

2 The Plaintiffs' case in the suit is that by a deed of trust executed between the original owners and the Plaintiffs' predecessors, the owners, as settlers, conveyed and transferred to the Plaintiffs' predecessors the suit property, then merely a land, to be held by the Plaintiffs upon trusts and

obligations as set out in the deed of trust. The primary object of the trust was to provide residential accommodation for poor (including lower middle class) members of the Parsi Zoroastrian community. It is the Plaintiffs' case that by an agreement dated 1 April 1968, entered into between the then trustees as owners and Lady Hirabi Cowasji Jehangir and four others as sponsors, the owners therein agreed to grant to the sponsors a licence to enter upon the suit property and construct buildings thereon. The agreement provided that after the buildings have been completed, the owners would grant, and the sponsors would confirm, in favour of Defendant No.1 society a lease of land forming part of the suit property. Three buildings were constructed in pursuance of this agreement on the suit property. Various members of Parsi Zoroastrian community occupy flats in these suit buildings, in keeping with the object of the trust. A draft lease deed was annexed to the agreement of 1 April 1968. Though Defendant No.1-society, in pursuance of this transaction, continued to pay rent to the Plaintiffs as per the terms of the proposed lease and also abide by the terms and conditions of the agreement of 1 April 1968 along with the form of lease annexed thereto, with effect from January 1997 Defendant No.1 stopped paying the quarterly rent. It is the Plaintiffs' grievance that despite being called upon to execute the lease in the form annexed to the agreement, Defendant No.1 failed to do so. The Plaintiffs, accordingly, seek specific performance of the agreement dated 1 April 1968 together with the form of lease annexed thereto in the present suit. The Plaintiffs also pray for permanent injunction restraining Defendant Nos.1 and 2 and their agents or persons claiming through or under them from giving any permission of transfer of any tenancy or licence in respect of any flat in any of the buildings constructed on the suit property. In the

alternative, the Plaintiffs pray for perpetual injunction restraining Defendant Nos.1 and 2 and their agents or persons claiming through or under them from permitting to any person to transfer of ownership or create any tenancy or licence in respect of any flat on the suit property, without obtaining an NOC from the Plaintiffs prior to granting such permission and without paying to the Plaintiffs 20% of the consideration payable by the transferee to the transferor of the suit flat. The Plaintiffs also pray for permanent injunction against Defendant No.1 and its agents from transferring ownership or creating tenancy or licence etc. in respect of any flat in the suit property to any person other than a person of Parsi/Irani of Zoroastrian faith.

3 The present notice of motion is taken out for interim reliefs in terms of the abovementioned perpetual injunctions. This Court, by an order dated 10 July 2015, has already passed an ad-interim order in terms of prayer clauses -(b) and (c) of the notice of motion. Since the passing of the ad-interim order, there has neither been any reply nor any appearance on the part of the Defendants. Accordingly, the notice of motion is made absolute in terms of prayer clauses -(b) and (c). Learned Counsel for the Plaintiffs also prays for relief in terms of prayer -(d) of the notice of motion. By this prayer, Defendant No.1 is required to disclose to the Plaintiffs full particulars of all flats which have been permitted to be transferred by them so far without an NOC of the Plaintiffs, both prior to and after 11 November 2006 and till 10 July 2015. In the facts of the case and considering the narration above, prayer -(d) also deserves to be allowed. Accordingly, there shall be an order in terms of prayer (d) of the notice of motion.

4 The Notice of Motion is disposed of in the above terms.

(S.C. GUPTE, J.)