

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 237/2012

Kuraisha Khatoon
Vrs.
Hushna Ara Khatoon.

ORDER

26.12.2015— This instant appeal petition is directed against the impugned order passed by DCLR, Mahrajganj in case No. 58/2011-12 on 16.08.2012.

The brief facts of the case are that the present respondent Hushna Ara Khatoon W/o Safiullah Ansari R/o Village- Sishai north Tola, P.S.- Goreyakothi, Dist- Siwan filed a case before DCLR, Maharaiganj by making present appellant as opposite party. In the said case her prayer was that the land measuring 28 decimal, R.s. Plot No. 5361 of Khata No. 287 which was settled to one Luti Mia and after abolition of Jamindari, the Jamabandi No. 185 was created in his favour. Her further case was that the 4 decimal of land out of 28 decimal belongs to her husband who happens to be the descendents of Luti Mia over which the present appellant (o.p. before DCLR) has put Gumti and Bedhi as such the same be removed. Then the learned DCLR after hearing the parties finally vide order dated 16.08.2012 held that the present respondent (petitioner before DCLR) has 4 deccimal share in the said land and he further ordered the C.O. Goreyakothi to remove the Gumti and Bedhi and also restrain the opposite party from making any intrusion.

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

Heard the parties.

The learned counsel appearing on behalf of the appellant submitted in details about the genealogy of the family of Luti Mia and the respective share of the descendents of the Luti Mia in the said 28 decimal of land which was acquired by him through settlement from Ex-Landlord. He further submitted that the husband of the respondent with his brother Yasin Mia had filed a T.s. No. 48/2005 against the appellant of this case for declaration of their title over the disputed land which was dismissed in default and now the respondent being a lady having no right in the property in the life time of her husband as per Mushlim law so she has got no locus standei to file any case before DCLR under the BLDR Act. He also argued that the learned lower court passed order with respect to the title of the parties but the fact is that the lower court of DCLR had no

jurisdiction to decide the question of title. He further submitted that the learned DCLR has wrongly declared the share of the respondent in the disputed land as such the said impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondent submitted that Luti Mia had two sons Suleman Mia and Razak Mia and Rajak Mia died in the lifetime of his father as such the descendents of Razaque Mia has no share in the property acquired by Luti Mia through settlement as per Muslim Law. He further submitted that the entire land acquired through settlement came in the share of Suleman Mia and the present respondent is the grand daughter-in-law of Suleman Mia. He further submitted that the learned DCLR after carefully considering all the material facts of the case has passed the order in favour of the respondent as much the said order is legally valid having no scope of interference. He lastly submitted that the appeal petition having no merit is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, oral and written statements of the contesting parties and on perusal of the impugned order, it appears that in the instant case the dispute between the parties basically relates to their respective share in the disputed land as both parties are admittedly wives of the descendents of one Luti Mia. The learned counsel for the appellant is of the view that such question like declaration of title and share can not be decided under the BLDR Act and DCLR has got no jurisdiction to deal with such complex issue. This plea seems to be correct in view of the fact that earlier a T.S. No. 48/2005 was also filed by the respondent but the same was dismissed in default. Thus it becomes quite obvious that in the instant case involves complex question of adjudication of respective share of the descendents of the Luti Mia. Infact, the learned DCLR is not competent to decide such a complex issue as observed by the Hon'ble High Court in the case of *Maheshwar Mandal & Ors. Vrs. The State of Bihar and Ors.*

Thus, for the aforementioned reasons, the impugned order of DCLR is not sustainable and hence the same is set aside.

Accordingly, this appeal is disposed of.

Dictated and corrected by me.

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26-12-15
Commissioner,
Saran Division, Chapra

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Saran Division, Chapra