

Order no. 06
Dated 07-05-2025

Today is fixed for hearing of temporary injunction application as well as application filed by the defendant under Order 39 Rule 4 of the CPC.

Memorandum of appearance filed by the plaintiffs and defendants.

Ld. Counsel on behalf of the plaintiffs filed one application with a prayer for time for filing W.O. against the application filed under Order 39 Rule 4 of the CPC.

The prayer for time is considered and rejected because couple of dates were given to the plaintiffs for filing W.O., but it has not been filed yet.

Accordingly, the case record is taken up for hearing the temporary injunction application along with application filed under Order 39 Rule 4 of the CPC.

Heard Ld. Counsels for both sides at length.

Perused the temporary injunction application and W.O. as well as application filed by defendants under Order 39 Rule 4 of the CPC.

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

The brief facts of the plaintiffs' 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 1/3rd 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.

On the other hand, Ld. Counsel for defendants denied and disputed the material allegations as alleged by the plaintiffs, but no specific case was agitated by the defendants in their written objection. However, in the application filed by defendants under Order 39 Rule 4 of the CPC it was specifically stated that there is one restraining order upon the defendants not to disturb the plaintiff in any manner whatsoever in respect of peaceful occupation of the plaintiffs over the 'Kha' schedule property, but plaintiffs are making unauthorized construction of the 'Kha' schedule property which has not been partitioned yet.

On perusal of application, materials on record and documents filed by plaintiffs apparently it appears that plaintiffs and defendants are co-owners in the suit property. There is jointness of title of the plaintiffs and defendants. The property has not been partitioned by metes and bounds as accepted by the plaintiffs. There are triable issues which makes a *prima facie* case in favour of defendants. In view of the allegations raised by defendants, I am of considered opinion that the balance of convenience and inconvenience is tilted in favour of defendants. In this context, it is also pertinent to mention here that if plaintiffs manage to dispossess the defendants from the unpartitioned suit property, then defendants will suffer irreparable loss of injury. Considering the nature of dispute and to avoid future complications which may give rise to multiplicity of proceeding, I am inclined to pass necessary order pertaining to the application filed by the defendants under Order 39 Rule 4 of the CPC.

Hence, it is,

ORDERED.

that injunction application preferred by the plaintiffs under Order 39 Rule 1 & 2 of the CPC is hereby modified by invoking provision as laid down under Order 39 Rule 4 of the CPC, on contest without any order as to costs.

Accordingly, both parties are directed to maintain 'status quo' in regard to their respective possession over the suit property till the disposal of the suit.

Fix **22-05-2025** for framing of issues.

Suggestive issues, if any, in the meantime.

Update CIS forthwith.

Dictated & Corrected by me.