

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

C.O. 3977 of 2024

Sri Surapati Nandi
Vs.
Sri Pashupati Nandi & Ors.

For the Petitioner	:	Mr. Tanmoy Mukherjee, Mr. Rudranil Das, Mr. Somen Mondal.
For the Respondent nos. 4 to 9	:	Mr. Sandip Das, Mr. Kapil Chandra Sahoo.
Judgment reserved on	:	12.05.2026
Judgment delivered on	:	20.05.2026

Shampa Dutt (Paul), J.

1. The civil revision has been preferred challenging a judgment/order dated 13th September, 2024 passed by the learned Civil Judge (Junior Division) 2nd Additional Court at Contai, District – Purba Medinipur, in Judicial Misc. Case No. 14 of 2015 [CIS Registration No. Misc. Case (Preemption) 06 of 2015].

2. Vide the impugned order, the learned Trial Court was pleased to dismiss the Misc. Case under Section 22 of the Hindu Succession Act. The learned Trial Court declined to grant a decree of pre-emption by evaluating the market value of 3/4th share of the suit property.

3. The petitioner's case before the learned Trial Court is that the 'Ka' schedule property originally belonged to Golok Behari Nandy, the father of the petitioner as well as opposite parties no. 1, 2 and 3. The suit plot is a non-agricultural plot and a two storied building has been constructed upon the same after having acquired the property from their father after his death, by way of inheritance.

On 09.04.2008, the opposite parties no. 1, 2 & 3 declared that they intended to transfer their share in the suit plots to stranger purchasers before making an offer of sale to the petitioner, who had preferential right to purchase the suit plot by dint of being a class one legal heir. The opposite parties no. 1, 2 and 3 have violated the injunction order of the suit and transferred the suit plot in favour of the opposite parties no. 4 to 9 by virtue of sale deeds and hence the petitioner has submitted that these sale deeds are void, collusive and is liable to be rejected. It has been further submitted by the petitioner that he is ready and willing to purchase the suit plot at the market value of the suit plot.

Hence, the instant Misc. case.

4. The opposite parties case before the Trial Court is that the suit plots are situated in the center of 'Deuli Hat'. It has been submitted that Golok Behari Nandy was a permanent resident of Mouza Purusottampur and his paternal house is situated in Mouza Purusottampur. By way of partition deed dt. 31.07.1969, Golok Behari Nandy had acquired some portion out of his paternal property in plot no. 2490 and had constructed his residential

house upon the same. **For the purpose of conducting his business, he had purchased the suit plots 217/478 & 218/479 and had developed the one storied house upon the same and had started conducting business himself in that building. The rest of the building and one godown was given away as tenancy to the opposite party.** It has been pleaded over and over again that the suit plots of this case do not refer to residential house of Golok Behari Nandy.

5. The petitioner along with his brother had acquired a plan of approval from the gram panchayet to reconstruct the house situated in the residential suit plot for the purpose of conducting the business effectively. Golok Behari Nandy had four sons and four daughters. The four daughters had transferred their share to their brothers by separate deeds. It is the O.Ps. case that the building had always been used as commercial building and they have been using the same as tenants. After the property was partitioned among the four brothers, these opposite parties no. 4 to 9 purchased the share of the opposite party no. 1 to 3 in the suit plots, by way of registered sale deed no. 1791 dt. 26.08.2008 and accordingly they have been in possession in respect of the said portion of the suit plots.

6. Thus the contention of the petitioner is that the opposite party nos. 1 to 3 in violation of the Court's order of "status quo" transferred their undivided interest in favour of the opposite party nos. 4 to 9 herein, without giving the petitioner his right to exercise his preferential right.

7. One of the submissions of the petitioner is that in violation of the said order of status quo the transfer has been made. Regarding the petitioner's grievance as of violation of Court's order there are specific provisions in the Code of Civil Procedure to proceed against the opposite parties. Admittedly the petitioner and the opposite parties herein are brothers (O.P. Nos. 1 to 3). The opposite party nos. 4 to 9 are the subsequent purchasers.

