

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision : 9<sup>th</sup> November, 2011

+ RFA(OS) 122/2009

BHARTI SANGAM TRUST .....Appellant  
Through : Mr.Ajay Kumar Agarwal, Advocate.

versus

SHRI VIDYA CHARAN SHUKLA & ORS. ....Respondents  
Through: Ms.Prachi Mishra, Advocate for R-1.  
Mr.Sachin Datta and Ms.Gayatri  
Verma, Advocates for R-4/UOI.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MR. JUSTICE S.P.GARG**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

**PRADEEP NANDRAJOG, J.(Oral)**

1. Vide impugned order dated 26.8.2009, CS(OS) No.1401/2005 filed by Bharat Sangam Trust under the signatures of Jagdish Sharma, claiming to be a trustee, has been dismissed: holding that Mr.Jagdish Sharma had neither pleaded nor shown any authority to sue on behalf of the plaintiff.

2. The suit in question seeks a declaration pertaining to an agreement dated 10.2.2005, signed by Sh.Vidya Charan

Shukla, defendant No.1, creating rights in favour of defendants No.2 and 3 i.e. MGF Development Ltd. and M/s.Columbia Holdings Pvt. Ltd. Under the agreement, a 0.5 acre land allotted by L&DO to Bharat Sangam Trust is to be developed, as per averments made in the plaint through defendants No.2 and 3. It is alleged in the plaint that the agreement in question fouts the terms under which L&DO has demised the land to Bharat Sangam Trust. The prayer in the plaint is predicated on the ground that if the agreement is allowed to be implemented, the plaintiff would lose a valuable property.

3. We have read the plaint and have repeatedly called upon learned counsel for the appellant to show us the averment in the plaint that Jagdish Sharma has been authorized to sue on behalf of Bharat Sangam Trust. Learned counsel concedes that there is no such averment in the plaint.

4. The only paragraph in the plaint where name of Jagdish Sharma is mentioned is paragraph No.1, 23 and 24 wherein following is pleaded:-

“1. That the plaintiff is a Trust duly registered under the Societies Registration Act, 1860, and Shri Jagdish Sharma is one of its Trustees.

XXXX XXXX

23. That in the evening of 10.2.2005 Jagdish Sharma received a telephone call from one of the security guards employed at the premises of the plaintiff complaining that some people are trying to make a forcible entry into the property. The said persons were fully armed and were threatening the guards with serious consequences. The said persons claimed themselves to be the new owners

of the property. On contracting defendant No.1, it was falsely told that he has not entered into any agreement with anybody. However, Police was called at about 11.45 – 12.00 p.m. and when the PCR Van arrived at the suit property, the said person ran away from the property.

24. That on 12.2.2005 Jagdish Sharma lodged a complaint with the Commissioner of Police and sent the copy to Hon'ble Prime Minister of India, Hon'ble Home Minister of India, Hon'ble the Lt.Governor of Delhi, Dy. Commissioner of Police, Economic Offences Wing and Station House Officer, PS: Chanakyapuri, New Delhi."

5. Learned counsel for the appellant concedes that averments made in paragraphs No.23 and 24 would have no bearing on the issue whether Jagdish Sharma could sue on behalf of Bharat Sangam Trust, but urges that averments in paragraph 1 of the plaint constitute sufficient authority in Jagdish Sharma, required to be pleaded, for the suit to be filed under his signatures.

6. Now, as pleaded in para 1 of the plaint, and indeed as a matter of fact, Bharat Sangam Trust is a society registered under the Societies Registration Act as pleaded and argued before us today; and if this be so, Jagdish Sharma has to show to us his competence to sue on behalf of Bharat Sangam Trust by referring to either the bye-laws of the society, if they so empower him, or a resolution by the management of the society authorizing him to do so. Learned counsel concedes that there is none.

7. Learned counsel seeks to urge that as a citizen, Jagdish Sharma can draw the attention of the Court to a wrong

done by a society and in this context urges the maintainability of the suit.

8. If Jagdish Sharma wants to maintain an action as a citizen of this country, he has then to sue in his own name.

9. Learned counsel for the appellant states that as recorded in the order dated 3<sup>rd</sup> May 2010 the matter may be treated as a Public Interest Litigation. The order in question reads as under:-

“Issue notice. Ms.Prachin Pandey, Advocate accepts notice on behalf of respondent No.1. Mr.Nikhil Srivastava, Advocate accepts notice on behalf of respondent Nos.2 and 3.

Learned Senior Counsel for respondent No.1 has informed us that a Suit for specific performance had been filed by respondent Nos.2 and 3, which has since been dismissed. He further states that respondent No.1 may have no objection if the entire matter is heard as a PIL, in terms of Sheela Barse (1988) 4 SCC 226, provided, the appellant is discharged of any further obligation.

Suit No.1580/2006 be sent for the next date of hearing.

Renotify on 25<sup>th</sup> May, 2010.”

10. The order in question does not direct that the instant appeal would be treated as a Public Interest Litigation. It only records, if we may use the expression, a puffed up stand taken by the first respondent that he has no objection if the matter is heard as a Public Interest Litigation.

11. If Jagdish Sharma wants to maintain a Public Interest Action, he is free to do so as per procedures established by law and not in the manner sought for i.e. a RFA(OS) being converted into a Public Interest Litigation.

12. The appeal is dismissed but without any order as to costs.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(S.P. GARG)**  
**JUDGE**

**NOVEMBER 08, 2011**  
dk