

**In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 68/2015**

**Sanjay Prasad
Vrs.
Munna Sah**

ORDER

08-09-2015- The instant appeal petition is directed against the impugned order passed by DCLR, Chapra Sadar in B.L.D.R. case No. 04/2014-15.

The brief facts of the case are that the present respondent Munna Sah, S/o Late Churaman Sah, R/o Vill-Kanhaulil Manohar, P.S.-Baniapur, Dist-Saran filed a case before DCLR, Chapra Sadar under the BLDR Act-2009 for the removal of encroachment over on area of 2 katha land of khata No. 98 Survey plot No. 3654 situated in the same village against the present appellant (o.p. before DCLR). Thereafter, the learned DCLR issued notice to the o.p. and after hearing the case finally passed order on 10.02.2015 wherein he held that both parties failed to prove their claim over the disputed land and also directed C.O. Baniapur to initiated encroachment proceeding in accordance with law. Feeling aggrieved by the said order the present appellant has preferred this appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel for the appellant submitted that the total area of the disputed plot is 10 katha 10 dhur and recorded in R.S. Khatiyan as Gair Mazaruwa Malik land which was settled to his maternal forefather named Baij Nath Sah as he used to cultivate the same before R.S. operation on the permission of Ex-landlord. He further argued that in the past a title suit No. 166/1949 was also filed by one Dukhharan Mishra with respect to the disputed land by making the ancestor of the appellant as o.p. and the said case was decided in such a way that 1/3 part of the disputed land was allowed in favour of the appellants ancestor and rest part to other parties. Again when an appeal was preferred vide Appeal No. 83/1951 against the said judgment, the appellate Court upheld the same. The learned Counsel further argued that as the title of the appellant has been decided in favour of the ancestor of the appellant by the Civil Court the same can not be disputed by any one and any revenue authority. He also submitted that as the appellant has become tenant of the part of the disputed land in that situation the C.O. Baniapur can neither declare the disputed land as public land nor he can settle the land belonging to the appellant with any one. He lastly submitted that the claim of the appellant that he uses the said part of land as his courtyard is totally false and frivolous, so this appeal is fit to be allowed.

The learned counsel appearing on behalf of the respondent on the other hand, opposing the submission forwarded by the counsel for the petitioner, submitted that there is no illegality in the impugned order. He further submitted that the disputed

land is recorded in khatiyani in the name of Maharani Janaki Kuwer but the disputes relates to only 2 katha in south side adjacent to residential side of the respondent. He further argued that the respondent is a landless person and he is coming in peaceful possession over the said land from time immemorial and the appellant tried his best to dispossess him in 2013 but local police interfered and a proceeding u/s 144 Cr.P.C. was initiated and the said proceeding was decided in his favour. He lastly argued that the impugned order is proper as Gair Mazurwa land can be settled only in favour of the member of S.C. ST or Ex-service man or landless person.

Considering the facts and circumstances of the case, arguments advanced by the learned counsel for the parties in support of their claims and on perusal of the impugned order, it is seen that the disputed piece of land is admittedly recorded in khatiyani as Gair Mazurwa Malik land over which both parties claim their possession on one and other way. The claim of the appellant is based on the alleged settlement to his ancestor whereas the claim of respondent is based on so called his possession over the said land. The learned DCLR has held that both parties failed to prove their claim on the basis of any documentary evidence. Thus, it appears that the claim over the disputed piece of land has not been proved conclusively by either parties before DCLR.

In that view of the matter, I do not find any apparent infirmity in the impugned order of DCLR hence the same is upheld. And accordingly this appeal application is disposed of.

Dictated and Corrected by me.

8-9-15

Commissioner
Saran Division, Chapra

8-9-15

Commissioner,
Saran Division, Chapra