

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5166 of 2018

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1. Malik Sabbir Alam, W/o Late Malik Mahalil, Resident of Village- Mohna, P.O.- Chouki Haripur, P.S.- Kadwa, District- Katihar.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Govt. of Bihar, Revenue Department, New Secretariat, Baily Road, Patna.
2. The Divisional Commissioner, Division, Purnia.
3. The Collector, District Katihar.
4. The Deputy Collector, Land Reforms, Barsoi, District- Katihar.
5. The Circle Officer, Circle Kadwa, District- Katihar.
6. Rabiya Khatoon, W/o Noor Islam, resident of Village- Choukitola, P.O.- Choki Harpur, P.S.- Kadwa, District- Katihar.
7. Malik Tanzil Alam, S/o Late Malik Mahlail,
8. Malik Manzil Alam, S/o Late Mail Mahalail, Both Respondent No. 7 & 8 R/o Vill.- Mohna, P.O.- Chauki Haripur, P.S.- Kadwa, Distt.- Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr. MD.KHURSHID ALAM -AAG12

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 11-09-2018

1. Heard both sides.

2. The petitioner in this writ petition seeks following reliefs:

(i) For issuance of writ in the nature of certiorari for quashing the Memo No.518 dated 28.02.2018(Annexure 1) issued under the signature of Circle Officer, Barsoi, Katihar whereby and whereunder he has directed the petitioner along with others to maintain possession over the land according to the boundary as mentioned in sale deed or to remove the possession till 31.03.2018 otherwise same will be removed at administrative level.



(ii) For issuance of writ in the nature of common directing the respondent authorities to maintain status quo over the land in question till final disposal of T.S. No.01/2018 pending in the Court of Sub Judge, Barsoi at Katihar.

(iii) For any other relief/reliefs for which petitioner deemed entitled to.

3. The facts leading to the dispute in brief is that Khata No.38, Plot No.26, area 0.73 acre Plot No.28, area 0.19 acre, Plot No.29 area 1.19 acre, Plot No.30 area 1.34 acre, Plot No.31 area 0.34 acre and Plot No.59 area 0.38 acre and other plots have been recorded in the name of Sheikh Badruddin one share, Malik Bahiruddin, Malik Quamruddin and Ghani one share, Sk. Salamat one share, Nizamuddin, Md. Sujauddin @ Sujat Ali one share in the revisional khatian in four equal shares. The lands are situated at Mauja Mohna, P.S. Kadwa, District Katihar. The recorded tenant Malik Sujat Ali @ Md. Sujauddin on the basis of amicable partition of property sold his share of land of R.S. Khata No.38 Plot No.26, 28, 29, 30, 31 and 59, total area 81 decimals to Gulam Mohammad Kariyadar through a registered sale deed dated 02.03.1970 and Gulam Mohammad Kariyadar came in possession of the land. Gulam Mohammad Kariyadar sold 21 decimals of land of the aforesaid plot of Khata No.38 in favour of Bibi Tahira Khatoon, mother of the petitioner



through sale deed dated 19.05.1989 with the following boundary North-Niz vendor, Gulam Mohammad Kariyadar, South-Malik Sujauddin, East-Niz Gulam Mohammad Kariyadar and West-Malik Hasnain. Bibi Tahira Khatoon came in possession of Plot No.28 as per boundary mentioned above. Out of 81 decimals of land, 16 decimals of land from northern side of Plot No.28 of Khata No.38 remained with Gulam Mohammad Kariyadar. Rabiya Khatoon, respondent No.6 purchased 10 decimals of land of Khata No.38 Plot No.28, 29, 30, 31 and 59 with the following boundary North- Niz vendor 15 decimals of land, South-Bibi Tahira Khatoon, mother of the petitioner, East-Niz, West-Road vide sale deed no.9485 from Gulam Mohammad Kariyadar and came in possession. Gulam Mohammad Kariyadar remained in possession of remaining 50 decimals of land of Plot No.28.

