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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 369/2022**

SATYAM KANOI & ANR.

..... Plaintiffs

Through: Mr. Rajiv Nayar, Senior Advocate
with Mr. Kartik Nayar, Mr. Saurabh
Seth and Mr. Rishab Kumar,
Advocates

versus

SHIV JATIA & ORS.

..... Defendants

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **03.06.2022**

I.A.9697/2022 (exemption from filing clear copies)

1. Subject to the plaintiffs filing the clear and legible copies with proper margin of the documents on which the plaintiffs may seek to place reliance, within four weeks from today, exemption is granted for the present.
2. The application is disposed of.

I.A.9698/2022 (u/S 151 for exemption from prior service)

3. For the reasons stated in the application, the same is allowed.

I.A.9695/2022 (u/S 92(1) CPC)

4. The present application has been filed on behalf of the plaintiffs under Section 92(1) of the Code of Civil Procedure, 1908 (CPC) seeking leave of this Court to institute the present suit.
5. The plaintiffs are two of the trustees in the defendant no.3 Trust and therefore, have an interest in the property being Plot No.DG/3, Action Area-



I in the New Town, Police Station Rajarhat District, North-24 Parganas, where the Delhi Public School, New Town, Kolkata is being run (Trust property) by the defendant no.3 Trust.

6. Senior counsel appearing on behalf of the applicants/plaintiffs relies upon the judgment of the Supreme Court in ***R.M. Narayana Chettiar & Anr. v. N. Lakshmanan Chettiar & Ors.***, (1991) 1 SCC 48 to submit that leave under Section 92 of the CPC can be granted even without notice to the defendants in a case where delay would cause considerable loss to the public trust. The aforesaid judgment has been followed recently by the Supreme Court in ***Bhupinder Singh v. Joginder Singh***, (2020) 18 SCC 243, wherein it has been noted that in an emergent situation, leave can be granted by the court under Section 92(1) of the CPC without issuing notice to the defendant. However, the defendant/respondent has a right to file an application for revocation of the leave granted.

7. In the present case, a school is being run in the Trust property and there is an apprehension that third party rights are being created in the Trust property. Therefore, in view of the facts and circumstances of the present case, I deem it appropriate to grant leave to the plaintiffs to institute the present suit.

8. The application is disposed of in above terms.

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9. Let the plaint be registered as a suit.

10. Issue summons to the defendants through all modes. The summons shall state that the written statement(s) shall be filed within thirty days from the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the



plaintiffs.

11. Liberty is granted to the plaintiffs to file replication(s) to the written statement(s) within fifteen days from the receipt of the written statement(s). Along with the replication(s) filed by the plaintiffs, affidavit of admission/denial of the documents of the defendants be filed by the plaintiffs.

12. List before the Joint Registrar on 26th August, 2022 for completion of service and pleadings.

13. List before the Court on 10th November, 2022 for framing of issues.

I.A.9696/2022 (O-XXXIX Rule 1 and 2 CPC)

14. The present suit has been filed on behalf of the plaintiffs under Section 92 of the CPC seeking declaration, mandatory injunction and other ancillary reliefs.

15. It is stated in the plaint that a school is being run at the Trust property of the defendant no.3 Trust. The defendants no.1, 2 and 4 together are seeking to create third party rights in respect of the aforesaid property of the defendant no.3 Trust. Attention of the Court has been drawn to the transcripts of the video recording dated 31st May, 2022 between the plaintiff no.1 and the defendant no.1, which shows that the defendant no.1 refused to show the perpetual lease deed in favour of the defendant no.3 Trust in respect of the Trust property to the plaintiff no.1. On 31st May, 2022 and 2nd June, 2022, a notice was sent on behalf of the plaintiff no.1 to the defendant no.2, wherein it is alleged that the defendant no.1 has admitted that the original lease deed was not in the registered office of the defendant no.3 Trust, but it is in the possession of a third party.

16. Issue Notice.



17. Notice be issued to the non-applicants/defendants through all modes.
18. Reply be filed within four weeks.
19. Rejoinder thereto, if any, be filed within two weeks thereafter.
20. *Prima facie* case is made out on behalf of the applicants/plaintiffs. It appears that the lease deed has been handed over to an outsider, which could be detrimental to the interest of the defendant no.3 Trust. Consequently, till the next date of hearing, status quo shall be maintained with regard to possession and title of the property being Plot No.DG/3, Action Area-I in the New Town, Police Station Rajarhat District, North-24 Parganas, where the Delhi Public School, Newtown, Kolkata is being run by the defendant no.3 Trust.
21. Compliance report under Order XXXIX Rule 3 of the CPC be filed within three days.
22. List before the Joint Registrar on 26th August, 2022 for completion of service and pleadings.
23. List before the Court on 10th November, 2022.

AMIT BANSAL, J.

JUNE 03, 2022

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