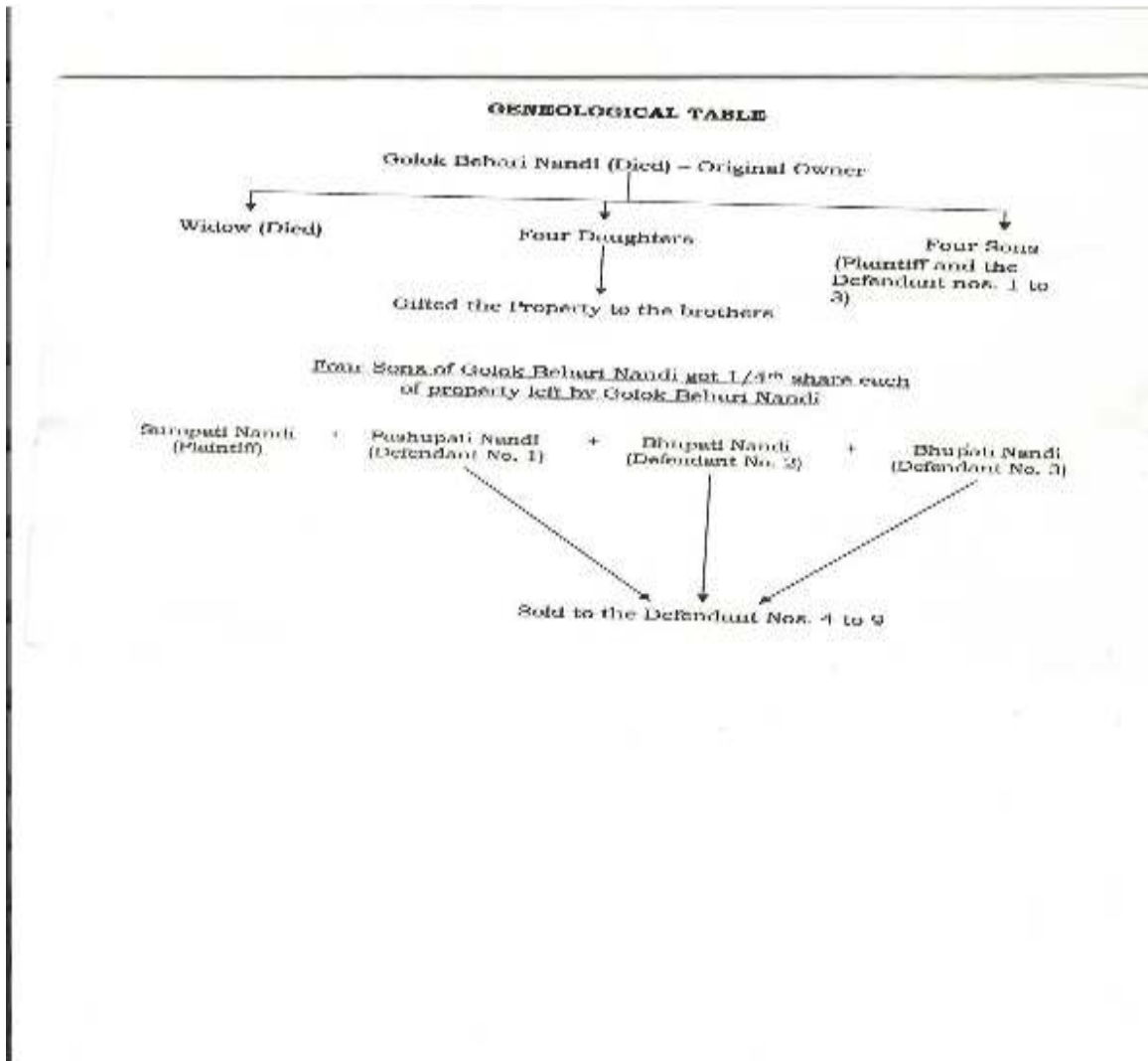
8. **Section 22 of the Hindu Succession Act, 1956 provides as follows:-**

“22. Preferential right to acquire property in certain cases.—

(1)Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.(2)The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.(3)If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.”

9. Both parties have filed their respective written notes. **A Genealogical chart has been filed by the petitioner herein:-**



10. From the said chart it appears that the petitioner and the opposite party nos. 1, 2 and 3 inherited the property from their father and also by way of transfer from their four sisters. The opposite party nos. 1, 2 and 3 had admittedly now transferred their share to the opposite party nos. 4 to 9.

11. Affidavits have been used by the parties and in the affidavit-in-opposition filed by the subsequent transferees it is stated that a Title Suit for declaration and injunction was dismissed and as such it is stated that the present case is not maintainable.

12. It is the further case of the opposite parties (transferees) that the case of the petitioner that the suit property is a dwelling house but the Court considering the inspection report held that the suit land is a commercial market place and there are shop rooms in the suit property. The Court held that the petitioner could not show that the suit property is a dwelling house though the ROR records stood in the name of the predecessor of the petitioner and the opposite party nos. 1, 2 and 3. It is the further case of the transferees opposite parties that the plaintiff/petitioner could not prove that the property in the present case is a joint dwelling house.

13. It is the further case of the transferee that the petitioner and his brothers was permanently residing in the Mouza – Purushottampur, which is as per partition deed of their father and the suit plot was not included in the said partition deed.

14. The transferees opposite party nos. 4 to 9 state that they are possessing the case land as shop keepers in the premises for more than 30 years. It is further stated that the predecessors of the petitioner did not have any right, title and interest in the suit property and the petitioner could not produce any documents to show title of his father in the property in this case.

15. The Trial Court held that “Ka” scheduled property is not a joint ancestral property. The Trial Court failed to believe that the predecessor of the petitioner and the opposite party nos. 1 to 3 were the owner of the suit property inspite of the fact that the record of rights stood in favour of the

predecessor of the said parties, on the ground that record of rights do not create any title. **But admittedly, the transfer by the O.P. nos. 1, 2 and 3 is only on the basis of the RSROR, when admittedly it is stated that there is no other documents in support of their title.**

16. Considering that the petitioner and the opposite parties nos. 1, 2 and 3 are brothers, the said argument of the transferee opposite parties cannot be sustained.

