rejection of plaint without looking into the sale deed that was referred to in the plaint. If even after looking into the sale deed, the learned Trial Court had rejected the same upon reaching a conclusion that issue raised by the petitioner required trial on and evidence, then in that case the said judgement referred to by the learned Advocate appearing for the opposite party might have been of relevance.

14. For all the reasons aforesaid, the order impugned dated February 09, 2026 is set aside. The matter is remitted back to the learned Trial Court for a fresh decision in accordance with law and upon hearing both the parties. The learned Trial Court shall decide the application independently without being influenced of any of the observations made by this Court on merits.

15. C.O. 857 of 2026 stands disposed of. There shall be no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)