

आदेश की क्रम
संख्या और तारीख

आदेश और पदाधिकारी का हस्ताक्षर

आदेश पर की गई
कारवाई के बारे में
टिप्पणी तारीख के
साथ

In The Court Of: Land Reforms Deputy Collector, Arwal.

Case No. 64/ 2015-16

Meena Devi- applicant

Vrs.

Babita Devi & others- opposite parties

Present- Rakesh Kumar, DCLR

Learned Advocate of applicant

1. Sri. Yogendra Singh

Learned Advocate of opposite party.

1. Sri. Bashishta Narain.

2. Sri. Binod kumar singh.

3. Sri. Bhairo Dayal Ram.

ORDER

Both the parties appeared at the time of hearing. The present is related to

Schedule-01

| Khata | Khesra | Area B-K- D | Boundary |
|-------|--------|----------------|---|
| 53 | 1423 | 0-0-10 | N-Paras singh. S- Rasta. E- Niz. W- Babita Devi. |

Schedule-02

| Khata | Khesra | Area B-K- D | Boundary |
|-------|--------|----------------|---|
| 199 | 1437 | 0-0-5.51 | N-Ram Nath singh. S- Kharid-dar E- Rang Nath Singh. W- Ramchela Singh. |

Both the schedule is at Mauza-Khamaini, P.S.- Rampur
Chauram, Dist-Arwal

Learned advocate of applicant submitted that

(Signature)

17-05-2017

land mentioned in schedule was purchased by applicant from Ram Nath singh s/o Lallu singh on 08.07.2013 and accordingly got the possession over it. Learned advocate further submitted that opposite parties namely Babita Devi w/o Chandravilas Ram (opposite party 1), Chandra vilas Ram s/o Late Ramchela Ram (opposite party 2), Vikash kumar s/o Chadra Vilas Ram (opposite party 3) has forcibly broken the ridge of applicant's plot and has threatened her. Learned advocate while arguing in court informed that measurement of said land was done by circle officer, Arwal but problem related to passage remained at spot. He said that applicant's plot is land locked though measurement of applicant's purchased land and her vendor was done but solution can be found if the land of opposite parties are also measured and demarcated at spot. So learned advocate pleaded for remeasurement & demarcation of both the parties as well as declaration of right in favour of applicant.

Learned advocate of opposite parties submitted that opposite party has purchased an area of 05 dismal of land on 11.06.2009 from co-villager Ram Nath singh and accordingly they are in peaceful possession of said land. Learned advocate also informed that opposite party has constructed boundary and has bored tube well and constructed Latrine and it is using as " makan mai sahan". Learned advocate informed that Anchal Amin had measured the land of applicant as per direction in circle measurement case No. 09/2015-16 and it was found that at spot only area of $5\frac{1}{2}$ dhur existed. Learned advocate is of view that for lesser area

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of land, vendor is responsible and not the opposite parties. Learned advocate alleged that applicant is aggressive in nature and her allegation regarding opposite parties are false. He said that opposite party 02 is employed in defence and is posted in Delhi whereas their son opposite party 03 studies at Sainik School Gopalganj (Bihar), so how can they break the ridge at spot. Learned advocate said that in plaint no cause of action is mentioned and informed that Husband of both the parties are own brothers. Learned advocate emphatically said that opposite party can not give passage to applicant as they are first purchaser. So it is case related to passage and not to measurements. So learned advocate finally pleaded for dismissal of the case. Heard the learned advocate of both the parties & perused the documents available on record. Applicant has submitted Kewala, and opposite parties has submitted Kewala, Anchal Amin's report. After looking these documents, it is found that Anchal Amin reports that in survey map, there is no passage, further as per land mentioned in Kewala of applicant, practically land is not available at spot. So the Amin could not find any solution at spot. So looking the situation at spot it is necessary to measure the land of both the parties as well as their vendor, so that clear picture comes to court. So as per direction, learned advocate commissioner, Sri P.C. Maharaj has submitted the measurement report. After looking the report it is found that applicant has purchased an area of 10 dhur but has possession over 07.17 dhur whereas opposite party has purchased an area of 05 desimal i.e. 32 dhur but is in possession of 31 dhur. Further, applicant's

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kewala is dated 08.07.2013 and that of opposite party is dated 11.06.2009 though its khata & plot was amended on 11.06.2015 but boundaries remained same as mentioned in kewala dated 11.06.2009. Thus, it is clear that mistake has been done by vendor and due care was not taken by applicant prior to registration of land. Since, opposite party is first purchaser, applicant can not claim passage by force as in survey map no passage is shown and in kewala in southern side passage is mentioned as reported by Anchal Amin. Further, in written argument of opposite party in para 09, it mentioned that applicant should have made party to vendor as well as to encroacher of plot No.- 1437 in southern side namely Avadh Singh but they have unnecessarily made party to these opposite parties. So learned advocate pleaded for dismissal of the case.

However, at the request of applicant sri Avadh Prasad singh was made party in the case and in his behalf learned advocate sri Bhairo Dayal Ram stated that land mentioned in schedule-02 is of Avadh Prasad singh, op 2 nd party, which was purchased by him through kewala dated 27.07.1995 and since then he is in peaceful possession of disputed land and on that land, a concrete boundary existed prior to his purchase of land. So he pleaded for rejection of claim of applicant. However, learned advocate of applicant stated that he has no objection to land purchased by Avadh Prasad singh but land of disputed plot 1423 comprising breadth of five feet, as per measurement

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report has been found to be intermingled in plot no-1437 which is of Avadh singh. Learned advocate said that no concrete boundary exists in this area as it was given as passage to applicant by vendor which is clear from kewala. He also stated that vendor of all the parties is same person namely Ram Nath singh. Learned advocate alleged that Avadh singh is aggressive in nature and he in collusion with other opposite parties is trying to grab the land of applicant and is also blocking her passage to main road. So learned advocate pleaded for implementation of report of learned advocate commissioner, so that passage i.e. Rasta can be restored to applicant.


Heard the learned advocates of all concerning parties & perused the documents available on record. So after looking measurement report it is found that applicant is short of approximately 03 dhur of land but she is the last purchaser among three person. Further, in kewala of applicant in southern side 'Rasta' is mentioned but it is not mentioned in kewala of other two parties though they have purchased land prior to her. Further, if any area of land is found to be dispossessed by Avadh singh then he is ready to leave the land but he is the first purchaser, so he requires land as per his kewala. However, at spot it was found that opposite party namely Babita Devi has constructed wall by leaving an area of about two & half feet on southern & Northern side for opening windows &

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Ventilation as she wants to construct house on erected wall and this area of Babita Devi is being claimed by applicant as passage, which can not be given to her. So as per measurement report, even if Avadh singh restores the so called dispossessed land to applicant, her purchased land remains land locked. Here, it is clear that vendor of all three persons is Ram Nath singh who seems to have cunningly sold land to applicant and this vendor has his barren land towards northern side of applicant's land and it is responsibility of vendor Ram Nath singh to provide passage i.e. 'Rasta' to applicant through that land. So applicant should ask her vendor for 'Rasta' and she can not claim from other purchasers. Further, learned advocate of applicant should have made party to vendor, so that after listening his views, direction could have been given to him. So case suffers from non-Joinder of parties and over all, applicant can not be given any relief from this court. So claim of applicant is rejected and case is dismissed.

Dictated and corrected


Land Reforms Deputy Collector
Arwal


Land Reforms Deputy Collector
Arwal.