

**Balbeer Singh Vs. Arjun Singh**

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**Court :** Allahabad

**Decided On :** Jul-15-1999

**Reported in :** 1999(3)AWC2683

**Judge :** P.K. Jain, J.

**Acts :** [Specific Relief Act, 1963](#) - Sections 20; [Indian Contract Act, 1872](#) - Sections 24; [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 154, 154(1) and (2), 166 and 337

**Appeal No. :** Second Appeal No. 1100 of 1993 (A)

**Appellant :** Balbeer Singh

**Respondent :** Arjun Singh

**Advocate for Def. :** B.N. Agarwal and ;Pradeep Chandra, Advs.

**Advocate for Pet/Ap. :** Manoj Misra and ;K.K. Dubey, Advs.

**Judgement :**

**P. K. Jain, J.**

1. This is defendant's second appeal against the judgment and decree dated 21.7.1993 passed by Sri C. B. Jaiswal, the then District Judge, Jhansi dismissing the Civil Appeal No. 46 of 1992, filed by the appellant.

2. Respondent Arjun Singh had filed Suit No. 193 of 1988 alleging that on 23.12.1985, the defendant had agreed to sell his Bhumidhari plot No. 76 area 4.32 acres situated in village Khiriya Nad, Pargana and Tehsil, Moth district Jhansi for a sum of Rs. 32,740. Prior to that an agreement dated 23.11.1985 was executed and a sum of Rs. 10,750 was advanced but the sale-deed could not be got executed within the prescribed time. Therefore, the second agreement dated 23.12.1985 was got executed and in addition to Rs. 10,750 already advanced earlier further sum of Rs. 14,000 was advanced to the defendant and the agreement was registered with the Sub-Registrar. According to the terms of the agreement, the sale deed was to be executed after payment of balance of Rs. 8,000 by the plaintiff by 15.5.1986. The plaintiff asked the defendant to execute the sale deed after receiving the balance sale consideration but the defendant had been postponing execution of the sale deed. The plaintiff, therefore, served a notice dated 19.3.1988 through his lawyer Sri Kedar Nath, Advocate which was received by the defendant on 20.5.1988 but the defendant did not execute the sale deed and made a false reply dated 4.6.1988 through his counsel. It was further alleged that the plaintiff was ever ready and willing and was still ready and willing to get the sale deed executed after payment of Rs. 8,000. With these allegations, a decree for specific performance of the contract was sought.

3. The defendant appellant contested the suit. In the written statement, he alleged that the agreement cannot be enforced under the law as the plaintiff is not entitled to purchase the land. It was further pleaded that the defendant was possessed of 12.37 acres of land in Patti Kurhara and 7.02 acres of land in village Ujyan--and thus he was possessed of more than 12.5 acres of land prescribed under Section 154 of the Zamindari Abolition and Land Reforms Act (hereinafter called the Act) and in view of the provisions of Section 154 of the Act he was not entitled to purchase the land in excess of said limit. It was also pleaded that defendant's father had taken loan from the plaintiff and in acknowledgment of the loan a document was written but the plaintiff instead of getting the document of loan executed got the present agreement of sale executed. Part of the amount of the loan taken by the father of the defendant was repaid by 15.5.1988 and the remaining was to be paid later on. The plaintiff had agreed to return the papers after the loan amount was fully repaid.

4. On the pleadings of the parties, the trial court framed following issues :

(1) Whether on 23.12.1985 the defendant had agreed to sell his land to the plaintiff and whether the registered agreement was executed and the sale consideration agreed was Rs. 32,750 and Rs. 24,750 was received by the defendant as advance?

(2) Whether the plaintiff was ready and willing to perform his part of the contract by paying Rs. 8,000?

(3) Whether the suit was barred by Section 154 of U. P. Act No. 1 of 1951?

(4) Whether the agreement dated 23.12.1985 was executed under impression that it was a document of loan and therefore it was void and illegal?

(5) Whether the suit was not maintainable?

(6) To what relief, if any, the plaintiff was entitled?

5. The trial court decided all the Issues in favour of the plaintiff and decreed the suit. As regards issue No. 4, the findings of the trial court were that the total area of land held by the plaintiff on the date of agreement was 12.78 acres and after purchase of 4.32 acres, the total area would be 17.10 acres whereas in view of the provisions contained in Section 337 of the Act, he was entitled to hold 18.75 acres of land in Bundelkhand.

6. The first appeal preferred by the appellant was dismissed by the first appellate court concurring with the findings arrived at by the trial court.

