

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 127/2013.
Principal, R.B.G.R. College, Maharajganj.
Vrs.
Sanjay Kumar & ors.

ORDER

~~19.09.2015~~— The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in case No. 132/12-13 on 19.03.2013.

The brief facts of the case are that the present respondent No. 2 Sanjay Kumar, S/o Late Chandrika Prasad, R/o Vill-Maharajganj, P.S.-Maharajganj, Dist-Siwan sent an application through registered post to DCLR, Maharajganj upon which a proceeding was initiated by him under the provision of BLDR Act. In the said case, the prayer of the present respondent was that the plot Nos. 1727 and 1728 measuring 10 katha 3.75 dhur of khata No. 416, 421 situated adjacent to the R.B.G.R. College was measured by Anchal Amin on 03.07.2012 and in presence of the principal of the College pillar was planted and subsequently the said pillar was dismantled. Besides this, the respondent also filed a case with respect to khata No. 416, plot No. 1727, area 7 katha, Khata No. 421, plot No. 1728, area-6 katha 15 dhur out of which 3 katha 3.25 dhur which is his ancestral land on which the present petitioner is creating unnecessary hindrance as such college administration be restrained from making any hindrance on the land in question. Thereafter, the learned DCLR heard the parties and on finding the claim of the present respondent to be justified restrained the present appellant from entering on the said land. Feeling aggrieved by the said order dt. 19.03.2013 of DCLR, the present appellant has preferred this appeal case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted that the disputed land is in the premises of the college and the khata No. 416 and 421 survey No. 1727 and 1728 was the land of Gopaljee and after the death of Gopaljee his legal heirs wife Rupwanti Devi and two sons Devi and Dhruv and one Grand son Dilip came in possession over the said land and after private partition between them they executed gift deed in favour of the R.B.G.R. College. He further said that for the said disputed land a proceeding u/s 145 Cr.P.C. was initiated between Ganga Ram Bajaj and ors Vrs Smt. Ansuia Jaiswal & ors vide case No. 304/85 before SDM, Siwan and after hearing, the order was passed in favour of the appellant, the RBGR, College and possession was declared. He also argued that a title suit case bearing T.S. No. 289/2002 is pending before Sub-Judge-Siwan and J.P. University, Chapra and R.B.G.R. College, Maharajganj have been made as defendants No. 1 and 2 respectively in that case which clearly shows that in the instant case complicated question of title is involved and such issue can not be decided under the BLDR Act. He further drew the attention towards section 4(5) of the Act. which strictly forbids the competent authority to entertain matter involving question of adjudication of title. He further submitted that the learned DCLR ignoring the said relevant provision of the Act decided the title and possession thereby violating the settled principle and in support of that contention he also filed the copy of reported judgement PLJR-2014, Vol-3, page-281. He lastly



submitted that the impugned order of DCLR is fit to be set aside in view of the observation made by the division bench of the Hon'ble High Court.

The learned counsel appearing on behalf of the respondent No.2 argued that this appeal is not maintainable in the eyes of law and fact both and it is fit to be dismissed. He further argued that the disputed land in question is the ancestral property of this respondent and for which Jamabandi No. 719 is running in the name of Gopaljee Kanu who is Grand father of this respondent No.2. He also argued that the disputed land for which return was filed by the Ex-land lord much before vesting of Jamabandi and accordingly Jamabandi No. 719 was opened in the name of Gopaljee Kanu and since then the said disputed land remained in the peaceful possession of this respondent from the life time of Gopaljee Kanu till now and respondent paid rent to the State of Bihar regularly. He also submitted that none of the family members of respondent has executed any gift deed or any sale deed in favour of the RBGR college in respect of the land. The learned counsel also submitted that there is serious error in this appeal in respect of respondent, because in the lower Court the BLDR case was initiated on petition of Sanjay Kumar, S/o Baijnath Prasad of Purani Bazar, Maharajganj but this appeal has been filed against other Sanjay Kumar S/o Chandrika Prasad of Vill-Maharajganj and in this view due to misjoinder of party this appeal is not maintainable and the same is fit to be dismissed. He also said that such misconduct has been committed by appellant to discard this respondent and to get order from this Court by way of mischief. The learned counsel lastly prayed that this appeal being devoid of any merit is fit to be dismissed.

Considering the facts and circumstances of the case, material on records arguments advanced by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case, dispute between the parties mainly relates to determination of right, title and possession over the disputed land in question. The appellants claim is based on the alleged gift deed executed by the legal heirs of khatiyani raiyat whereas the respondent No.2 claims his right on the basis that the said land is his ancestral property and Jamabandi is existing in the name of his Grand father. Thus, nature of dispute involved in the present case seems to be determination of title between the parties over the disputed land and it is also correct to hold that such kind of dispute can not be resolved in summary proceeding and even the BLDR Act does not confer any jurisdiction upon the competent authority to decide such complicated issue. In view of the recent judgement of Hon'ble High Court passed in **CWJC No. 1091/2013 (Maheshwar Mandal Vrs The State of Bihar and ors)** redressal of dispute relating to right, title and possession can not be decided under the provisions of BLDR Act-2009.

For the aforesaid reasons, the impugned order of DCLR is not sustainable, hence the same is set aside and accordingly this appeal is disposed of.

Dictated and Corrected by me.

b/19.8.15
Commissioner,
Saran Division, Chapra

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