

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 53/2013

Rafik Khan & ors.

Vrs.

Mashul Mian

ORDER

24-09-2015- The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in BLDR case No. 110/2012-13 on 29.01.2013.

The brief facts of the case are that the present respondent Mashul Mian, S/o Ajim Mian R/o Vill-Baria Dhodhan, P.S. Uchakagaon, Dist-Gopalganj filed a case before DCLR, Hathua by making present appellants as o.ps. In the said case the claim of the present respondent was that the land in question situated in Mauza Bairia Dhodhan khata No. 66, plot No. 448 having area 4 katha 1 dhur and of plot No. 451, area 4 katha 11 dhur upon which the present appellants were creating hindrance in their possession as such they be restrained from doing so. Thereafter, the learned DCLR issued notice to the other side and heard the case and finally vide order dt. 29.01.2013 allowed the case in favour of the present respondent (petitioner before DCLR) with the observation that so long partition is not decided by the competent Court, the other party must not make any hindrance on the possession of the present respondent. Feeling aggrieved by the said order, the present appellants have preferred this appeal case before this Court.

Heard the parties.

The learned counsel appearing on behalf of the appellants submitted that R.S. khata No. 66 in which three plots Nos. 448, 45 and 443 is recorded in the name of Saman Hajam and Jhaman Hajam, both sons of Inayat Hajam having half share to each. He further submitted that after the death of Saman Hajam, his son Abdul Hajam sold 4 katha 6 dhur out of plot Nos. 448 and 451 to the ancestor of the appellant in the year 1982 and ever since then they are coming in possession. He further argued that no documents have been filed by the respondents to show that plots Nos. 448 and 451 were exclusively allotted to his ancestor Juman Mian. He also argued that the learned DCLR without taking any oral evidence on the mode of partition between the ancestor of the respondents, wrongly held that the entire disputed plot are in possession of the respondent and in fact the learned lower Court should have held that dispute between the parties can only be decided by the Civil Court and should have dismissed the case. He lastly submitted that the learned DCLR has no jurisdiction to decide this case because complicated question of law and fact is involved. He also stated that the Hon'ble High Court in its recent judgment has held that revenue authorities are not competent to decide the complex question of right and title and in this connection he also referred to the reported judgment (PLJR 2014 (3) page-281).

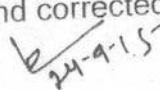
The learned counsel appearing on behalf of the respondents, on the other hand supported the impugned order by saying that the said order is proper, valid, legal and based on documents available on the record. He further argued that according to

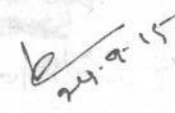
respondent when partition took place between the recorded tenants, the disputed plots No. 448 and 451 fell in the share of Jhaman Hajam and plot No. 443 fell in the share of Saman Hajam. He further submitted that the appellant with wrong intention over plot No. 448 and 451, has brought many sale deeds with the collusion of Abdul Haque and started hindrance in the peaceful possession of the respondents. He also argued that neither the vendor of the appellants nor the appellants have any concern with the plot No. 448 and 451 after the partition between original tenants. He lastly stated that appellants do not have any right to challenge partition which was done earlier by the ancestors of the parties, so this appeal having no merit is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, respective arguments forwarded by the learned counsel for the contesting parties and on perusal of the impugned order, it is quite evident that the nature of dispute between the parties relates to their respective share in plot no. 448, 451 and 443 which is stated to have been already decided between their ancestor after partition. It is admitted fact that the dispute arose between the parties when both parties, who are the descendants of Khatiyani raiyat raised their claim on the ground that they have been came in possession over the said disputed land after partition. Obviously this kind of dispute involving claim of partition over the raiyati land can not be resolved under the BLDR Act. But the learned DCLR without considering this important fact went on resolving the dispute. It has been observed by the Hon'ble High Court in CWJC No. 19169/2013 in the case of Mahendra Yadav Vrs The State of Bihar and ors. that revenue authorities are not empowered to resolve the dispute relating to partition under the provisions of the BLDR Act. 2009.

Thus, for the aforementioned reasons, the impugned order of DCLR, Hathua is not sustainable and accordingly the same is set aside and this appeal is disposed of.

Dictated and corrected by me.


24-9-15
Commissioner,
Saran Division, Chapra


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