4. Genesis of the dispute is that Bibi Tahira Khatoon purchased 42 decimals and 3 $\frac{1}{4}$ kari land out of different plots including Plot No.28 from legal heirs of original raiyats namely Malik Aiyub, Malik Kalu, Anisul and Mannu by registered sale deed dated 05.05.1992 which is alleged to be near the purchased land of Bibi Tahira from Plot No.28. Bibi Tahira got her saw mill constructed and started doing business. Respondent No.6 filed petition before the Circle Officer for measurement of her land in Khata No.38 Plot No.28



area 10 decimals and paid necessary fees for Anchal Amin. Circle Officer directed the Anchal Amin to get the land of respondent No.6 measured after issuing notice to all the boundary raiyats including the petitioner. Anchal Amin measured the land on 20.05.2013 and found that some portions of the land of respondent no.6 was encroached by the petitioner and his mother. Thereafter, petitioner filed petition before the D.C.L.R. under the Bihar Land Dispute Resolution Act on which B.L.D.R. Case No.63 of 2013-14 was registered on 26.06.2013. D.C.L.R. found that the writ petitioner purchased the land from the original khatiyani raiyats but in the aforesaid sale deed boundary of the land purchased by Tahira Khatoon, mother of the writ petitioner was not properly described and accordingly, directed the writ petitioner and his two brothers to vacate the encroached land of respondent No.6 of Khata No.38 Plot No.28 area 10 decimals.

5. The petitioner filed Land Dispute Appeal No.418 of 2013 before the Divisional Commissioner, Purnea against the order dated 12.11.2013 passed by D.C.L.R. in Land Dispute Case No.63 of 2013-14. The petitioner took specific plea before the D.C.L.R. as well as the Commissioner in appeal that the dispute involves question of title and, therefore, the court of D.C.L.R. has got no jurisdiction to decide the dispute and the order passed by the D.C.L.R. is without jurisdiction but the Commissioner after hearing the parties dismissed the appeal



and held that the dispute does not involve any complicated question of title and the dispute is with regard to the measurement of land purchased by the appellant and his mother without the boundary of the land in the sale deed and accordingly, dismissed the appeal but the petitioner did not file any case before the B.L.T. against the order dated 20.04.2016 passed by the Commissioner and filed Title Suit No.1 of 2018 which is pending in the Court of Sub Judge for declaration of their right, title and possession over the disputed land. The petitioner received notice as contained in Memo No.518 dated 28.02.2018 by which the Circle Officer directed the petitioner to vacate the lands alleged to have been encroached by the petitioner till 31.03.2018. The petitioner appeared before the Circle Officer and filed show cause. The petitioner in his show cause stated that he has already filed title suit and, therefore, till the decision of the title suit status quo may be maintained. The petitioner being aggrieved by the order as contained in Memo No.518 dated 28.02.2018 filed this writ petition.

6. Mr. Ranjan Kumar Dubey, learned counsel appearing on behalf of the petitioner submits that admittedly the land of Khata No.38, Plot Nos.30, 31, 59 and others was standing in the name of Md. Sujauddin @ Sujat Ali and others. The recorded tenants partitioned the properties among themselves and Sujat Ali sold 81



decimals land to one Gulam Mohammad Kariyadar through registered sale deed dated 02.03.1970. Bibi Tahira Khatoon, mother of the petitioner purchased 21 decimals of land of Plot No.28 of Khata No.38 by a registered sale deed dated 19.05.1989 from western side. The mother of the petitioner also purchased 42 decimals and 3 ¼ kari from the legal heirs of recorded tenants. The mother of the petitioner constructed saw mill on the purchased land and the petitioner, his brothers and her mother were doing business. It is submitted that respondent No.6 filed petition before the D.C.L.R. for declaration of title and recovery of possession. Petitioner appeared and filed rejoinder stating particularly that the dispute involves complicated question of title and according to Section 4(5) of the B.L.D.R. Act, if the dispute involves title the case should be disposed of with a direction to the parties to get the dispute settled through the Civil Court having competent jurisdiction but the D.C.L.R. found that the petitioner encroached upon ½ decimals of land of the respondent No.6 and accordingly, directed to vacate the land. It is further submitted that the order of D.C.L.R. and the Commissioner dismissing the appeal without considering the contention of the petitioner that the dispute involves complicated question of title which oust the jurisdiction of the revenue court in view of the law laid down by a Division Bench of this Court reported in 2018(3) PLJR



1007(Maheshwar Mandal and Anr. vs. The State of Bihar and ors.).

7. Learned counsel for the petitioner further submits that respondent No.6 did not file any execution case before the D.C.L.R. as envisaged under Section 15 of the Bihar Land Disputes Redressal Act and the Circle Officer having received the order of the D.C.L.R. issued notice to the petitioner on 28.02.2018(Annexure-1) which is without jurisdiction. The Circle Officer unless duly authorized by the D.C.L.R. on petition filed by the respondent No.6 for execution of the order has got no jurisdiction to get the order of the D.C.L.R. executed, therefore, the order of the Circle Officer as contained in Memo No.518 dated 28.02.2018(Annexure-1) is without jurisdiction and fit to be set aside.

