

**Shiv Ram Vs. Ram Veer**

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**SooperKanoon Citation :** [sooperkanoon.com/455178](http://sooperkanoon.com/455178)

**Court :** Allahabad

**Decided On :** Mar-03-2004

**Reported in :** AIR2004All324; 2004(2)AWC1308

**Judge :** Tarun Agarwala, J.

**Acts :** [Specific Relief Act, 1963](#) - Sections 20; [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 154 and 166

**Appeal No. :** Second Appeal No. 1572 of 1987

**Appellant :** Shiv Ram

**Respondent :** Ram Veer

**Advocate for Def. :** Sri. C.S. Agnihotri

**Advocate for Pet/Ap. :** Sri. R.B. Singhal

**Disposition :** Appeal dismissed

**Judgement :**

**Tarun Agarwala, J.**

1. The second appeal was admitted on the following substantial question of law, namely :

'Whether the lower appellate court could non-suit the plaintiff-appellant on the ground that he possessed 125 bighas of land in the circumstances of the present case?'

2. The brief facts leading to the second appeal is that the plaintiff filed a suit for specific performance of an agreement to sell dated 23.5.1981, wherein, the plaintiff agreed to purchase the land for. a sum of Rs. 11,000 out of which the plaintiff had paid a sum of Rs. 4,000 as earnest money and the balance amount of Rs. 7,000 was to be paid at the time of the execution of the sale-deed. It was alleged that the plaintiff was always ready and willing to perform his part of the contract. On the other hand the defendant was resiling from the contract and was not willing to execute the sale deed. The plaintiff gave a notice to the defendant and inspite of the receipt of the notice, the defendant did not execute the sale deed, hence the suit for specific performance.

3. The defendant, on the other hand, contended that he was always willing to execute the sale deed and in fact, upon the receipt of the notice from the plaintiff, had gone to Sub-Registrar office to get the sale deed executed. Since the plaintiff had no money to pay the balance amount, the sale deed could not be executed.

4. The trial court after framing various issues decreed the suit for specific performance and directed the defendant to execute the sale deed falling which an option was given to the plaintiff to get the sale deed executed through the process of the Court.

5. The appellate court reversed the decree of the trial court and dismissed the suit of the plaintiff on the ground that the plaintiff already possessed 125 bighas of land and in view of the bar contained under Section 154 of U.P.Z.A. and L.R. Act, 1950 (hereinafter referred to as the 'Act'), the sale deed could not be executed. The appellate court further directed the defendant to refund the amount along with interest.

6. Aggrieved by the reversal of the decree the plaintiff-appellant has preferred the present Second Appeal.

7. I have heard Sri R.B. Singhal, learned counsel for the plaintiff-appellant and Sri C.S. Agnihotri, learned counsel for the defendant-respondent.

8. The learned counsel for the appellant submitted that merely on account of an admission made by the plaintiff in his cross-examination, the plaintiff could not be non-suited. The counsel for the appellant submitted that no issue was framed on the question as to whether the plaintiff possessed 125 bighas of land or not, nor any issue was framed as to whether the agreement to sell could not be enforced in view of the bar contained in Section 154 of the Act. In the absence of the aforesaid issues being framed, the appellate court committed an error in dismissing the suit on the sole ground that the appellant himself admitted to be in possession of 125 bighas of land and therefore could not possess any further land as the same was barred under Section 154 of the Act. It was submitted that until and unless an issue is framed, the appellate court could not non-suit the appellant merely on an admission made by him during his cross-examination.

9. Section 154 of the Act reads as under :

'(1) Save as provided in Sub-section (2), no bhumidhar shall have the right to transfer by sale or gift, any land other than tea gardens to any person where the transferee shall, as a result of such sale or gift, become entitled to land which together with land, if any, held by his family will in the aggregate, exceed 5.0586 hectares (12.50 acres) in Uttar Pradesh.'

10. Section 166 of the Act reads as under :

'Every transfer made in contravention of the provisions of this Act shall be void.'

11. From a combined reading of the aforesaid provisions of the Act, it is clear that any transfer of land by way of sale or gift whereby the transferee possesses more than 12.5 acres land, such transfer of land by way of sale or gift would be void. Thus the plaintiff cannot be provided to hold more than 12.5 acres of land. If, the suit was decreed, the plaintiff would hold more than 12.5 acres of land, which he could not be permitted to hold under Section 154 of the Act. Thus the suit for specific performance could not be decreed, as it was clearly barred by Section 154

read with Section 166 of the Act. In my opinion the appellate court rightly allowed the appeal and dismissed the suit.

12. The arguments of the learned counsel for the appellant that an issue should have been framed on the question as to whether the plaintiff possessed 12.5 acres of land or not and in the absence of any issue being framed the appellate court could not non-suit the plaintiff. The argument of the learned counsel for the appellant is devoid of any merit. An issue is framed when there is an assertion of a fact by one party and denied by the other party. In the present case the plaintiff himself admitted in his deposition that he possessed more than 12.5 acres of land and in view of this clear admission there was no requirement to frame an issue. Thus in my opinion no issue was required to be framed. The learned counsel for the appellant invited my attention towards a judgment of the Supreme Court in *Basanta Vishwanath and Ors. v. B.K. Elayalwar and Ors.*, 2001 (8) SCC 133 paragraph No. 12. The said judgment has no application to the present facts of the case.

13. It may be stated here that under Section 20 of the [Specific Relief Act, 1963](#), the Court has a discretion to grant or refuse to grant a relief of specific performance. In the present case the discretion exercised by the appellate court in not granting the relief for specific performance was not arbitrary but was sound and reasonable and guided by judicial principles taking into consideration the prohibition contained in Section 154 read with Section 166 of the U.P.Z.A. and L.R. Act.

14. In view of the aforesaid, there is no infirmity in the order passed by the lower appellate court. The appeal fails and is dismissed. However, there shall be no order as to cost.