

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 171/2012

Mohan Prasad Yadav.

Vrs.

Suraj Rai

ORDER

27-09-2015- The instant appeal is directed against the impugned order passed by DCLR, Sadar Chapra in Dakhil-Kharij Appeal (Misc.) case No. 03/2011-12 on 09.06.2012 under the provision of Bihar Land Dispute Resolution Act-2009.

The brief facts of the case are that the present respondent filed a case before DCLR Chapra Sadar under the provision of Bihar Land Dispute Resolution Act-2009 wherein the order passed by C.O. Chapra Sadar in Dakhil-Kharij case No. 69/2009-07 dt. 20.10.2006 was under challenge by making the present appellant as o.p. The dispute between the parties mainly relates to 3 bigha 2 katha 19 dhur of land appertaining to khata No. 1083, plot No. 4609 of mauza Brahampur, P.S. Bhagwan Bazar, Dist-Saran. The learned DCLR after issuing notice to the o.p. , heard the case and by his voluminous order dt. 09.06.2012 rejected the order of C.O. and directed for creation of fresh jamabandi. 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 in details about the whole course of events leading to coming up of this case before this Court. He further argued that as the respondent filed a case before DCLR under the BLDR Act he has got every right to challenge the same under the same act before this Court in appeal. He also argued that the learned DCLR has wrongly entertained the case under the BLDR Act and decided the right, title and possession over the land in question for which he was not competent to do that under the provision of BLDR Act-2009. He also argued that the learned DCLR instead of deciding this case, should have rejected the same as the said case was filed under the BLDR Act under which Dakhil-kharij case was not maintainable. He further contended that the relief sought for by the respondent in his memorandum of petition itself makes everything clear. He also argued that the impugned order is illegal and arbitrary hence the said order is fit to be set aside.

The learned counsel appearing for the respondent on the other hand, strongly opposed the arguments forwarded by the learned counsel for the appellant and submitted that the instant appeal petition is not maintainable before this Court because, the order passed by DCLR in Dakhil-kharij case can not be challenged in appeal under the BLDR Act. He further argued that the appellant in order to complicate the issue has preferred this appeal case before this Court as such this appeal petition having no merit is fit to be rejected.

Considering the facts and circumstances of the case, material available on records and rival submissions advanced by the learned counsel for the parties and on perusal of the impugned order, it is quite apparent that the dispute between the parties relates to right and title over the disputed land arose subsequent to the Dakhil-kharij done with respect to the said land by C.O. Chapra Sadar. Obviously, the appellant claims that he has obtained the power of attorney from the rightful owner of the recorded tenant whereas the respondents claim that the said power of attorney is a forged one. This obviously shows that the preliminary dispute between the parties relates to adjudication of right and title and certainly such kind of complicated issue can not be decided by any revenue authority. However, so far as the maintainability of this appeal petition before this Court is concerned, it can be safely assumed that as the respondent had filed the case before the DCLR under the BLDR Act and if the said order has been challenged in appeal under the same Act. this plea of the respondent is of not much significance.

Thus, it appears that the contesting parties have played some wrong either due to ignorance or with some ulterior motive by filing their cases for adjudication of dispute under the BLDR Act-2009 before different Court.

In that view of the matter, it is obvious that there is jurisdictional error in passing the order by DCLR by entertaining a petition under the BLDR Act and went on deciding the complicated question of right without having any jurisdiction to examine and assess the correctness of the documents over which the parties based their claim.

For the aforementioned reasons, the impugned order 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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Saran Division, Chapra

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Commissioner,
Saran Division, Chapra