8. As per contra, learned counsel for the respondent No.6 submits that the petitioner has concealed material facts from the Court and obtained order of stay on 15.05.2018. Respondent No.6 firstly filed petition before the Circle Officer to get her land measured by Amin. The Circle Officer directed the Amin to get the land measured and submit report. Circle Officer issued notice to all the boundary raiyats of the lands purchased by respondent No.6 of Khata No.38, Plot No.28 area 10 decimals. It is further submitted that Amin reported that the petitioner and his brothers and mother encroached $\frac{1}{2}$ decimal of land of respondent No.6 situated just north to the



purchased land of the petitioner from the said landlord Gulam Mohammad Kariyadar through a registered sale deed. The sale deed of the respondent No.6 also described the boundary of the area of land purchased by respondent No.6 through same vendor. In the south of the purchased land of respondent No.6, the land of the mother of the petitioner is situated and in the north of the purchased land of respondent No.6, the land of Gulam Mohammad Kariyadar is situated. Gulam Mohammad Kariyadar purchased 81 decimals of land from Sujauddin. The dispute arose when the mother of the petitioner purchased 42 decimals of land from another recorded tenants but the sale deed does not disclose the boundary of the purchased land. By virtue of such sale deed, the petitioner, his brothers and mother encroached the land of respondent No.6. The measurement made by Circle Amin fully depicted the picture that petitioner encroached $\frac{1}{2}$ decimal of land of respondent No.6 only thereafter the respondent No.6 filed petition before the D.C.L.R. under the Bihar Land Dispute Redressal Act being B.L.D.R. Case No.63 of 2013-14. D.C.L.R. not only recorded the statements of all the adjoining raiyats but also got the land measured and found that the petitioner encroached $\frac{1}{2}$ decimal of land of respondent No.6 and accordingly directed the petitioner to vacate the encroached land. It is submitted that there is no question of title involved. It is simply a case of removal of encroachment and the



D.C.L.R. has stated all the facts in his order. Similarly, the Commissioner before whom the petitioner had preferred appeal against the order of the D.C.L.R. considered the plea of the petitioner that there involves question of title in the dispute but the Commissioner very categorically held that no question of tile is involved. The D.C.L.R. has recorded his finding that the petitioner encroached ½ decimal of land of respondent No.6 who purchased 10 decimals of land from Gulam Mohammad Kariyadar. Even the father of the petitioner is a witness in the sale deed of the respondent No.6. The Commissioner also held that the dispute arose only when the mother of the petitioner purchased some land from the legal heirs of recorded tenant without any boundary and tried to take possession of the land of respondent No.6 by virtue of such sale deed. It is submitted that mother of the petitioner and respondent No.6 purchased the land from Gulam Mohammad Kariyadar who purchased 81 decimals of land of the disputed Plot No.28 of Khata No.38. Gulam Mohammad Kariyadar firstly sold 21 decimals of land from extreme south to the mother of the petitioner and thereafter sold 10 decimals of land to respondent No.6. The remaining 50 decimals land still remains with the vendor of the respondent No.6 and mother of petitioner. Petitioner did not file any case before the B.L.T. as provided under the Act. Thereafter, respondent No.6 filed petition



before the D.C.L.R. for execution of his own order passed in B.L.D.R. Case No.63 of 2013-14 and on such, D.C.L.R. delegated the power to the Circle Officer for execution of the order, therefore, the order does not require any interference.

9. On the basis of the submission of both sides, the question arises for consideration “whether the order of the Circle Officer dated 28.02.2018 as contained in Memo No.518(Annexure-1) is without jurisdiction and the dispute between the parties involves question of title ousting the jurisdiction of the revenue court under Section 4(5) of the B.L.D.R. Act, 2009?”

