

Title Suit No. 55 of 2025

CIS No. 55 of 2025

CNR No. WBBK07-000094-2025

Present : Sri Tanumoy Karmakar (J.O. Code: WB01209)

Order no. 09

Dated 19-02-2026

Today is fixed for hearing of temporary injunction application as well as application filed by defendant no.1 under Order 39 Rule 4 of the CPC and SR in respect of defendant no.2 to 9.

Memorandum of appearance filed by plaintiff and defendant no.1

SR has been received in respect of defendants and those are kept with the record.

SR reflects that summons was duly served upon defendant no.4.

However, defendant no.4 is absent today without any step.

None appears on his behalf in spite of repeated calls.

Accordingly, the instant suit shall be proceeded as ex parte against defendant no.4.

Moreover, service in respect of defendant no.2, 3, 5 to 9 is not satisfactory.

Accordingly, plaintiff is directed to file fresh requisites in respect of defendant no.2, 3 & 5 to 9 in the meantime in postal mode.

Now, the case record is taken up for hearing the temporary injunction application as well as hearing of application filed by defendant no.1 under Order 39 Rule 4 of the CPC.

Perused the temporary injunction application as well as W.O. filed by defendant no.1.

I have also perused the application filed under Order 39 Rule 4 of the CPC and W.O. thereof.

Heard Ld. Counsels for both sides at length.

Now, the case record is taken up for passing necessary order.

The brief facts of the plaintiff's case is that the plaintiff and the proforma defendant no.2 to 9, being the legal heirs have inherited the suit property from their father namely, Gourhari Pal and they are possessing the same. It has been further averred in the plaint that defendant no.1 is owner of one land which is situated adjacent to the suit property and he has no right, title and interest over the suit property. It has been more alleged in the plaint that defendant no.1 is now raising illegal and unauthorized construction by encroaching the northern side of the suit plot.

On the other hand, Ld. Counsel for defendant no.1 denied and disputed the material allegations as alleged by the plaintiff except the matter of record in his written objection. The specific case of defendant no.1 is that about 30 years ago the ground floor constructed by defendant no.1 over plot no.6786. Thereafter, due to increase of family member, now defendant no.1 is constructing first floor over the existing ground floor of the said building. It has been further asserted by defendant no.1 that he obtained permission of Panchayet and paid revenue for constructing the first floor over plot no.6786. Therefore, there is no question of encroachment of the suit plot and accordingly, defendant no.1 prayed for rejection of the temporary injunction application.

Ld. Counsel for the plaintiffs in the course of his submission, has produced all the documents which reflect that the father of the plaintiff is the original owner of schedule property. Plaintiff also filed original L.R. R-o-R record as well as the legal heir certificate of Gourhari Pal issued by Lego G.P. Plaintiff also filed death certificate of the predecessor-in-interest of the plaintiff and proforma defendant no.2 to 9.

On the other hand, Ld. Counsel for defendant no.1 filed one copy of partition deed and it reflects that defendant no.1 received 4 decimal of property pertaining to plot no. 6786 along with one house comprising over the said plot. It also appears that the deed was executed in the year of 1989. So, it is clear that defendant no.1 is possessing the plot no. 6786 including one building since 1989.

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As there is a question of encroachment by the defendant no.1, but without going through the trial it cannot be ascertained that defendant no.1 is actually encroaching some portion of the schedule property. Even the plaintiff has not file any applicaton for expert opinion for ascertaining the fact of encroachment by defendant no.1. Moreover, it has not been clarified by the plaintiff in his plaint that defendant no.1 by demolishing the existing house is constructing new building by encroaching the suit property.

There are triable issues which makes a *prima facie* case in favour of plaintiff. Plaintiff also able to prove a *prima facie* case in his favour on the basis of the documents as advanced by him. The balance of convenience or inconvenience also tilts in favour of the plaintiff on the basis of the series of documents and records. The plaintiff will also suffer irreparable loss and injury, if the nature and character of the suit property has been changed by the act of defendant no.1 prior to demarcation of the suit property of defendant no.1. *It is also pertinent to mention here that defendant did not file any sanction plan to show that he is not making construction by encroaching the suit property of the plaintiff.*

Considering the nature of dispute and to avoid future complications which may give rise to multiplicity of proceeding as well as for preservation of the suit property. I am inclined to grant an order of injunction because all basic principles tilts in favour of the plaintiff.

Hence, it is,

ORDERED,

that injunction application preferred by the plaintiff under Order 39 Rule 1 & 2 of the CPC read with Section 151 of the CPC is allowed on contest without any order as to costs.

Accordingly, defendant no.1, his men, agents and associates are hereby restrained from doing any illegal and unauthorized construction by encroaching the suit property till the disposal of the suit.

As a sequel of this order, the application filed by defendant no.1 under Order 39 Rule 4 of the CPC is hereby rejected on contest.

As temporary injunction application has been disposed of in contested manner, the application for extension of ad interim order filed by the plaintiff is hereby rejected.

Fix **02-06-2026** for SR in respect of defendant no. 2, 3 & 5 to 9.

Update CIS forthwith.

Dictated & Corrected by me.

Civil Judge (Sr. Divn.), Bishnupur
S.D.

Civil Judge (Sr. Divn.), Bishnupur