



Presented on : 24-10-2025
Registered on : 24-10-2025
Decided on : 04-06-2026
Duration : 0 years, 7 months, 11 days

West Bengal Form No. - 3707

HIGH COURT FORM No. (J) 3
HEADING OF JUDGMENT OF APPEAL

DISTRICT: ALIPURDUAR

In the Court of the Additional District & Sessions Judge, FTC 2nd Court,
Alipurduar

Present : Sri Pukar Pradhan
Additional District & Sessions Judge,
FTC 2nd Court, Alipurduar

This the 04th day of June, 2026

Title Appeal No. 19 of 2025
CIS NO.- Title Appeal NO. 19 of 2025
C.N.R NO -WBJP05-002011-2025

Sri. Nepal Ch. Das

.....Appellant (s) / Petitioner (s)

versus

Sri Ratan Das & others

.....Respondents (s) / Opposite Party (s)

Give date or dates This Appeal comings on for final hearing on
04.06.2026 in the presence of

- | | |
|---------------------------------|--|
| 1. Badal Kumar Brahma..... | Advocate (s) / Pleader (s)
for
Plaintiff (s) / Appellant (s) |
| 2. Dheeti Dwipan Baneerjee..... | Advocate (s) / Pleader (s)
for
Defendant (s)/Respondent (s) |
| Amit Biswas (State) | |

*and having stood for consideration to this **04th Day of June, 2026**,
the Court delivered the following Judgment :-*



JUDGMENT

The present Appeal has been preferred by the appellant Sri Nepal Ch. Das being aggrieved and dissatisfied with the *ex-parte* judgment dated 30.08.2025 passed by *Ld. Civil Judge (Jr. Divn.)*, *Alipurduar* in Misc. Pre-emption Case No. 09 of 2023 on the ground set-forth at the memorandum of appeal.

The appellant/petitioner contended that **Misc. Pre-emption No.09/2023** was instituted seeking right of pre-emption before the Ld. Trial Court wherein the opposite party appeared but failed to file written objection within prescribed period. Thereafter, the appellant/petitioner deposed as **PW-1** and during his evidence, produced registered deed of sale (**Exbt. 1**), certified copy of LR ROR (**Exbt. 2**), certified copy of sale deed (**Exbt. 3**), original death certificate (**Exbt. 4**) and legal heir certificate (**Exbt. 5**).

No such evidence is adduced on behalf of the opposite party. Then the Ld. Court heard *ex-parte* argument and passed judgment erroneously which failed to properly adjudicate the real question of dispute arose between the parties and hence the appellant/petitioner do hereby prefer this appeal.

It is contended that Ld. Trial Court was erred in law and facts in passing the impugned order, Ld. Court misinterpreted the law and failed to consider the application in right manner and failed to evaluate the documents so submitted by the appellant/petitioner. The impugned judgment was passed superficially without appreciating the documents and the evidences so adduced by the appellant/petitioner.



Hence, Ld. Trial Court committed error in holding that the appellant/petitioner have no title over the plot belonging to his father which is adjacent and contiguous to the transferred plot and dismissed the case on whimsical ground.

Hence, prays for allowing the appeal.

Respondents/opposite parties even though challenge the appeal on the very merit but did not file any written objection to that effect nor they contested the original case by filing written objection before the Ld. Trial Court.

Ld. Advocate for the respondents/opposite parties severely challenged the contention set forth by the Appellant/petitioner and put forward their specific case thereby, contended that the only duty of the petitioner, Nepal Ch. Das is to show that he was a contiguous owner/owner of the adjacent land, which belong to Lt. Suresh Ch. Das.

It is further contended that the appellant/petitioner also have to prove that A schedule land have the longest common boundary to the transferred land as described in schedule B. The appellant/petitioner failed to prove his specific title over A schedule property by producing relevant documents. Hence, present appeal is liable to be dismissed.

I. The petitioner's case in original suit

By filing a case in exercising the right of pre-emption, the petitioner Nepal Ch. Das contended that he is one of the co-owner and possessor of A schedule property measuring 2.39 acres under

Mouza- Uttar Barobisha, which was inherited by them after the death of Lt. Suresh Ch. Das, who purchased the A schedule property by virtue of registered deed of sale being I-7785 in the year 1971. Since the date of purchase, Lt. Suresh Ch. Das was absolute owner and possessor till his death. Subsequently, it was inherited by the petitioner and other legal heirs.