10. Admitted facts are that different plots of Khata No.38 situated in Mauza-Mohna were recorded in the name of Sk. Badruddin, Malik Bahiruddin, Malik Quamruddin and Ghani with equal share. They all partitioned the property and as per share, Md. Sujauddin @ Sujat Ali sold 81 decimals of land to Gulam Mohammad Kariyadar through registered sale deed 02.03.1970. Bibi Tahira Khatoon purchased 21 decimals of land of Plot No.28 Khata No.38 from Gulam Mohammad Kariyadar on 19.05.1989. Tahira Khatoon also purchased 42 decimals and 3 ¼ kari of land of different plots including Plot No.28 from the legal heirs of original raiyats namely, Malik Aiyub, Malik Kalu, Anisul and Mannu through registered sale deed dated 05.05.1992. Respondent No.6 also purchased 10 decimals



of Plot No.28 Khata No.38 through registered sale deed dated 15.12.1998 from Gulam Mohammad Kariyadar. 50 decimals land of Plot No.28 Khata No.38 remained with Gulam Mohammad Kariyadar. Gulam Mohammad Kariyadar got his land measured and it transpired that some portions of the purchased land of respondent No.6 was encroached by Tahira Khatoon and her sons and for that, respondent No.6 filed petition along with the required fees before the Circle Officer for measurement of the land by Anchal Amin. Anchal Amin measured the land and found that the petitioner and his brothers had encroached upon $\frac{1}{2}$ decimals land of respondent No.6. Thereafter, respondent No.6 filed case before the D.C.L.R. being B.L.D.R. Case No.63 of 2013-14. The petitioner objected the petition of the respondent No.6 inter alia on the ground that the petition of respondent No.6 is not maintainable as the dispute involves disputed question of title but the D.C.L.R. has very categorically mentioned in his order that on the basis of the statement of the adjoining raiyats of the purchased land of the petitioner and respondent No.6 and on the basis of the measurement, it transpired that petitioner encroached $\frac{1}{2}$ decimal of land out of 10 decimals of land purchased by respondent No.6. D.C.L.R. also held that dispute arose only because the mother of the petitioner purchased 42 decimals of land from some of the recorded raiyats of Khata No.38 but the boundary of the purchased



land were not mentioned in the sale deed and on account of such vagueness in the sale deed, the petitioner and his brothers encroached upon the purchased land of the respondent No.6. D.C.L.R. has also found that 21 decimals of land of the petitioner and 10 decimals purchased land of respondent No.6 are clearly defined in their sale deed and no question of title is involved. It is a simple case of encroachment and forceful dispossession of respondent No.6 from ½ decimal of land by petitioner and his brothers. Petitioner filed appeal and also took the same plea before the Commissioner but the Commissioner also held that no question of title is involved and it is simply a case of measurement of the land purchased by the petitioner and respondent and dismissed the appeal but the petitioner did not exhaust the available remedy by filing case before the B.L.T. against the order of the Commissioner. Thereafter, respondent No.6 filed petition before the D.C.L.R. for execution of his own order passed in B.L.D.R. Case No.63 of 2013-14 and the D.C.L.R. directed the Circle officer to execute the order. In pursuance thereof, Circle Officer issued notice to the petitioner to vacate the encroached land of the respondent till 31.03.2018, therefore, I find that the notice as contained in Memo No.518 dated 28.02.2018 is not without jurisdiction. The Circle Officer after getting the order from the D.C.L.R. issued the notice.



11. So far as the contention of the petitioner that the dispute involves question of title and oust the jurisdiction of the revenue court is not acceptable. From perusal of the order of D.C.L.R. as well as Commissioner, it is evident that both the revenue courts considered the contention of the petitioner and held that it is simply a case of measurement of the purchased land of the petitioner and the purchased land of respondent No.6. On the basis of the measurement, it was found that petitioner and his brothers had encroached $\frac{1}{2}$ decimal of land purchased by respondent No.6 in northern side of the purchased land of petitioner.

12. Section 4(5) of the B.L.D.R. Act oust jurisdiction of the revenue courts only when there appears to be involvement of question of title and the same has not been decided by competent Civil Court but in the present case, on the facts of the case, it is evident that the case relates to the measurement of the land purchased by mother of the petitioner and respondent No.6. Mother of the petitioner purchased 21 decimals of land of Plot No.28 from Gulam Mohammad Kariyadar. Respondent No.6 also purchased 10 decimals of land from same plot just north to the purchased land of the petitioner and remaining 50 decimals of land is still owned by Gulam Mohammad Kariyadar. The boundary of the purchased land has been clearly described in the sale deeds of the mother of the petitioner and the



respondent No.6, therefore, there involves no question of title.

13. Having considered the facts aforesaid, I do not find any merit in this writ petition, accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	26.09.2018
Transmission Date	

