

**\_ IN THE COURT OF DISTRICT JUDGE AT ALIPORE, SOUTH 24  
PARGANAS**

**Present: Sri Ajay Kumar Gupta, District Judge**

**Misc Appeal No. 36 of 2020**

**Akbar Ali Molla & Ors.**

**..... Appellants/Plaintiffs**

**Vs.**

**Abu Bakkar Molla & Ors.**

**..... Respondents/Defendants**

**Order No.01 dated 10.02.2020**

The instant Miscellaneous Appeal under Order 43 rule 1 (r) read with Section 151 of the C.P.C is at the instance of the Appellants against the Respondents to impeach the Order dated 27.01.2020 passed by the Ld. Civil Judge (Jr. Divn.), 3<sup>rd</sup> Court at Alipore in Title Suit No. 118 of 2020.

Court fees have been correctly stamped. Certified copy of the impugned order has not been filed. Appellants file a leave petition to file the present appeal without certified copy of the impugned order. Appellants file a web generated copy of the order with under taking to file certified copy of the impugned order dated 27.01.2020.

Heard. Considered.

Prayer for leave is granted. Appellants are permitted to file the appeal before Central Filing Section. Register.

At this stage appellants file an application under Order 39 Rules 1 and 2 read with Section 151 of C.P.C for temporary injunction.

Appellants file hazira.

The record is taken up for admission hearing.

As per the office report the appeal is filed within the period of limitation.

On perusal of the petition as well of report of offices, I find there is no impediment to admit the appeal. So appeal is admitted.

Now the petition under Order 39 Rule 1 and 2 read with Section 151 of CPC is moved by the Ld. Advocate for the Appellants.

As per office report no caveat lodged.

Heard the submission of the Ld. Advocate for the Appellants/Plaintiffs.

Appellants/Plaintiffs' case in brief is that Jabbar Molla was the absolute owner and during possession Jabbar Molla made the construction of eight tiles shed rooms with bathe and privy on the said suit property and paying the KMC tax in time. Abdul Jabbar Molla @ Jabbar Molla had four wives and out of four wives first wife died as issueless, second wife died leaving three daughters namely Golenar Bibi, Golenur Bibi and Shamsunnesa Bibi and after death of second wife he married to third wife. She also died leaving one daughter namely Nazma Khatoon (Bibi) who also died on 03.01.2020 leaving behind her sons. Out of them one Afsar Thander who is the Plaintiff no.4 herein and lastly Abdul Jabbar Molla also married to Chabera Bibi @ Sabera Bibi. She also died leaving behind his three sons and one daughter who are the Plaintiff nos. 1 and 3. Rafiqul and their names have been impleaded herein as Plaintiff nos. 5 to 8. After death of Golenar Bibi, out of her four sons one son has been impleaded as Plaintiff no.9. After death of Golenur Bibi, her one son impleaded as Plaintiff no.10. Accordingly, after death of Abdul Jabbar Molla, the right, title, interest and possession of the suit property devolved upon the Appellants/Plaintiffs herein.

The predecessor of Respondents/Defendants Keyamuddin Molla approached to predecessor of the Appellants/Plaintiffs for staying in a brick built tiles shed rooms with using of vacant land along with bathe and privy in temporary manner in the suit property without paying any license fees to him with a condition that while predecessor of the Appellants/Plaintiffs asked the predecessor of the Defendants/Respondents to quit vacate the said tiles shed rooms with vacant land, then predecessor of the Defendants would vacate and handed over the possession of suit schedule property. After death of the deceased Keyamuddin Molla, the Respondents/Defendants constructed their dwelling house on their separate ejmali property and they are not using the suit property. The Appellants/Plaintiffs requested the

Respondents/Defendants to vacate the suit property but they neglected to quit. On 17.01.2020 the Defendants/Respondents came to the suit property with goons and threatened the Appellants/Plaintiffs. Accordingly the Appellants/Plaintiffs pray for an order of temporary injunction restraining the Defendants and their men and agents from parting with possession and/or transferring the suit property to any third party and/or restrain them not to make any change the nature and character by making new construction on the suit scheduled property till the disposal of the suit.

In support of their case, the Appellants/Plaintiffs have filed some relevant documents i.e. photocopies of R.S Khatian, LR Khatian, KMC Tax Receipt.

Perused the documents available in the case record. Considered.

It appears from the record that the Appellants/Plaintiffs have been able to prove the prima facie case in their favour and balance of convenience and inconvenience are also in favour of the Appellants/Plaintiffs. I also find urgency in this matter.

In view of that this court is also inclined to direct both the parties to maintain status quo as regards the nature, character and possession thereof in respect of the suit property as of today till 24.02.2020.

Respondents/Defendants are directed to show cause as to why the Appellants/Plaintiffs' prayer for ad-interim injunction should not be allowed.

Appellants/Plaintiffs are directed to comply with the provision under Order 39 rules 3(a) and 3(b) of the C.P.C.

Issue notice. Requisites to be put in forthwith.

However, the Defendants/Respondents are at liberty to apply to the court for discharge or variation on vacating of the order, as above, as per the principle u/s 39 rule 4 of the C.P.C.

To 24.02.2020 for S/R and A/D.

D/C by me  
Sd/- Sri Ajay Kumar Gupta  
District Judge

Sd/- Sri Ajay Kumar Gupta  
District Judge