It is further contended that the opposite parties, namely Ratan Das and others purchased an area of 16.5 decimal from the LR Plot No. 1235, the adjacent land vide registered deed of sale being no. I-4418 dated 13.10.2023 from one Swapan Choudhury. No such notice was served upon the petitioner as mandate by law. Hence, the petition for exercising his preemptive rights.

II. The opposite parties case in original suit failed to file any written objection or contested the suit.

In order to prove the case, the petitioner examined himself as **PW-1** and during his evidence following documents are marked as Exhibits.

Sl. No.	Exhibit	Description
1.	Ext.1	One registered deed of sale, bearing No. I-7785, dtd. 05.11.1971.
2.	Ext.2	Certified copy of LR ROR bearing khatian No. 833.
3.	Ext-3	Certified copy of deed of sale, bearing No. I-4418, dtd. 01.12.2023.
4.	Ext-4	Original death certificate, bearing registration No. 30/05, dtd. 24.08.2025.
5.	Ext-5	Original legal heir certificate, issued by Pradhan of Volka, Barobisha, GP No.I, dtd. 19.12.2023.



Upon considering the pleadings of the parties Ld. Trial Court has framed the following points for determination:-

- 1) *Whether the petitioners are a contiguous and adjoining land owners to the pre-empted land and having the longest common boundary with the pre-empted land?*
- 2) *Whether the suit is barred by limitation?*
- 3) *Whether a portion or share of a plot of a land of raiyat is transferred in favour of the opposite party?*
- 4) *Whether notice was sent to the petitioner?*
- 5) *Whether pre-emption application is maintainable or not?*
- 6) *Whether the petitioner is entitled to get an order of pre-emption?*

III. The Provision of Law:

8. Right of purchase by co-sharer or contiguous tenant.— (1) If a portion or share of a [plot of land of a raiyat] is transferred to any person other than a [co-sharer of a raiyat in the plot of land],[the bargadar in the plot of land] may, within three months of the date of such transfer, or] any [co-sharer of a raiyat in the plot of land] may, within three months of the service of the notice given under sub-section (5) of section 5, or any raiyat possessing land [adjoining such plot of land] may, within four months of the date of such transfer, apply to the [Munsif having territorial jurisdiction,] for transfer of the said portion or [share of the plot of land] to him, subject to the limit mentioned in [section 14M,]on deposit of the consideration money together with a further sum of ten per cent of that amount.

In the above background and upon considering the submission set forth by the respective parties the following points are taken up for discussion in the present appeal:-

- 1) *Whether the trial court below is justified in dismissing the case on merit?*
- 2) *Whether there is any scope to interfere with the ex-parte judgment passed by Ld. Trial Court?*



Decisions with reasons:-

[Both the points are taken up together for discussion for the sake of brevity of convenience and to avoid repetition of sentence.]

Order 43 Rule 1 (d) of CPC provides that an appeal shall lie from an order to set aside the decree passed *ex-parte*. The first appeal is a valuable right and the parties have a right to be heard, both on question of law and facts. Therefore, it is the duty of this Court to discuss the evidence afresh and take notes of the grounds taken and the reasons advanced by the trial court to reach its decision.

Hon'ble Apex Court in a case of **Narmada Prasad Vs. Chhaganlal and others** reported in **AIR 1969 SC 395** Hon'ble Apex Court has been pleased to observed *that in an appeal the burden is on the appellant to prove how the judgment under appeal is wrong. To establish this he must do something more than merely asked for a reassessment of the evidence. He must show wherein the assessment has gone wrong.*

The Appellate Court is certainly at a disadvantage, because it has not before it the witness but the dead record of the deposition as recorded.

Upon perusal of the trial court record, it is apparent that the present case was instituted on 15.12.2023 for exercising the right of pre-emption against the sale so made by the opposite parties Sri Swapan Choudhury in favour of Shri Ratan Das and others vide registered deed of sale dated 13.10.2023.



A separate petition is also filed seeking time to file the deficit court fee at the time of final order. It is unfortunate to note here that, Ld. Trial Court neither allowed the same nor rejected the same. Therefore, the Trial Court totally erred in pronouncing the impugned judgment.

