

**Title Suit No. 37 of 2025**  
CIS No. 37 of 2025  
CNR No. WBBK07-000053-2025  
Present : Sri Tanumoy Karmakar (J.O. Code: WB01209)

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**Order no. 02**  
Dated 25-03-2025

Record is put up today on the strength of a put up petition filed by the plaintiff.  
Petition is considered and allowed.

Ld. Counsel for the plaintiff intends to move the application under Order 39 Rule 1 & 2 of CPC.

The crux of the plaintiff's case is that the great grandfather of plaintiff no.1, 2, 4 & 5 and father of plaintiff no.3, namely, Chandrakanta Kapri @ Kapas was the original recorded owner of the suit property. It has been further alleged that said Chandrakanta Kapri @ Kapas had expired after leaving behind his one son, namely, Monmatha Kapas as his legal heir and successor. It has been more alleged that Monmatha Kapas also expired after leaving behind his legal heirs and successors who are the predecessor-in-interest of the plaintiffs. Accordingly, plaintiffs are the owners of 1/3<sup>rd</sup> share in respect of the 'Ka' schedule property. It has been further averred in the plaint that defendant no.1 has made one two-storied building in the north-west side of the schedule property as well as by making one privy on the eastern side of the said building which is comprising 3.33 decimal as per his share. It has been more averred in the plaint that defendant no.2 has made one building in the west side of the schedule property as well as by making one cow-shed on the eastern side of the said building which is comprising 3.33 decimal as per his share. Plaintiff no.1 & 2 also possessing the suit property by making house in accordance with their share and other plaintiffs are possessing 'Kha' schedule property which is a part and parcel of the 'Ka' schedule property measuring 25 feet long and 11 feet wide. Now, plaintiffs are trying to make one building by demolishing the existing building which is in very dilapidated condition in the said 'Kha' schedule property which is under the possession of the plaintiffs. It has been further averred in the plaint that defendant no.1 & 2 are trying to obstruct the plaintiffs from making the said house in the 'Kha' schedule property.

Plaintiffs also alleged that on several occasion they requested defendants for partition of the suit property amicably, but defendants flatly refused the same.

In this compelling situation plaintiffs have filed this instant suit for partition and prayed for an order of injunction restraining the defendant no.1 & 2 from creating any sort of disturbance in respect of the 'Kha' schedule property which is exclusively under the possession of the plaintiffs.

As per the departmental report no caveat is pending on the said property with regard to the said dispute.

Ld. Counsel for the plaintiffs in the course of his submission filed original C.S. R-o-R reflecting the name of the predecessor-in-interest of the plaintiffs. Plaintiffs also filed legal heir certificate of deceased Ramkrishna Kapas issued by Bishnupur Municipality and L.R. R-o-R. In support to their contentions plaintiffs also filed one sketch map of the 'Ka' and 'Kha' schedule properties prepared by one Government Surveyor.

So, plaintiffs are quite able to prove a *prima facie* case in their favour because all the documents reflect that plaintiffs are the co-sharers in respect of the suit properties. The balance of convenience and inconvenience also tilts in favour of the plaintiffs on the basis of the documents filed by them. The plaintiffs will suffer irreparable loss and injuries if they have been disturbed in respect of peaceful possession of the 'Kha' schedule property because *prima facie* it appears that 'Kha' schedule property was under the exclusive possession of the plaintiffs.

Accordingly, I find that some protection can be given to the plaintiffs at this juncture.

Hence, it is,

**ORDERED**

that the prayer for ad interim order on application under Order 39 Rule 1 & 2 of CPC preferred by the plaintiffs be and the same is granted as ad-interim measure but in part.

Defendant no.1 & 2, their men, agents and associates are hereby restrained from disturbing the plaintiffs in any manner whatsoever in respect of peaceful occupation of the plaintiffs over the 'Kha' schedule property upto the next date.

Defendant no.1 & 2 are hereby directed to show-cause within 30 days from the date of receipt of notice as to why the relief claimed in the said application shall not be granted.

Issue notice accordingly.

Plaintiffs are hereby directed to file the requisites forthwith.

Plaintiffs are also directed to comply Rule 3(a) & 3 (b) of Order 39 forthwith within 24 hours.

To date (07-05-2025) for awaiting SR of summons/notice and appearance of the defendants.

Update CIS forthwith.

Dictated & Corrected by me.