17. In reply the petitioner has submitted that an appeal against the dismissal of the Title Suit is still pending.

18. It is the specific contention of the petitioner that the O.P. nos. 1, 2 and 3 could not transfer un-partitioned property in favour of any third-parties.

19. From the materials on record it appears that admittedly no partition has taken place in respect of the disputed property in which the record of rights stands in the name of the predecessors of the petitioner and O.P. Nos. 1, 2 and 3. **The O.P. Nos. 1, 2 and 3 acquired their right on the basis of the said RS ROR standing in the name of their father, who is also the father of the petitioner.**

20. Admittedly, the petitioner, prima facie, has right in the property similar to the right which the opposite party nos. 1, 2 and 3 claim and by which they have transferred the property in favour of the O.P. Nos. 4 to 9.

21. Parties have filed their respective written notes. The petitioner now submits that since the Opposite Party nos. 1 to 3 herein have illegally transferred the property in favour of Opposite Party nos. 4 to 9 by virtue of

the Registered Deeds of Conveyance without first offering to the present petitioner, being the full blood brother and also being the Class I heir as per section 22 of the Hindu Succession Act, 1956, the present petitioner was compelled to file one Misc. Case seeking for exercising his preferential right in respect to the property in question against the opposite parties herein.

22. The petitioner herein by way of Misc case prays for cancellation of the sale deed executed by the opposite party nos. 1, 2 and 3 in favour of the transferees, transferees being the opposite party nos. 4 to 9.

23. The opposite parties have also filed their written notes contending the same facts as stated in their opposition.

24. The Trial Court vide the impugned order on framing issues decided the maintainability of the application under Section 22 of the Hindu Succession Act and decided the point of maintainability in favour of the petitioner.

25. Admittedly, the disputed plot in this case is not part of the deed of partition (Exhibit J). The partition deed relates to a partition between the predecessors of the petitioner and O.P. Nos. 1, 2 and 3 and his brothers Golak Behari Nandy. The property of Golak Behari Nandy appears to be un-partitioned. Admittedly, the properties were transferred by the O.P. Nos. 1, 2 and 3 when an order of status quo was in subsistence in the Misc. Case.

26. The Trial Court then proceeded to consider the issue in another case being Title Suit No. 106 of 2008. Regarding the petitioner's preferential rights to acquire "Ka" scheduled property as per Section 22 of the Hindu Succession Act the Trial Court held as follows:-

“It has also been brought to the notice of the court that Golok Behari Nandy used to conduct business from there. But again, no such document has been established by which it can be ascertained that Golok Behari Nandy conducted his business there from. From the trade licenses so filed in the analogous suit T.S. – 106/2008, it is evident that the same are issued in the names of the vendees of the sale deeds, by virtue of which they acquired right, title, interest and possession over the suit plots.

*Ergo, in absence of legitimate documentary evidence, this court is of the opinion that merely on basis of oral depositions and affidavit in chiefs so filed by the respective parties, ownership of any person with respect to particular suit plots cannot be established. For affirming ownership, there is no scope to be lenient and assume the same, on the premise that mutation records had been recorded and prepared in his name. **Thus, points 5 and 6 stand decided against the petitioner.**”*

27. Accordingly, this Court on considering the facts and circumstances of the case is of the view when the transfer by the O.P. Nos. 1, 2 and 3 in favour of the O.P. Nos. 4 to 9 is admitted and the same has been made on the basis of a RS ROR recorded in the name of the father of the petitioner and the opposite party’s 1, 2 and 3, it appears that the petitioner has similar right in the “Ka” schedule property as the O.P. Nos. 1, 2 and 3. The O.P.s No. 1, 2 and 3 did not have a better title than the petitioner in the “Ka” schedule property.

28. Admittedly the “Ka” schedule property is not partitioned and is undemarcated and as such as per Section 22 of the Hindu Succession Act the petitioner’s right under the said provision of law is well established. Regarding the property being a commercial property, Section 22(1) of the

Hindu Succession Act provides that said right can be exercised in respect of any immovable property of an interstate or in any business carried on by him or her in respect of interest in the property or business. As the word “business” has been inserted in the said Section, it is clear that properties commercial in nature are also covered under Section 22 of the Hindu Succession Act.

29. Thus, the impugned order being not in accordance with law, is hereby set aside. The petitioner’s preferential right under Section 22 of the Hindu Succession Act is hereby declared. The impugned deeds transferring the properties in favour of the opposite party nos. 4 to 9 are declared null and void.

30. Petitioner shall exercise his preferential right as per the provisions of the Act in accordance with law at the earliest.

31. With the above observations and directions this application being **C.O. 3977 of 2024 stands disposed of**, without any order as to costs.

32. Photostat certified copy of this Judgment, if applied for, be furnished expeditiously.

(Shampa Dutt (Paul), J.)