

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 219/2012

Ram Pukar Kamkar

Vrs.

Ambeshwar Tiwary & ors.

ORDER

12.04.2016 - The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in Land Dispute Case No. 06/2012-13 on 13.07.2012.

The brief facts of the case are that one Ramesh Kamkar S/o Bhukhal Kamkar R/o Village- Tiwary Chapra , P.S.- Kateyan ,Dist- Gopalganj had filed a case before DCLR, Hathua by making the present respondents as O.Ps. In the said case, the prayer of the petitioner was that the Jamabandi created in favour of the present respondents with respect to the disputed land of khata No. 142 situated in Mouza Tiwary Chapra circle- Panchdeori, Gopalganj, as per Jamabandi Record No. 1173 of 1960-61 and 1151 of 1960-61 was obtained fraudulently as such the same be corrected because of the fact that the said disputed land has been recorded in Survey Khatian as Sikami land in the name of his grand father Ranjit Kamkar and also having their possession over the same. Thereafter, the learned DCLR issued notices to the parties and after hearing the case finally vide order dated 13.07.2012 rejected the same with the observation that the very order on the basis of which the said Jamabandis were created should have been challenged by filing appeal. Feeling aggrieved by the said order, the present appellants Ram Pukar Kamkar has preferred the instant appeal and the original petitioner before DCLR, Ramesh Kamkar has been made o.p. along with other O.Ps. in the case.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted that the said disputed land is Sikmi Kaimi of the appellant's as the same is recorded as Sikmi Kaimi of Sarbagit Kamkar, own brother of the ancestors of the appellants and after the death of Sarbagit Kamkar in 1940 the said land was inherited by his brother and they came in possession as Sikamidar. He further submitted that the ancestors of the appellants had acquired right of occupancy so they are entitled to get themselves mutated over the land in dispute and get cash rental fixed by the state. He further argued that the learned lower court erred in not considering those legal aspects of the case. He also strongly submitted that the learned lower court ought to have held that Jamabandi running in the name of respondent is illegal because the appellants acquired occupancy right in the suit land and they are entitled to get their name mutated over the disputed land. He lastly submitted that as the impugned order is illegal, arbitrary and invalid the same is fit to be set aside.

The learned counsel appearing on behalf of the respondent at the very outset of his argument , submitted that the instant appeal is not legally maintainable as the

grounds framed in the appeal are baseless. He further argued that survey plot No. 460, 465, 474, 468 of Khata No. 142 of Tiwary Chapra village of which the Jamabandi No. 168 is running in the name of Banka Tiwary S/o Basudeo Tiwary who was the father of the present respondent. He further submitted in detail as to how the said land came in possession of his ancestor and how the Jamabandi was created and the claim of the appellants that their ancestor was Sikamidar is totally wrong as the Sikmidar had no right to pay rent so long he is not declared as raiyat under section – 48D of B.T. Act. He further submitted that the appellants have filed a false case before lower court on the basis of wrong genealogy and the Jamabandi which is existing for more than 50 years has never been challenged in the post. He lastly submitted that the appellants do not have any legal right to prefer an appeal under the BLDR Act as the issue involve in the instant case relates to B.T. Act so the instant appeal is legally not maintainable and fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, claims and counter claims made by the learned counsel for the parties and on perusal of the impugned order, it is quite apparent that in the instant case the dispute between the parties basically relates to their respective claim over the disputed land on one or another basis. The claim of the appellants rests on the ground that the said land was recorded in Khatiyar as Sikami land in the name of their ancestor whereas the claim of the O.Ps. is that the said land is their ancestral land and even the Jamabandi are also existing in the name of their ancestor. It is also seen from the lower court recorded that the present appellants have approached the learned DCLR under the provision of the BLDR Act for the creation of Jamabandi in their favour with respect to the disputed land on the ground that they being the descendents of the recorded Sikamidar. The learned DCLR, however on finding that the relief sought for by the appellant could have been decided by appeal and the appellants should have preferred appeal against the orders by which the said Jamabandis have been created. It is also to be noted that matter relating to cancellation of Jamabandi can only be initiated before Addl. Collector as per the provisions contained in The Bihar Land Mutation Act- 2011. Thus, it appears that the learned DCLR is correct in holding that the relief sought for by the appellant can be resolved in appeal by filing a case before the appropriate authority under the Act.

For the aforementioned reasons, the impugned order is upheld and this appeal petition is disposed of accordingly.

Dictated and Corrected by me.

12-4-16
Commissioner,
Saran Division, Chapra

12-4-16
Commissioner,
Saran Division, Chapra