

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 23/2013
Walijan Mian & Ors.
Vrs.
Most Sahjadi Kuar.

ORDER

13.3.2014

The instant appeal is directed against the impugned order passed by DCLR Siwan Sadar in B.L.D.R. Case No. 14/119/2012-13 on 24.12.2012

The brief facts of the case are that Sahjadi Kuar W/o late Bashir Mian R/o Village- Kanaila , P.S.- Darauli, Dist- Siwan filed a case bearing No. 14/119/2012-13 on 26.05.2012 before DCLR, Siwan Sadar against the present appellants with respect to a piece of land having area 1 khata 2 dhur. Her further Plea was that, although, the said land was settled to her husband the present appellants were trying to dispossess her from the said land and had also encroached the same. The learned DCLR, after hearing the claims and counter claims of the parties., finally decided that as the case of the present appellants relate to deciding the title in respect of disputed piece of land and so long they can not get the title decided by a competent court, their encroachment on the said land is illegal and accordingly allowed the case in favour of the present respondent.

On being aggrieved by and dissatisfied with the aforesaid order , the present appellant preferred this appeal.

Heard the parties.

The learned counsel appearing on behalf of the appellants while arguing in details about the back ground of the case, submitted that the piece of land measuring 2 Katha 4 Dhur, plot No 593, Khata No. 196 was actually in joint possession of Najrali Miyan and Bangur Miyan. And after their separation in 1936 the 2 Katha 4 Dhur fell in the share of Bangur Miyan. The said Bangur Miyan settled the plot No. 593 to one Matisawar Kuar and the present appellant Walijan Mian is the grand son of Matisari Kuar. He further assailed the impugned order and submitted that the learned lower court ought to have call for Register- 2 from the Anchal and after perusal of the same ought to have passed the final order. He also said that in the present case complicated question of law, title and possession are involved hence the learned court ought to have sent the record of the case to the civil court for deciding the same.

The learned counsel appearing on behalf of the o.p. submitted that the this appeal in not maintainable either in law or in facts as the appellants having no cause of action for filing this frivolous appeal but the appellants want to humiliate and harass the widow




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respondent with ulterior motive to grab the land of widow who is helpless. He further submitted that the disputed land was settled by Ex-land lord in the name of Wasir Aansari, the husband of Most. Sahjadi Kuwer the present respondent at the time of vesting of Jamindari in the state and settled the return in his name and vide Jamabandi No. 25, the husband of the respondent had paid rent to the state and after his death the said land come in peaceful possession of respondent by way of inherited property. He further pointed out that a proceeding u/s 144 Cr. P.C also decided in favour of the respondent and Cr. Revision No. 237/2009 filed by appellants was dismissed by Dist and Session Judge, Siwan and now the appellant with a malafide intention want to grab the land on the basis of forged and fabricated documents. He lastly said that the present appeal suffers with various material and legal defects and fit to be dismissed.

Considering the facts and circumstances the case, material available on records and claims and counter claims made by the learned counsel for the parties. I found that the claims of the respondent is much superior and having some force because the Jambandi No. 25 in respect of 2 Katha 4 Dhur the disputed land of plot No. 593 Khata No. 136 is still running in the name of the husband of the present respondent and accordingly rents were being paid by him in the past and now by his wife. Even a proceeding u/s 144 before SDM Siwan was also decided in favour of the respondent and subsequently Cr. Rev. No. 237/2009 filed by the present appellants was dismissed by Dist Session Judge Siwan. Thus, it is clear that the appellants do not have any genuine claims over the land. The encroachment made by the appellant over the disputed land is illegal. On the other hand the appellants failed miserably before the court below and before this court to prove their claim beyond all reasonable doubts through any documentary evidences.

Thus, for the aforesaid reasons, I do not find any illegality in the impugned order of DCLR, Siwan Sadar, accordingly the same is upheld and this appeal being devoid of merit is dismissed.

Dictated & Corrected by me.


Commissioner,
Saran Division, Chapra
13/3/14


Commissioner
Saran Division, Chapra
13/3/14