Hon'ble Apex Court in the case of **Barasat Eye Hospital vs Kaustabh Mondal** reported in **AIR online 2019 SC 2075**, Hon'ble Court observed that once the time period to exercise a right is sacrosanct, then the deposit of the full amount within the time is also sacrosanct. The two go hand-in-hand. It is not a case where an application has been filed within time and the amount is deficient, but the balance amount has been deposited within the time meant for the exercise of the right. We are saying so as such an eventuality may arise, but in that case, the right under the application would be triggered off on deposit of the amount which, in turn, would be within the time stipulated for triggering the right. That not having happened, we are of the view that there cannot be any extension of time granted to the respondent now, to exercise such a right. This is, of course, apart from the fact that this speculative exercise on behalf of the respondent has continued for the last fourteen years, by deposit of 50% of the amount.

Ld. Trial Court while dealing with issue no. 1 "*whether the petitions are a contiguous and adjoining land owner to the pre-empted land and having the longest common boundary with pre-empted land?*" Ld. Trial Court came to the conclusion that **Exbt. 1** confirms that Suresh Ch. Das, father of the appellant/petitioner was the original recorded owner of 33.5



decimal of land under Mouza- Barobisha comprised under Plot No. 1233, 1234, 1240, 1247, 1248, 1250, 1253, 1257, 1261 and 1263 but its boundaries given at the schedule of **Exbt. 1** is different than that a A schedule property of the original petition. Similarly, **Exbt. 2** that is the LR ROR stands in the name Suresh Ch. Das and the plot no. again defers as **Exbt. 2** except plot no. 1233 and 1234. Thus, the petitioner failed to proved his title over the portion which is adjacent to the preemptive land.

Hon'ble Apex Court in the judgment recorded in **AIR 1958 SC 838** was pleased to observe that *"the right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase i. e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place."* Therefore, it is a very weak right available to the petitioner.

Secondly, upon perusal of the evidence of Nepal Ch. Das, he only produce **Exbt. 1**, i.e the registered deed of sale being no. 7785 dated 05.11.1971, **Exbt. 2**, i.e the LR & ROR and the impugned deed **Exbt. 3**. That apart, the petitioner tried to prove the death of his father Suresh Ch. Das by producing his death certificate, **Exbt. 4** as well as the legal heir certificate, **Exbt. 5**.



However, the petitioner failed to prove the longest common boundary or his ownership over the adjacent land to the pre-empted land or by applying survey of the property or by producing LR map or other documents.

It is not disputed that A schedule property belong to Lt. Suresh Ch. Das, however, the schedule given as **Exbt. 1** does not tally with the schedule A of the petition too.

As discussed here-in-above, the right of pre-emption being a very weak right, it can be defeated by all legitimate methods.

Therefore, considering the evidence on record, in the light of the pronouncement of Hon'ble Court and for the reason mentioned hereinabove the conclusion arrived by the Ld. Trial Court keeping reliance upon the evidence so adduced by the parties, the *ex-parte* judgment dtd. 30.08.2025 so pronounced by the Ld. Trial Court is proper and does not need interference. Accordingly, both the points are decided against the appellants / plaintiffs.

Thus the appeal fails. C.F. paid is correct.

Hence, it is

O R D E R E D

That the present Appeal be and the same is dismissed on contest. However no order as to cost. However, the petitioner is at liberty to withdraw the money which has been deposited in the learned Court below on proper application.

The ex-parte judgment dated 30.08.2025 passed in Misc. Pre-emption case no. **09 of 20223** by ***Ld Civil Judge (Junior Division) Alipurduar***, is hereby *affirmed*.



Let the copy of this Judgment be sent to the Court of Ld. Civil Judge (Jr. Divn.) Alipurduar, for information.

Trial Court Record of Misc. Pre-emption case no. **09 of 20223** be transmitted back at once.

DA to comply.

Accordingly, the appeal is disposed off.

The case record be accordingly, transmitted to the District Record room as per Law.

Up date CIS.

Dictated and corrected by me;

*Additional District and Sessions Judge,
Fast Track 2nd Court, Alipurduar*

*Additional District and Sessions' Judge
Fast Track 2nd Court, Alipurduar*

WB 01097

Office of the Addl. District & Session Judge,
FTC-II, Alipurduar

Memo No: /FTC-II

Dated: 04.06.2026

The copy of this judgment along with Trial Court Record of Misc. Pre-emption case no. **09 of 20223** be sent to The Ld Civil Judge (Junior Division), Alipurduar for information.

Addl. Sessions Judge,
Fast Track 2nd Court, Apd.

(WB-01097)