

UPEW010021192025



THE COURT OF DISTRICT & SESSIONS JUDGE, ETAWAH.
Present: Rajat Singh Jain, HJS, (U.P.-6519)
Civil Revision No. 27 of 2025

Shivram son of Late Vijay Bahadur.

Resident of Gram Shekhpur Pachar, tehsil Takha, pargana Bharthana,
district Etawah.

Present resident of 57C Friends Colony, city & district Etawah.

... ..Revisionist.

Versus

1. Dinesh Kumar son of Late Ramnarayan.
2. Vinod Kumar son of Late Ramnarayan.
3. Smt. Munni Devi wife of Late Rakesh Kumar.
4. Abhishek Kumar son of Late Rakesh Kumar.
5. Rajesh Kumar son of Late Rakesh Kumar.
6. Vivek Kumar son of Late Rakesh Kumar.
7. Ashish Kumar son of Late Rakesh Kumar.

All residents of Gram Adda Ajuddi, Mauja Barakhera, tehsil, pargana &
district Etawah.

... ..Respondents.

J U D G M E N T

1. By way of this revision, decree holder/plaintiff of Original Suit no. 189/2000 Vijay Bahadur vs. Ramnarayan has challenged order dated 11.03.2025 passed by executing Court of Civil Judge (S.D.), Etawah in execution petition no. 5/2005 Vijay Bahadur versus Ramnarayan, whereby the execution petition was dismissed.

2. Brief facts leading to the present revision are that the plaintiffs suit for specific performance regarding 49/148 Gata no. 83 area 1.48 acre situated at mauja hidauli pargana and district Etawah was decreed by ex-parte judgement and decree dated 28.09.2004.

3. Thereafter, the decree holder filed an application for execution of decree on 16.03.2005. The judgement debtor took a plea that gata no. 83 is not in existence and therefore, the decree could not be executed. Decree

holder submitted that gata no. 83 has been converted into new gata no. 215 regarding area of original judgement debtor and therefore the decree can very well be executed.

4. After hearing the parties, learned executed court came to the conclusion that specific performance regarding new gata no. 215 can not be ordered and accordingly dismissed the execution by impugned order.

5. Heard Sh. Gyan Agrawal learned counsel for the revisionist and Sh. Ajay kumar Srivastava learned counsel for legal heirs of judgement debtor respondents and perused the record.

6. According to learned counsel for the revisionist/decree holder, for new gata number is given at the same place where old gata number was situated, then decree for specific performance can be executed.

7. In support of his contention he relied on **Rama Shankar vs. Raja Ram** reported in **2009(107) RD 401** wherein the Hon'ble Allahabad High Court has held that where the plot number of the land during consolidation of holding changed but the land remained the same, agreement of sale can not be defeated.

8. He also relies on **Hori Lal and another vs. Additional District Judge, Court no. 6 Agra** reported in **2012(91) ALR 634**, wherein, the Hon'ble Allahabad High Court has held that where description of property has been completely changed suit for specific performance can not be executed. In that case, the Hon'ble Allahabad High Court distinguished the judgement of the Hon'ble Supreme Court in **Phool Pata and another vs. Vishwanath Singh and others, AIR 1977 SC 1226** and **Baikunthinath Devi and others vs. Mahendra Nath and another, (1977)2 SCC 496**.

9. Learned counsel for plaintiff/decree holder further submitted that the Hon'ble Allahabad High Court in **Mahendra Nath vs. Baikunthi Devi (1976)2 ALR 21** held that an agreement to sale can be specifically enforced in respect of new numbers if the property is same. In appeal before the Hon'ble Supreme Court i.e. **Baikunthi Devi and others Vs Mahendra Nath and Others (1977)2 SCC 496** the Hon'ble Supreme Court upheld the decision of Hon'ble Allahabad High Court and held that even though the new allotted land was less than the original land and the

plaintiff was willing to give up the excess land, specific performance can be granted.

10. Per contra, the learned counsel for the respondent submitted that new chak allotted to the defendant/judgment debtor was at different places and therefore the decree for specific performance can not be executed. He further submitted that the new chak was allotted to the defendants during pendency of the suit but the plaintiff did not seek replacement of new number in place of old chak number.

11. In support of his contention, he relied on **Babu Ali(dead) and others vs. Dukkhi(dead) and others** reported in **2004(96) RD 530** wherein, the Hon'ble Allahabad High Court held that where most of the plots in dispute were allotted to other persons and the village was notified under Section 52 of the Consolidation of Holdings Act then obligation to execute the decree of specific performance in respect of plots forming new chak did not subsist and execution of decree cannot proceed.

12. He further relied on **Piarey Lal vs. Hori Lal** reported in **AIR 1977 RD 280** wherein, the Hon'ble Supreme Court held that where old holding regarding which agreement to sell was executed, was changed to a new holding, the rights, title and interest in old holding are lost and agreement for sale becomes void within meaning of Section 58 of the Contract Act and therefore, suit for specific performance of the agreement for sale was liable to dismissal.

13. Learned counsel for the respondents further relied on **Hori Lal (supra)**.

14. A perusal of the judgements cited by learned counsel for the parties, makes it clear that where new chak is carved out of the old holdings and its number changes, than specific performance can be granted. However, when new chak is allotted somewhere else and not on the old holding, specific performance can not be ordered.

15. The learned executing court should have decided this issue after receiving evidence that whether new chak no. 215 allotted to the judgment debtor was at the same place where old chak no. 83 was existed or the new chak is at different place, and only thereafter, it should have been decided that the decree was executable or not.

16. In view of the above, the impugned order is not sustainable and deserves to be set aside.

ORDER

The revision petition is hereby allowed. Impugned order dated 11.03.2025 is hereby set aside. Matter is remanded back to the learned executing court, who shall restore the execution case to its original number and will decide if new gata no. 215 of the judgement debtor was allotted out of old gata no. 83 at the same place or not and only thereafter will proceed to decide the executability of the decree.

While deciding this issue, the learned executing court can take evidence of the parties, if any. In the facts and the circumstances of the case, the parties are left to bare their own respective costs. Record be sent back immediately. Parties are directed to appear before the learned executing court on 25.03.2026.

Date: 10.03.2026

(Rajat Singh Jain)
District Judge,
Etawah.

Judgment signed, dated and pronounced in the open court today.
Date: 10.03.2026

(Rajat Singh Jain)
District Judge,
Etawah.