

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. No. 87/2013
Sandhya Devi
Vrs.
Md. Nazim @ Laddu Mian

ORDER

The instant appeal is directed against the impugned order of DCLR, Siwan passed in Bihar Land Dispute Resolution case No. 82/192/2012-13.

The brief facts of the case as per the memorandum of appeal petitioner is that the piece of holding No. 20 having area 10 dhur 15 dhurki situated in Kasera Toli, P.S- Siwan, Dist-Siwan was originally belonged in the joint possession of the family of one Jagdish Prasad and subsequently after family partition the said piece of land came in the possession of Jagdish Prasad who used to run a steel box making unit over the said land and present respondent was engaged as care-taker. After the death of Jagdish Prasad his widow Fulwanti Kuwer and her three sons became the owner of the land and got her name mutated in the demand register of Siwan municipality. Thereafter, the legal heirs of late Jagdish Prasad sold the said land to one Binda Devi W/o Bhagwan Prasad by a registered sale deed executed on 23-12-2005. The purchaser Binda Devi also got her name mutated in the Municipal Register and paid taxes till she sold the same to Sandhya Devi the present appellant through a registered sale deed dated 03.07.2008. The present appellant also got her name muted in the demand register of Siwan municipality and started paying taxes. In the meantime, the respondent Md. Nazim @ Laddu Mian discontinued his job of care-taker and filed a Title suit case before sub-judge-IV Siwan vide T.S. No. 313/06 claiming that the said land was transferred to his father Abdul Rahman on the consideration of Rs. Ninety through oral sale in 1945 by Jagdish Prasad and, thereafter, the said land transferred to him on 20.03.1960 by oral hibba. Meanwhile, respondent started disturbing the present appellant which led to filling of an Itlai petition before SDM, Siwan on 24.07.2010 by the present appellant and on receiving the report of police, the SDO, Siwan started a proceeding u/s 144 of Cr.P.C. against the respondent and after hearing both parties, the matter was decided in favour of the appellant. Thereafter, the respondent started to disturb the possession of the appellant, hence, she filed a petition before DCLR, Siwan which was finally disposed of vide order dt. 12.02.2013 holding that the dispute between the parties relates to claim of title over the land and the same can not be decided by him.

On being aggrieved by and dissatisfied with the aforesaid order, the petitioner has preferred this appeal.



Heard the parties.

The learned counsel appearing on behalf of the appellant submitted in detail as to how the appellant came in possession over the disputed land and also elaborated the whole course of events leading to filing of this appeal. He also argued at length about the false claim made by the respondent of the ownership of the disputed land on the basis of oral sale and oral hibba and how these statement were found contradictory in itself before Sub-judge-iv and DCLR. The learned counsel while assailing the impugned order of DCLR, argued that the lower Court has erred in not considering the plea of the appellant that she had no concern with the T.S. No. 313/06 pending in the Court of Sub-Judge-iv Siwan and also of not considering the fact that the prayer of respondent before Sub-judge-iv for impleading the present appellant in the T.S. No. 313/06 has been rejected. He further pleaded that the learned DCLR erred in not holding the findings of the learned SDM, Siwan made u/s 144 Cr. P.C. wherein after hearing both parties made the order vacated in favour of the appellant and also made order absolute against the respondent on the basis of papers and possession of the appellant over the disputed holding and the respondent was making repeated efforts to dispossess the appellant with the help of criminals. He further argued that the impugned order is not a speaking and reasoned order with regard to section 4(5) of the BLDR Act-2009 and has not been understood properly. The learned counsel lastly prayed that the impugned order be set aside.

The learned counsel appearing on behalf of the respondent submitted that the main question before this Court is to decide as to whether the learned lower Court, after considering the facts and circumstance of the case and after perusal of materials available on record, the DCLR has rightly passed the order for the closure of the proceeding by the impugned order or not. He further quoting the relevant provision of the said BLDR Act-2009 submitted that section 4(5.) of the Act prohibits the authority to deal with complex question of adjudication of title. He also pointed out that the title of Binda Devi from whom this appellant has purchased the said property is in dispute and for the adjudication of the title a civil suit bearing T.S. No. 313/2006 has got instituted and is pending before Sub-Judge-iv, Siwan and in such a situation the learned DCLR has rightly decided that such proceeding filed by the appellant can not be continued and accordingly dismissed the case. Hence this appeal is fit to be rejected outrightly.

Considering the facts and circumstance of the case, material available on records and on going through the claims and counter claims made by the learned counsel for the contesting parties during their oral submissions as well as in their written statements, it appears that there is no dispute, rather it is an admitted fact by both parties that a Title suit No. 313/2006 with respect to disputed land is pending before Sub-judge-iv, Siwan, wherein the Binda Devi, the transferor of the disputed land has been made the opposite party by the respondent. It also appears from the record that the prayer of the present appellant before, the DCLR was not about the declaration of title rather her claim was that she should not be



dispossessed from her land by the present respondent which was purchased by her through registered sale deed from the vendor and also on the basis that the SDM, Siwan has already decided in his favour through a proceeding u/s 144 Cr. P.C. where the present respondent was also a party. In such a situation the learned DCLR ought to have passed some order under the said BLDR Act-2009 with a view to safeguard the interest of the appellant instead of closing the proceeding and leaving the appellant in harness and face the threat of dispossession from a person whose claim is quite doubtful in absence of any valid documentary evidence. It is also essential to mention here that the present respondent is fighting a case of Title only on the basis of oral sale/oral hibba while on the other hand the appellant claims her possession on the basis of valid sale deed document, rent receipt etc. Although the relevant section of BLDR Act-2009 prohibits the competent Authority from deciding the complex question of title but this does not mean that other petty issues like forcible dispossession by unlawful means can not be dealt with. From perusal of the record it also transpires that the learned SDM, Siwan on the basis of police report rightly arrived at the conclusion that the present appellant has possession over the disputed land from the day of execution of sale deed and the respondent does not have any documentary proof to claim his possession over the said land.

Thus, on correct appreciation of facts of the case, I find that the impugned order of DCLR is not correct so far as his finding that the only issue involves in the case relates to declaration of title between the parties before him despite the appellant was not a party to the T.S. No. 313/2006. In fact the main prayer raised before the DCLR relates to threat of dispossession at the hands of a person whose very claim of title over the disputed land is quite doubtful as he failed to produce any substantial documents in support of his claim before the SDM and DCLR.


It that view of the matter, the appellant deserves that her possession over the purchased land needs to be safeguarded by the competent authority so long the said pending T.S No. 313/2006 is not finally disposed of by the competent Civil Court.

With the aforesaid observations and directions this appeal is disposed of.

Dictated and Corrected by me.


Commissioner,
Saran Division, Chapra

12.4.2014


Commissioner
Saran Division, Chapra
12.4.2014