

27.02.2026
SL No.59
Court No.6
(gc)

**RVW 182 of 2024
CAN 1 of 2024
In
CO 3929 of 2022**

**Amit Kumar Ghosh
Vs.
Abhijit Joy Ghosh**

Mr. Saptansu Basu, Sr. Adv.,
Mr. Ayan Banerjee,
Mr. Dhiman Banerjee

.....for the Applicant/Petitioner.

Mr. Sayantan Bose,
Mr. Shounak Mukhopadhyay,
Ms. Priyanka Gope

....for the Respondent.

1. Heard the learned Advocates for the respective parties.
The plaint which was rejected by the order of this Court was amended subsequently, but the effect of such amendment was not taken care of by this Court in the judgment and order dated May 7, 2024.
2. The revisional application arose out of an order refusing to reject the plaint. The defendant in the suit who was the petitioner in the civil revision, had prayed for rejection of the plaint on the ground that the plaint did not disclose a cause of action and the suit was not maintainable under Section 22 of the Hindu Succession Act, 1956.
3. That the plaintiff/opposite party did not have a preferential right to purchase the share of the original defendant Abhijit.

4. The learned Trial Judge rejected the said application on the ground that the cause of action pleaded was not illusory. The plaintiff and defendant were joint owners. They were enjoying the property. Both were in possession of the property. The property had not been partitioned. The shares had not been demarcated and, as such, the cause of action could be deciphered from the totality of the averments in the plaint. This Court, upon hearing the revisional application arising out of the order refusing to reject the plaint, came to a specific finding that the plaintiff did not have a right to sue under Section 22 of the Hindu Succession Act, 1956. The plaintiff and the father of the defendant were class-I heirs. Section 22 intended to give preferential right to class-I heirs of the owner of the immoveable property, to acquire the property of other class-I heirs. The object was to prevent fragmentation of a dwelling house by introduction of strangers in the family house and in the estate. Moreover, it was never the plaintiff's case that the plaintiff wanted to purchase the share of the defendant. This Court was of the further view that the plaintiff's purpose was to protect his privacy, secrecy and peaceful living and Section 44 of the Transfer of Property Act took care of such a situation. The Court also held that another remedy was under Section 4 of the Partition Act.

5. This court was of the opinion that the suit was not maintainable as it was framed.
6. An amendment application was filed by the plaintiff before the revisional application was filed and a third party purchaser was added in the proceeding. This fact was not brought to the notice of the Court, which resulted in passing of the order in the revisional application on the facts which were available when the application under Order 7 Rule 11 of the Code of Civil Procedure had been rejected. Subsequently, the review application was filed with a prayer that the judgment and order be reviewed on the ground that the suit could not fail as a whole as the addition of the third party purchaser would take care of the provisions of Section 44 of the Transfer of Property Act. In my view, the effect of the amendment and whether the same would cure the inherent defect in the suit with regard to non-applicability of Section 22 of the Hindu Succession Act, 1956 has to be decided afresh as the amendment had taken place prior to filing of the civil revision. The judgment was passed by this Court without considering the factum of amendment as the same was neither in the records of the Court nor brought to the knowledge of this Court.
7. Accordingly, the review application is allowed. The judgment and order dated May 7, 2024 is reviewed. CO

3929 of 2022 be placed before the appropriate Court for fresh hearing.

8. The review applicant/plaintiff will deposit a sum of Rs.10,000/- as cost to the State Legal Services Authority for the funds of Juvenile Justice Committee, High Court Calcutta.
9. Accordingly, the review application is disposed of.
10. There shall be no order as to costs.
11. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)