

**In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No.176/2014**

Madan Mallah & ors.

Vrs.

Upendra Narayan Dubey & ors.

ORDER

[7.10.2015] - The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in B.L.D.R. case No. 65/241/2013-14 on 24.04.2014.

The brief facts of the case are that the present respondents (petitioners before DCLR) filed a case before DCLR, Siwan Sadar under the relevant provision of the BLDR Act-2009 against the present appellants wherein their prayer was that the disputed piece of land appertaining to khata No. 158, 218, plot No. 1005 and 992 having area 18 katha and 4 katha respectively, situated in Mauza Majhawalia be measured by any Aanchal Amin/survey knowing Commissioner and if any encroachment is found thereupon the same may be removed and further the disputed land be demarcated by erecting stone pillar on four corners. Thereafter, the learned DCLR after hearing the case finally vide order dt. 24.04.2014 allowed the case and directed the concerned circle officer to get measure the land and also to ensure the possession of the petitioner. Feeling aggrieved by the said order, the present appellants (o.ps before DCLR) have preferred this appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted that the order of learned DCLR is bad in law and is fit to be set aside because the learned DCLR while deciding the case has not considered to make any inquiry. He also submitted that the learned DCLR has erred in holding that the sale deed of the respondent which was of the year 1948 but did not consider the sale deed of the appellant which is of the year 1924. He further argued that the learned DCLR's finding on the point of Bataidari case is perverse and he ought to have considered that in Bataidari case the ancestors of the appellants were not party hence it was not binding on them. He further submitted that as the impugned order is erroneous the same is fit to be set aside and this appeal petition is fit to be allowed.

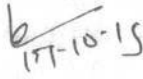
The learned counsel appearing on behalf of the respondent submitted that the appellants on the basis of a sale deed dt. 01.10.1924 stated to have been executed in favour of their ancestor which itself is bogus and fraudulent that deed of 1924 contains details of stamp, folia, registration charge etc in new system of money format like rupees and Naya paisa such as Rs. 1.25 p or Rs. 1.75 etc on the face of deed document instead of Anna, paisa prevailing at that time in 1924. He further submitted that the learned Court below has rightly ordered for demarcation of the disputed land as per provision of the BLDR Act. He further submitted that if the appellants were aggrieved by the order of the DCLR, they should have filed a case before Civil Court for declaration of title instead of filing appeal before this Court and accordingly they have

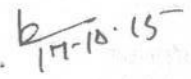
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filed a T.S. No. 322/2014 before Sub-judge Siwan in respect of the disputed land and in that condition, the instant appeal becomes infructuous and without merit, so this appeal is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records respective pleadings forwarded by the learned counsel for the parties and an perusal of the impugned order, it is quite obvious that the dispute arose between the parties when the appellants refused to allow the measurement of the land in question when requested for the same by the respondents. This led to filing of the case before DCLR under the BLDR Act seeking relief for measurement and demarcation of the land either by Aanchal Amin or by survey knowing Commissioner. The learned DCLR also passed the order to that effect only so far that extent the impugned order seems to be appropriate and maintainable under the BLDR Act, 2009. The operative part of the impugned order of DCLR is quoted hereinbelow reads. " अतः वाद स्वीकृत करते हुए अंचलाधिकारी को निदेश दिया जाता है कि नियमानुसार विवादित भूमि की खरीदगी दस्तावेज के वर्णित चौहदी के अनुसार मापी कराते हुए विपक्षीगण द्वारा अतिक्रमित भूमि मुक्त कराते हुए आवेदकगण का कब्जा दिलाए". Thus, it is quite evident that neither the DCLR has declared any title of the parties nor any relief for the declaration of the same was sought for by the present respondents. The appellants have even not disputed the said findings recorded by the learned DCLR rather they already filed a T.S. case No. 322/2014 before Sub-judge Siwan during the pendency of this case. Obviously therefore, it appears that there is no infirmity in the impugned order of DCLR so far his order relating to demarcation and measurement of disputed land is concerned. Accordingly, the same is upheld and this appeal petition being devoid of any merit is dismissed.

Dictated and Corrected by me.


Commissioner,
Saran Division, Chapra


Commissioner,
Saran Division, Chapra