

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. appeal No. 170/2011
Kalawati Devi & Ors.
Vrs.
Sugriv Sah & Ors.
ORDER

29.09.2015 - The instant appeal is directed against the impugned order passed by DCLR Siwan Sadar in BLDR case No. 05/41-2011-2012 on 12.09.2011.

The brief facts of the case are that the present appellant Kalawati Devi W/o Raj Kumar Prasad & ors. R/o Vill Pakari, P.S. M.H. Nagar Hasanpura, Dist-Siwan filed a case before DCLR, Siwan Sadar against the present respondents wherein her prayer was that the disputed piece of land measuring 3 bigha 7 katha and 01 dhur appertaining to khata No. 291 having plot Nos. 1587 and 1727 was settled to her father-in-law by the Ex-intermediary and delivered possession and jamabandi No. 387 was created. Her further case was that the present respondent No. 1 got settled an area of 2 bigha 14 katha and 18 dhur land of plot No. 1727 with collusion of the local officers and also got created jamabandi No. 396 in his favour as such the said jamabandi be cancelled. Thereafter, the learned DCLR after hearing the parties finally vide order dt. 12.09.2011. disposed of the said case with the observation that the petitioner should approach the competent Court for the cancellation of said jamabandi which has been created on the basis of settlement.

On being aggrieved by and dissatisfied with the said order of DCLR, the present appellant has preferred this appeal.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant while assailing the impugned order of DCLR, submitted that the said order has been passed without considering the relevant facts of the case. He further argued that the learned lower Court has not considered that already register-ii is running in the name of one Ram Prakash Raut, who was father in law of the appellant with respect to the total land spread over in plot No. 1727 and 1587 whose total area is 3 bigha 7 katha 1 dhur from long before and also not taken into account and accepted the parcha which was executed by the Ex-intermediary. He also submitted that the learned DCLR did not accept the rent receipts granted by the Ex-landlord nor the receipt granted by the Govt. He also argued that how can a new jamabandi could be created without cancelling the earlier jamabandi for the same land as such this kind of dispute is very much possible under the BLDR Act but the leaned DCLR wrongly held that the appellant's grievance can not be resolved under the BLDR Act.

The learned counsel appearing on behalf of the respondents submitted that the case before DCLR was filed with a prayer for cancellation of jamabandi No. 396 and the learned DCLR after hearing the parties rightly held that the said jamabandi

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against the respondent for the disputed land was created vide Mutation record No. 26/65-66 under the military personnel quota and was also approved by D.M. Saran on 23.07.1971 and for redressal of any grievance pertaining to above jamabandi, the appellant should approach the competent Court and no relief can be granted under the BLDR Act. He further said that there is no provision under the BLDR Act for cancellation of jamabandi as such the impugned order is legal and proper so the instant appeal is liable to be rejected as the same is also not maintainable under the BLDR Act.

Considering the facts and circumstances of the case, material available on records, arguments advanced by the learned counsel for the parties and on perusal of the written statements and impugned order, it is quite evident that the dispute in the instant case relates to cancellation of jamabandi No. 396 for 2 bigha 18 katha 14 dhur land of plot No. 1727 of khata No. 291. The appellant's claim is that the said land was settled by the Ex-landlord to her father-in-law before vesting of Jamindari and subsequently the jamabandi No. 387 was created in his favour. The claim of the respondent is that the said land was settled to him by the authority under military quota in the year 1971 and on that basis his said jamabandi No. 396 was created. However, the learned DCLR on finding that the nature of dispute brought before him for adjudication under the BLDR Act is not maintainable in view of the fact that no such provision exists in the said Act, he accordingly disposed of the proceeding with the observation as quoted here under :-

“ विवादित जमीन की बन्दोवस्ती विपक्षी के नाम वाद सं०-26/65-66 द्वारा सैनिक कोटे के तहत विधिवत प्रक्रिया अन्तर्गत समाहर्त्ता, सारण द्वारा दिनांक 23.07.71 को स्वीकृत है, जिसकी जमाबंदी को निरस्त करने हेतु आवेदक को उक्त बन्दोवस्ती के विरुद्ध सक्षम न्यायालय में अपील दायर करना चाहिए। उन्हें इस अधिनियम के अन्तर्गत लाभ नहीं दिया जा सकता है। उपर्युक्त विवेचना के साथ बाद की कार्यवाई समाप्त की जाती है”।

Obviously, I do not find any illegality in the aforesaid order and observation made therein by the learned DCLR. Accordingly, the said order is upheld and this appeal petition is also disposed of.

Dictated and Corrected by me.


29-9-15
Commissioner,
Saran Division, Chapra


29-9-15
Commissioner,
Saran Division, Chapra