

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. appeal No. 46/2014

Seraj Ahmad

Vrs.

Suresh Kumar Chauhan & others

ORDER

17.09.2015 The instant appeal petition is directed against the impugned order passed by DCLR, Mahrajanj in BLDR case No. 107/2013-14 on 29.01.2014.

The brief facts of the case are that Suresh Kumar Chauhan S/o Late Aashrafi Mahto R/o Village- Ratan Parauli, P.S.- Bhagwanpur Hat, Dist- Siwan filed a case under BLDR Act before DCLR, Mahrajanj by making present appellants as O.Ps. In the said case the prayer of the present respondent was that the land in question appertaining to Khata No. 132 R.S. plot No. 788, area 03 Katha 15 dhur is recorded in R.S. Khatian in the name of Moolchand Nonia and some others in which their respective shares is also mentioned but with the passage of time, the said land either through partition or succession came in the possession of the descendents of Khatiyani raiyats. His further case was that as 12 dhur land of the said plot has been transferred by one co-sharer ignoring the private partition to the present appellant and the present appellant dug foundation thereby obstructing their movement over the said land which was being used by there as road as such the said sale deed be declared void and purchaser be restrained from making any disturbance on their possession. Thereafter the learned DCLR after hearing the case vide order dated 29.01.2014 allowed the case and observed that as the vendor executed a sale deed of 12 dhur land without having title so the case of forgery may be instituted and LPC issued in respect of such land as well Jamabandi No. 227 be cancelled. Feeling aggrieved by the said order, the present appellant has preferred this appeal.

Heard the learned counsel for the parties.

The learned senior counsel appearing on behalf of the appellant, at the very outset of his argument, submitted that the impugned order of DCLR is illegal and can not be sustained as per the observation made by the division bench of the Hon'ble High Court in the case of Maheshwar Mandal & Ors. Vrs. The State of Bihar & Ors. He further argued that in the instant case there involves determination of complex question of right and title and the learned DCLR has got no jurisdiction to decide such complex issues but instead of closing the proceeding and directing the parties to approach the competent civil court for adjudication of such complex dispute, went to deciding the title of the parties and also questioned the validity of the said sale deed, which is certainly a matter to be decided by the civil court. He lastly submitted that in view of the observation made by the Hon'ble High Court in several cases, the impugned order of the DCLR is fit to be set aside.

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The learned counsel appearing on behalf of the respondents in his detailed argument submitted that there is no question of determination of title but the dispute between the parties relates to adjudication of their claim based on their title and possession and also the claim of the purchaser which is based on a false sale deed. He further argued and thrown light on the genealogy of the Khatiyani raiyat Moolchand Nonia and their descendents and how the different persons came to acquire different area of land from the same plot on the basis of private partition between them just in order to prove that the person who transferred the land to the present appellant had no share left in the said plot. He lastly prayed that the impugned order is legal and proper, hence the same is fit to be upheld and this appeal is devoid of any merit is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, and on perusal of the impugned lengthy order passed by learned DCLR, Mahrajanj, it is seen that the disputed fact of the case is that both parties claim their right over a piece of land measuring 12 dhur of plot No. 788 Khata No. 132 either on the basis of being descendents of the Khatiyani raiyat and having come to acquire the same or on the basis of sale deed executed by the rightful owner of the disputed land. Thus, it is quite obvious that admittedly the disputed land was purchased by the appellant whereas the claim of the respondents are that the person who sold the land had no share left in that plot. This kind of dispute essentially involves adjudication of title over the disputed plot and certainly the DCLR is not empowered to resolve such kind of complex issues of title under the provisions of BLDR Act.- 2009.

It is well established that the subject matter of adjudication under the BLDR Act does not include such matters. The Hon'ble High Court in its judgement in *CWJC No. 1091/2013 (Maheshwar Mandal and Ors. Vrs. The State of Bihar & Ors.)* has observed that the revenue authorities are not empowered to entertain matter not arising out of the six enactments mentioned in schedule- 1 of the BLDR Act- 2009, obviously the instant dispute does not fall under any of the six enactment and as such it was not maintainable before the lower court.

Thus for the aforementioned reasons and keeping in view the observation made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and this appeal petition is accordingly disposed of.

Dictated and Corrected by me.


Commissioner,
Saran Division, chapra


Commissioner,
Saran Division, Chapra