

**(2011) 01 AHC CK 0345**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 2785 of 1985

Charan Singh

APPELLANT

Vs

VII A.D.J.

RESPONDENT

**Date of Decision :** 24-01-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 47

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 168A

**Citation :** (2012) 2 ADJ 678

**Hon'ble Judges :** S.U. Khan, J

**Bench :** Single Bench

## Judgement

Hon"ble S.U. Khan, J.—List revised. No one appears for the contesting respondent. Heard learned counsel for the petitioner. This writ petition was earlier allowed by another Hon"ble Judge on 6.8.2009 without hearing any one on behalf of contesting respondents as no one had appeared on their behalf. Thereafter re-hearing application was filed which was allowed. The judgment dated 6.8.2009 was set aside and matter was directed to be listed for hearing before another Judge.

2. An agreement for sale was executed by Kallu in favour of the petitioner on 24.10.1966 in respect of agricultural land area of which was 1 bigha 16 biswancies. The executants of the agreement executed sale-deed in favour of Albel Singh on 2.5.1967. Petitioner filed suit for specific performance being O.S. No. 367 of 1967 which was decreed on 6.5.1971 by the trial court. Appeal filed against the same was dismissed and second appeal being second appeal No. 591 of 1972 was also dismissed by this court on 22.11.1979. Thereafter petitioner filed execution application which was registered as Execution case No. 50 of 1972. In the execution proceedings contesting respondents took up the defense (by filing objections u/s 47 C.P.C.) that meanwhile consolidation had taken place and area and the number of the land in dispute had changed hence decree could not be executed. Munsif, Hawaii, Meerut through order dated 5.12.1981 passed in case No. 50 of 1972 copy of which is Annexure-7 to the writ petition accepted

the objections and dismissed the Execution case. Against the said order petitioner filed civil revision No. 142 of 1982 which was also dismissed by VII th Additional District Judge, Meerut on 21.1.1985 hence this writ petition.

3. The land which was agreed to be sold was comprised in chak No. 54 consisting of following plots:

- Plot No. 631 area 0-1-17
- Plot No. 633 area 1-1-18
- Plot No. 635 area 0-10-15
- Plot No. 635 area 0-1-10
- Total area = 1 bigha 16 biswa

4. The revisional court dis-agreed with the executing court regarding in-executability of the decree due to change of plot number or reduction in area during consolidation proceedings placing reliance upon supreme court authority reported in Baikunthi Devi and Others Vs. Mahendra Nath and Another, . Same view has been taken by the Supreme Court in Phool Pata and Another Vs. Vishwanath Singh and Others, .

5. However, the revisional court held that plot Nos. 633 and 635 which were subject-matter of the agreement and total area of which was 1-14-3 were re-numbered as plot No. 391 during consolidation which the judgment debtor got but the area of new plot No. 391 was 1-15-6 hence if sale-deed of lesser area i.e. of 1-14-3 was executed, it would be hit by Section 168-A of U.P. Zamindari Abolition & Land Reforms Act.

6. Firstly, I do not agree with the revisional court that provision of 168-A of U.P.Z.A & L.R. Act as it stood at that time would have been hit if the sale-deed had been executed by the court. The total area for which the agreement was executed was 1 bigha 16 biswa i.e. more than 1 bigha 15 biswa 6 biswancies hence there was no harm in executing the sale-deed of the entire plot No. 391 which the judgment debtor had got in consolidation, in lieu of plot Nos. 631, 633 and 635. Even though new plot No. 391 contained some additional area of plot Nos. 633 and 635 (0-1-03) however, it was in lieu of plot No. 631.

7. In any case Section 168-A of the Act has been deleted in the year 2004 by U.P. Act No. 27 of 2004. Accordingly, when agreement was executed Section 168-A was no bar to execution of sale-deed. The entire chak had been agreed to be sold. Now if the sale-deed is executed then also it will not be hit by Section 168-A as the said Section is no more on the statute book.

8. Till the dictation of the above part of the judgment Shri H.N. Sharma, learned counsel for the respondents did not appear. After dictation of the above part of the judgment and after learned counsel for the petitioner had left the court, on behalf of learned counsel for respondent Shri H.N. Sharma prayer for

adjournment was made. The Court indicated that judgment had been dictated in open court hence there was no question of adjourning the case. Thereafter learned counsel requested that written submission which he would be filing shortly might be considered. The said prayer was accepted. Para-5 of the written submission filed on behalf of Satveer Singh one of the respondent represented by Shri H.N. Sharma, learned counsel is quoted below :

That Section 168-A of U.P.Z.A. & L.R. Act has been deleted w.e.f. 23rd August 2004 in U.P. This amendment being only prospective will have no application in the present case. As such the orders impugned in this writ petition may be confirmed.

9. There is no doubt that deletion of Section 168-A is prospective. However, as no sale-deed has yet been executed hence the Section as it remained in existence only until 23.8.2004 cannot be applied to the sale-deeds to be executed after the said date even if they are executed pursuant to agreements for sale executed during the period when the said Section was on the statute book. Accordingly, writ petition is allowed. Impugned orders are set aside. Executing court is directed to immediately execute the decree.