

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 123/2015

Rita Devi

Vrs.

Bhushan Paswan & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Sonpur, in Land Dispute case NO. 140/2012-13 on 20.06.14.

The brief facts of the case are that the present appellant Rita Devi W/o Shiv Pujan Bhagat R/o Vill-Nayagaon, P.s.-Nayagaon, Dist-Saran filed a case before DCLR, Sonpur by impleading the present respondents as o.ps. In the said case her prayer was the land purchased by her through sale deed on 05.11.2001, in which wrong khata and kheshera nos. Have been entered by the scribe. Her further claim was that the whole issue has been settled and jamabandi has been created in her favour of the said land as per the decretal order passed by Sub-judge-1, Chapra in T.S. No. 663/2008. In the said case she also sought relief to the extent that her said land be measured and pillars be erected. Thereafter, the learned DCLR heard the case and finally vide order dt. 20.06.14 disposed of the said case with the observation that relief sought for by the petitioner can not be granted till the information sought by the o.p. under the RTI from D.M. Saran is not finalized.

Feeling aggrieved by the aforesaid order, the present appeal has preferred that instant appeal before this Court.

Heard the learned counsel for the parties

The learned counsel appearing on behalf of the appellant while assailing the impugned order submitted that the said order is bad in law. He further submitted in detail as to how the appellant purchased the said disputed piece of land and in course of purchase due to negligence of scribe, number of khata and plot are wrongly entered in the sale deed dt. 24.12.1980 executed by Bijayanti Devi in favour of Mosmat Gangajali as khata No. 126, R.S. plot No. 907 instead of khata No. 720, R.S. plot No. 93 and other entries regarding the area and boundaries are correct. He further submitted that on the basis of sale deed dt. 24.12.1980 Most. Gangajali sold her purchased land to the present appellant on 05.11.2001 and due to ignorance, the mistake regarding khata No. and R.S. plot No. again got repeated and when she approached the vendor for rectification the vendor refused to do so. He also submitted that the appellant, thereafter, filed T.S. No. 663/2008 in the Court of Sub-Judge-1, Chapra for declaration of title and the said case was subsequently decided on compromise.

The learned counsel appearing on behalf of the respondent strongly opposed the arguments made by the learned counsel for the parties and submitted that the instant appeal is not maintainable either in law or in facts. He further submitted that the instant appeal has been filed on baseless grounds and suffers from the defect of the parties. He also argued that the appellant has never purchased the land in question of khata No. 720, plot No. 93 of village Nayagaon through any sale deed on



05.11.2001 and the said land is not in her possession. He further clarified that in fact the said land has been acquired by Railway and on the spot it exists as plot No. 93. The learned counsel also argued that the appellant is not entitled to seek demarcation of plot No. 93 vested in Indian Railway. He further submitted that plot No. 94 belongs to the respondent having his house and some part left for sahan. He lastly said that the order dt. 20.06.11 is fit and lawful.

Considering the facts and circumstances of the case, material available on records, pleadings made by the learned counsel for the parties and on perusal of the impugned order, it appears that the dispute between the parties relates to identification of the disputed land on the basis of khata No. and survey plot No. The claim of the appellant is that due to mistake of the scribe, wrong khata No. and plot No. has been entered in the sale deed document whereas the claim of the respondent is that the said plot No. 93, for which the appellants claim is her land and stated to have been purchased land, belongs to Railway. The appellant also claims that the matter relating to dispute has been settled by Civil Court but the claim of the respondent is that in the said case he was not made party.

In the view of the contradictory claim of the parties with respect to the said disputed land, it seems that learned DCLR has rightly expressed his inability to pass any order in the case so long the information sought by the respondent under RTI Act is not made available. However, the learned DCLR should have also considered the fact that the matter brought before him for adjudication, involved determination of complex question of title of the parties and for that reasons he should have directed the parties to approach the competent Civil Court and had closed the proceedings. But it is seen that the learned DCLR instead of directing the parties to approach the competent Civil Court for redressal of grievances but he simply dismissed the case. On this ground as well as keeping in view the observation made by the Hon'ble High Court in the case of Maheshwar Mandal & ors vrs The State of Bihar & ors., the instant case was not maintainable. As such the impugned order can not be upheld.

For the reasons stated above, the impugned order is not sustainable and hence the same is set aside.

Accordingly, this appeal petition is disposed of.

Dictated and Corrected by me.

Commissioner
Saran Division, Chapra.

Commissioner
Saran Division, Chapra.