

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 218/2011
Radha Kishun Sonar
Vrs.
Abhishekh Raman Mishra
ORDER

22-09-2015 - The instant appeal application is directed against the impugned order passed by DCLR, Hathua in BLDR Case No. 83/2011-12 on 18.11.12.

The brief facts of the case are that the present respondent Abhishekh Raman Mishra S/o Ram Naresh Mishra R/o Village- Papan Mahuawa P.S.- Kateya, Dist- Gopalganj filed a case before DCLR Hathua by making present appellant as O.P. In the said case his prayer was that the present appellant without having any right over the land in question measuring 01 Katha 12 dhur of Khata No. 176, Plot No. 552, has forcibly captured the same as such possession be delivered to him by evicting the appellant (o.p. before DCLR). Thereafter, the learned DCLR heard the case and finally disposed of vide order dated 18.11.2012 wherein he held that the right of the present respondent (petitioner before DCLR) is established and accordingly he allowed the case. Feeling aggrieved by the said order, the present appellant has preferred this appeal before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted that the impugned order is bad in law and facts of the case because the lower court erred in not correctly determining the exact location of the land purchased by both parties because both parties are purchasers from the branches of khatinani raiyat. He further argued that in R.S. khatian the disputed land has been recorded in the name of different persons with their well defined share and the appellant is the purchaser from Mahrani Kuar. The respondent is the purchaser from the branch of Bihari Pathak as such the findings of the learned lower court is not correct in holding the right of the respondent over the disputed land. He lastly submitted that only civil court has jurisdiction to decide the matter of possession and dispossession and the DCLR has no jurisdiction to decide such kind of dispute and furthermore to order for recovery of possession and hence the impugned order is fit to be dismissed.

The learned counsel for the appellant submitted that this appeal is not legally maintainable and liable to be rejected. He further submitted that the total area of plot No. 552 of khata No. 176 is 1 bigha, 5 katha 6 dhur and has been recorded in the name of several co-sharer and this respondent purchased the disputed land from one Gazar Dubey through registered sale deed on 12.08.1986 and came in possession. Accordingly the said land was mutated in his name and Jamabandi No. 607 was opened and he is paying rent. He further argued that the appellant now on the basis of forged sale deed for 3 katha 5 dhur of land started disturbance in the peaceful possession of the respondent and the sale deed of this respondent has never been challenged by anyone. He lastly submitted that the impugned order is legal and valid having no need of any interference.

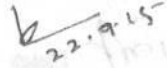
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Considering the facts and circumstances of the case, material available on records, respective arguments forwarded by the learned counsel for the parties and on perusal of the impugned order, it appears that dispute between the parties relates to their respective possession over the land in question which is stated to have been purchased by them from the descendents of the khatiyani raiyat through sale deeds on different occasions. Obviously such kind of dispute in which complex issue of title and possession is involved can not be decided under the BLDR Act inasmuch as the said land has not been allotted or settled to them under any of the six enactments mentioned in schedule- 1 of the BLDR Act. The division bench of the Hon'ble High court in the case of *Maheshwar Mnadal & Ors. Vrs. The State of Bihar & Ors.* has observed that revenue authorities are not competent to resolve the dispute relating to right and title of the parties.

For the aforesaid reasons, the impugned order of DCLR is not sustainable as he declared the right of the respondent over the disputed land which was beyond his jurisdiction under the BLDR Act. Accordingly the impugned order is set aside and this appeal petition is disposed of.

Dictated and Corrected by me.


Commissioner,
Saran Division, chapra


Commissioner,
Saran Division, Chapra