7. Learned counsel for the appellant has raised the following two questions of law :

(1) Whether the Courts below have misread or ignored the material evidence while giving a finding that the appellant was always willing and ready and was still willing and ready to perform his part of the agreement?

(2) Whether in the facts and circumstances of the present case, the said agreement to sell could not be legally enforced?

8. Sri K. K. Dubey, learned counsel for the appellant and Sri B. N. Agarwal, learned counsel for the respondent have been heard on theaforesaid substantial questions of law at length.

9. During the course of hearing of the appeal, Sri K. K. Dubey has also made a statement that in view of the statement made by the plaintiff as P.W. 1, during his cross-examination to the effect that 'he was ready to accept the amount of advance with interest and expenses of the litigation and in case, he gets the same he can get the suit dismissed', the appellant is ready to deposit the amount of Rs. 24.750 along with interest at the rate of 12% per annum from the date of agreement, i.e., 23.12.1985 till the date of deposit and expenses of the litigation within 4 months from today.

Point No. 2 :

10. Submission of learned counsel for the appellant is that in the written statement, a specific plea was taken that at the time of execution of the agreement, the plaintiff was possessed of agriculture land more than the limit prescribed in Section 154 of the Act. The plaintiff had filed replication as contained in Annexure-RA-5. In para 2 of the replication he had categorically admitted that he was possessed of 7.74 acres of land in village Ujyan and 12.78 acres of land in village Patti Kurhara. It is further submitted that during cross-examination also, the plaintiff as P.W. 1 has admitted that at the time of filing of the suit, he was possessed of 7.75 acres of land in village Ujyan and 12 acres of land in village Patti Kurhara. It is further submitted that in view of the provisions contained in Section 154 of the Act, which reads as follows 'he was not entitled to possess and hold more than 12.50 acres of land in Uttar Pradesh.'

Restriction on transfer by a bhumidhar-

(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.

(2) Subject to the provisions of any other law relating to the land tenures for the time being in force, the State Government may, by general or special order, authorise transfer in excess of the limit prescribed in sub-section (1) if it is of the opinion that such transfer is in favour of a registered cooperative society or an institution established for a charitable purpose, which does not have land sufficient for its need or that the transfer is in the interest of general public.

11. The plaintiff was not entitled to hold land which may exceed 12.50 acres of land in Uttar Pradesh. It is further submitted that in view of the provisions contained in Section 166 of the Act, the transfers made in contravention of the provisions of the Act are void. The submission of the learned counsel for the appellant is that in agreement, the consequence of which would be that the transfer of land would be void cannot be enforced by a decree of specific performance. Learned counsel for the plaintiff-respondent submits that there is categorical finding of the Courts below that the plaintiff-respondent was possessed of only 12.78 acres of land and with the purchase of 4.32 acres of land, the total area in his possession would have been 17.10 acres. Since the land was situated in Bundelkhand, for the purposes of Section 154 of the Act, the area in possession of the respondent or to be possessed by him after execution of the sale deed shall be computed in accordance with the provisions of Section 337 of the Act. In case, the area of the land possessed by the plaintiff-respondent and the area of land to be purchased by him is computed in accordance with provisions of Section 337 of the Act, the area would be less than 12.50 acres. It is further submitted that the finding of the trial court as well as the appellate court with regard to the land possessed by the plaintiff/respondent at the time of execution of the agreement to sell is a finding of fact which cannot be disturbed in second appeal.

12. On perusal of the material before the Court, it would be found that the finding of fact by the trial court as confirmed by the appellate court has been arrived at by misreading the evidence. As observed above, in the replication, the plaintiff-respondent has categorically admitted that he was possessed of 7.74 acres of land in village Ujyan and 12.78 acres of land in village Patti Kurhara, viz., the total land possessed by him was 20.52 acres. During cross-examination also, almost similar admission was made by the plaintiff-respondent in his deposition. The trial

court has not taken into consideration the admission of the plaintiff-respondent with regard to the land measuring 7.74 acres in village Ujyan. While deciding the issue No. 4, the trial court has only taken into consideration the land held by the plaintiff in village Patti Kurhara and by adding 4.32 acres of land which was to be purchased by the plaintiff through the agreement in question, the total land would have been 17.10 acres. Thus, the land held by the plaintiff in village Ujyan was not taken into consideration by the trial court. The appellate court confirmed the finding of the trial court without considering the material evidence on record. According to the provisions of Section 337 of the Act, the area of the land situated in Bundelkhand region shall be fixed by treating one and half acres of land equal to 1 acre land. If this formula is applied, then the area of 12.50 acres of land provided in Section 154 of the Act shall be equivalent to 18.75 acre of land whereas the plaintiff was admittedly possessed of 20.52 acres of land and the addition of 4.32 acres of land which he was going to purchase, the area would have been 24.84 acres of land which would have been much more than the prescribed limit under Section 154 of the Act. The finding of fact arrived at by the Courts below is thus vitiated by non-consideration of material admissions and misreading of the evidence.

