

IN THE COURT OF COMMISSIONER, SARAN DIVISION, CHAPRA

B.L.D.R. Appeal No. 133/2013

Birendra Singh & Ors.

Vrs.

Shrawan Kumar & Ors.

ORDER

15.4.15 The instant appeal is directed against the impugned order passed by DCLR, Siwan Sadar in BLDR Case No. 27/132/2012-13 on 08.04.2013.

The brief facts of the case are that the disputed piece of land having Khata No. 129 and 151 situated in Mauza Jhunapur and Bindusar of Siwan District and spread over different plots and having different areas also. The present respondent had filed a case before DCLR Siwan Sadar with a prayer that the aforesaid land be partitioned and his half share be demarcated from all such plots. The learned DCLR disposed the matter with a direction to C.O. Pachrukhi to measure the disputed land and after that the respective shares of the parties be demarcated vide order dated 08.04.2013.

Feeling aggrieved by the said order the present appellant who were respondent in the court of DCLR has preferred this appeal.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted that the impugned order is against law and facts of the case and the order has been passed without Jurisdiction as in this case complicated question of law and fact is involved. He further, while arguing on the merit of the case, submitted that there is presumption of jointness in a Hindu family and father is Karta of the family and all sale deeds were executed by father in capacity of Karta of the family which is binding on sons. He also argued that the respondents filed a case before DCLR for carving out their shares in the land sold by his father and thus they have challenged the sale deed executed by their father and court below has no jurisdiction to decide such issue. He also said that the respondent had also filed suit No. 666/2009 in the court of sub-judge- 1 for partition. He lastly prayed that impugned order be set aside as the DCLR is not competent to decide the share of the parties.

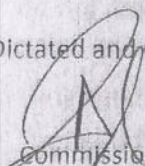
The learned counsel for the respondent on the other hand while strongly opposing the arguments made by the learned counsel for the appellant, submitted that the impugned order of DCLR is correct and in accordance with law and he has full authority and jurisdiction under the act to pass such order. He further argued that the


respondents filed a petition before DCLR, Siwan for carving out their legitimate share in the disputed property in consideration of the judgement dated 17.11.2009 passed by learned sub-judge, Siwan in T.S. No. 666/2009. He also argued that the learned DCLR after proper consideration of entire facts of the case rightly passed the order in favour of the respondents which is justified, legal and in accordance with law having no scope of interference by the appellate court.

Considering the facts the circumstances of the case, material available on the records and on going through the respective submissions advanced by the learned counsel for the parties, it is seen that the dispute between the parties is mainly relates to right , title and interest over the disputed piece of land. Furthermore, from the impugned order it is seen that the present respondent claimed before the DCLR that the part of land sold by his father to be partitioned from his existing half share and same be also demarcated and his this claim was based on entry made in the survey Khatiyani and for this he also relied on the genealogical table of his family. Thus, it appears that there involves adjudication of a complex question of title. In view of the nature of dispute in the instant case, it can be safely assumed that this case was not maintainable before DCLR as per the provisions contained in the BLDR Act- 2009. However, the learned DCLR, did not bother to ascertain the maintainability of the case brought before him for adjudication by completely ignoring the relevant provisions of the BLDR Act. The subject matter of adjudication under the BLDR Act does not include setting aside or changing the records of rights, determination of complex issues involving title of the parties who are staking their claims on the disputed land in question. The Hon'ble High Court also in its recent judgment in CWJC No. 1091/2013 (Maheshwar Mandal and others vrs The State of Bihar and ors.) on 24.06.2014 observed that the competent authority, the DCLR, is not empowered to entertain matter not arising out of the six enactments mentioned in schedule- 1 of the BLDR Act- 2009 and also held that complex question of title can never be decided in a summary proceedings.

Thus, for the aforesaid reasons and keeping in view the recent observations made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR Siwan Sadar is not sustainable. Hence, the same is set aside and accordingly this appeal is disposed of.

Dictated and Corrected by me.


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