

Title Suit No. 554 of 2026

**Present:- Smt. Sutanuka Nag, Judge-in-Charge, Bench-V, City
Civil Court, Calcutta (Code- WB01248)**

Order No. 02// Dated-06.03.2026

Record is put up today on the basis of the petition filed by the Plaintiffs along with one application filed under Order 39 Rules 1 & 2 read with Section 151 of the Code of Civil Procedure.

Ld. Advocate on behalf of the Plaintiffs files another application under Order 39 Rule 7 read with Section 151 of CPC supported by an affidavit praying for appointment of an Advocate Commissioner on the grounds stated therein.

Let it be kept with the record.

From the office report it appears that no caveat has been filed till date.

It is submitted by the Ld. Advocate for the Plaintiffs that at all material point of time Habibul Hoque was the absolute owner of a brick built residential building measuring One Cottah Eight Chittacks more or less lying and situated at Premises No. 33/1, Rafi Ahmed Kidwai Road, Police Station- Park Street, Kolkata-700 016 and after the death of said Habibul Hoque his son Md. Muslim Khan inherited the said building and became absolute owner of the said building and after death of said Md. Muslim Khan his two sons and one daughter namely Md. Nayeem Khan, Md. Amin Khan alias Mark Anthony Gomes and Amina Khan jointly inherited of the said building.

Nayeem Khan died issueless leaving behind his widow namely Nasreen Akhtar i.e. the Defendant No. 1 herein and therefore, Md. Amin Khan alias Mark Anthony Gomes, Amina Khan and Nasreen Akhtar became the absolute owners of the said building being Premises No. 33/1, Rafi Ahmed Kidwai Road, Police Station- Park Street, Kolkata-700 016 and thereafter, they sold the suit building by virtue of a registered Deed of Conveyance dated 12th April, 2004 and thus, the Plaintiffs became the absolute owner of the said suit building being Premises No. 33/1, Rafi Ahmed Kidwai Road, Police Station- Park Street, Kolkata-700 016.

Initially there was one big landed property under Premises No. 33, Rafi Ahmed Kidwai Road, Police Station- Park Street,

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Kolkata-700 016 and the said property was partitioned into four lots on different measurements and Musst. Nasreen Akhtar and Moin Hossain Akhtar i.e. the Defendant Nos. 1 & 2 became the joint owners of Premises No. 33/1B, Rafi Ahmed Kidwai Road, Police Station- Park Street, Kolkata-700 016 and by virtue of a registered Deed of Development Agreement dated 28th June, 2014, the Defendant Nos. 1 & 2 handed over the Premises No. 33/1B, Rafi Ahmed Kidwai Road, Police Station- Park Street, Kolkata-700 016 to the Defendant No. 3 for development and construction of a multi-storied building over the said premises and the Defendant Nos. 1 to 3 suppressing the material facts before the Kolkata Municipal Corporation encroached the Premises No. 33/1, Rafi Ahmed Kidwai Road, Police Station- Park Street, Kolkata-700 016 and obtained the sanctioned plan of the Premises No. 33/1B, 33/1C, Rafi Ahmed Kidwai Road, Police Station- Park Street, Kolkata-700016.

Plaintiff No. 1 is lawyer and busy in his profession and his brother the Plaintiff No. 2 is also engaged in his business and they failed to look after the Premises No. 33/1, Rafi Ahmed Kidwai Road, Police Station- Park Street, Kolkata-700 016 and taking advantage of the Plaintiffs absence, the Defendant Nos. 1 to 3 are illegally trying to encroach and/or trespass into the said building and finding no other alternative, the Plaintiffs served a Notice under Section 586 of the Kolkata Municipal Corporation Act, 1980 to the Defendant Nos. 4 & 5 but despite receiving the same they did not give reply to the same and the Plaintiffs on several occasion requested the Defendant Nos. 1 to 3 not to encroach the Plaintiffs' land situated at Premises No. 33/1, Rafi Ahmed Kidwai Road, Kolkata-700 016 but the Defendants refused to obey the Plaintiffs' request and as such, prayed for restraining the Defendant Nos. 1 to 3 and their men and agents and/or servants and/or each of them from raising any construction over the Plaintiffs' land situated at Premises No. 33/1, Rafi Ahmed Kidwai Road, Police Station- Park Street, Kolkata-700 016 in any manner whatsoever and further prayed for restraining the Defendant Nos. 4 & 5 from issuing any sanction plan in respect of the the Premises No. 33/1, Rafi Ahmed Kidwai Road, Police Station- Park Street, Kolkata-700 016 in

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favour of the Defendant Nos. 1 to 3.

Upon perusal of the application under Order 39 Rules 1 & 2 read with Section 151 of the Code of Civil Procedure filed by the Plaintiffs and also considering the **Annexure-"A"** i.e. the original Deed of Conveyance dated 12th day of April, 2004, **Annexure-"B"** i.e. original Two Mutation Applications filed before the Kolkata Municipal Corporation, **Annexure-"C"** i.e. original Sketch Map of Premises No. 33/1, Rafi Ahmed Kidwai Road, Police Station- Park Street, Kolkata-700 016, **Annexure-"D"** i.e. original Notice under Section 586 of Kolkata Municipal Corporation Act, 1980 and **Annexure-"E"** i.e. original Registered Boundary Declaration so furnished by the Plaintiffs and also considering the submission of the Ld. Advocate appearing on behalf of the Plaintiffs, it is the view of this Court that the three cardinal principles namely, prima facie case, balance of convenience and inconvenience and the chance of irreparable loss and substantial injury are to be considered and adjudicated at the time of deciding both the ad-interim Order of injunction as well as the injunction application in its finality.

In the present case, Plaintiffs with the help of the documents, as annexed with their injunction application, has tried to establish the prima facie case in their favour and the Plaintiffs have been able to prove that there is a prima facie case in the present suit and the balance of convenience and inconvenience are also lying in favour of the Plaintiffs and the Plaintiffs will suffer irreparable loss and injury if the ad-interim order of injunction is not passed.

Hence, it is

ORDERED

that the Defendant Nos. 1 to 3 and their men and agents and/or servants and/or each of them are hereby restrained from raising any construction over the Plaintiffs' land situated on Premises No. 33/1, Rafi Ahmed Kidwai Road, Police Station- Park Street, Kolkata-700 016 in any manner whatsoever **for a limited period i.e. the next date.**

Issue notice upon the Defendants directing them to show-cause within **15 days** as to why an order of temporary

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injunction shall not be recorded against them in terms of the prayer so made by the Plaintiffs.

Plaintiffs are hereby directed to comply with the provisions of Order 39 Rules 3(a) & 3(b) of CPC at once and file affidavit of compliance.

Upon appearance of the Defendants, this Court shall consider the application dated 06.03.2026 filed under Order 39 Rule 7 read with Section 151 of CPC supported by an affidavit praying for appointment of an Advocate Commissioner.

Fix **23.04.2026** for S.R. and A.D. and appearance.

Requisites be filed at once.

Bench Clerk is hereby directed to return all the original documents so filed by the Plaintiffs and retain the photocopies of the said documents with the record.

Dictated & Corrected by me.

Judge-in-Charge, Bench-V
City Civil Court, Calcutta

Judge-in-Charge, Bench-XIII
City Civil Court, Calcutta