13. As to the submission of the learned counsel for the plaintiff-respondent that the finding of the Courts below in this regard is a finding of fact, it may be stated that the finding is vitiated by misreading and non-consideration of material evidence. It is not pure and simple finding of fact but it is a mixed finding of fact and law, therefore, the High Court in second appeal can interfere with such finding on issue No. 4.

14. It is not disputed that the transfer of the land in violation of the provisions of Section 154 of the Act would have been void in view of the provisions of Section 166 of the Act. It would not be out of place to mention here that under Section 24 of the Indian Contract Act, an agreement the object of which is unlawful is a void agreement. The relief of specific performance of the contract under the Specific Relief Act is discretionary relief and shall not be granted by the Court, if the agreement for the contract is void being against clear prohibition by law.

15. In view of the above facts and circumstances, point No. 2 is decided In favour of the defendant-appellant and it is held that the agreement in question could not have been specifically enforced and no decree for specific performance of agreement could have been passed by the Courts below :

Point No. 1 :

16. Learned counsel for the appellant submits that during cross-examination, the plaintiff-respondent had admitted that if he gets the amount advanced by him along with interest and expenses, he would get the suit dismissed. It was also admitted by him that he was ready to accept the amount advanced by him along with expenses of the litigation and interest. In view of this admission, learned counsel submits that the plaintiff was not ready and willing to get the sale deed executed, and therefore, the Courts below should not have passed the decree for specific performance. It is submitted that the Courts below have ignored this part of the admission of the plaintiff while deciding issue No. 2. There is force in the submission of the learned counsel for the appellant and in view of the aforesaid statement given by the plaintiff-respondent, the Courts below should not have decreed the suit for specific performance of the contract.

17. As already pointed out above, learned counsel for the appellant has made a statement during hearing of the appeal that the appellant is ready to refund the amount of Rs. 24,750 along with interest from 23.12.1985 till the payment at the rate of 12% per annum and expenses of litigation throughout. In this view of the statement made and signed by learned counsel for the appellant as well as signed by the appellant, it would be just and proper that the decree for refund of Rs. 24,750 along with interest at the rate of 12% per annum from the date of agreement till the date of final payment/deposit in Court is passed and further the plaintiff-respondent be awarded expenses of the litigation throughout. Learned counsel for the respondent has submitted that a time-limit be fixed for the payment of the amount as aforesaid and in case such amount is not paid within the said period, conditional decree be passed dismissing the appeal of the defendant/respondent. In view of the fact that this Court has held that the agreement to sell being against the provisions of U.P.Z.A. and L.R. Act, was not

enforceable, such a decree cannot be passed. However, to protect the interest of the plaintiff/respondent, the Court feels that it would be proper to direct the plaintiff/respondent to deposit in Court the principal sum of Rs. 24,750 'within 2 months from today and the balance amount of Interest and expenses be deposited by the plaintiff/respondent within 2 monthsthereafter. It would further be proper to direct the plaintiff/respondent that in case of failure to comply with any of the aforesaid conditions of the decree, the plaintiff/respondent shall be liable to pay interest at the rate of 16% per annum from 23.12.1985 till the date of payment or deposit and on expiry of the period of 4 months from today, the plaintiff shall be entitled to execute the decree through Court.

18. In view of the foregoing discussions, the appeal is partly allowed. The judgment and decree passed by the trial court as confirmed by the appellate court is set aside. The suit of the plaintiff/respondent is partly decreed. Plaintiff/respondent shall be entitled to refund of Rs. 24,750 with 12% interest per annum from the date of agreement, i.e., 23rd of December, 1985 till the date of payment of the said amount along with litigation expenses throughout. It is further decreed that the principal sum of Rs. 24.750 shall be deposited by the appellant in the trial court within 2 months from today and the amount of interest and cost shall be deposited within 2 months thereafter. In case of default in complying with the terms of the decree within the time as aforesaid, the plaintiff shall be entitled to interest at the rate of 16% per annum from 23.12.1985 till the date of payment and the plaintiff/respondent shall be entitled to get the decree executed on expiry of 4 months' period from today.