

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. appeal No. 116/2012

Sudama Sah & ors.

Vrs.

Dashrath Sah & ors.

ORDER

~~12.08.2015~~ The instant appeal application is directed against the impugned order passed by DCLR, Hathua in BLDR case No. 136/2011-12 on 07.03.2012.

The brief facts of the case are that the present respondents Dashrath Sah and ors. filed a case before DCLR with a prayer by making present appellants as respondent, to create Jamabandi with respect to the land in question situated in Mauza Jamsar, P.S.-Uchakagaon, Dist-Gopaganj of khata No. 525 plot No. 2549 area 13 decimal; khata No. 51 plot No. 71 area 12 katha 17 dhur and plot No. 407, area 10 katha 10 dhur, plot No. 2042 are 8 katha 7 dhur, and of khata No. 416, area 11 dhur, khata No. 405 plot No. 1499 area 16 decimal in half-half proportion to him and the present appellant. Thereafter, the learned DCLR after issuing notice to the Ops who appeared in the case through their advocate and also filed their reply and after hearing the parties finally passed order on 07.03.2012 wherein he held that the sole criteria for creating Jamabandi is the possession over the land and the present respondents (petitioner before DCLR) have their possession over the half portion of above land, Jamabandi be created in their name and he also directed C.O. Uchakageon to take necessary steps for that. Feeling aggrieved by the said order, the present appellants (respondents) have filed this appeal application before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants submitted that the disputed piece of land was given orally by Hanuman Kanu to Bikau Sah in lieu of his service and then Bikau Sah came in possession thereof and later on the two sons of Bikau Sah partitioned their share and are now having their separate possession and on the basis of oral partition the present respondents prayed for separate Jamabandi in his name. He further argued that in the garb of carving out separate Jamabandi the respondent filed a case before DCLR under the BLDR Act. in respect of disputed land for right, title, interest which was beyond the Jurisdiction of the lower Court. He further submitted that the respondent had filed a false case before the lower Court and the lower Court erred in holding that the advocate Commissioner had got right to file report regarding possession whereas he ought to have held that the advocate Commissioner has got no right to file any report in respect of possession of the party. He also argued that the learned DCLR did not consider the case of the appellant properly and in fact disbelieved the case of the appellant and allowed the case in favour of the present



respondent hence the said order is fit to be set aside. He also said that the Court below had got no right to decide complicated question of title and possession which is involved in this case.

The learned Counsel appearing on behalf of the respondent submitted that this appeal is not maintainable. He further said that the claim of the appellant that disputed land was purchased by Babulal Sah through sale deed from Ganpat Sonar and Sital Sonar is false and appellants want to make undue pressure on respondents to grab the land. He also submitted that prior to the appeal several documentary evidence were shown like legal proceeding, police report of that disputed land having his 1/2 possession. The case of auction as disclosed by appellant is wrong and incorrect, because there is not any documentary evidence that shows that disputed land was purchased by Babulal Sah. He lastly prayed that this appeal be dismissed.

Considering the facts and circumstances of the case, material available on records and on perusal of the impugned order, it is seen that the dispute arose between the parties when the respondents prayed before DCLR for creating Jamabandi of the half portion of the land in question which is claimed to have been his share. On the other land the present appellants dispute the said claim on the ground that the Jamabandi for the said land can not be created merely on the report of advocate Commissioner as he is not competent to judge the possession over a land so the impugned order is not legally correct. I find that in the instant case involves complex question of adjudication of title of the parties as both parties claim their right on one and another ground over the same land. In fact learned DCLR should not have decided such a vexed issue merely on the basis of possession.

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 judgment in CWJC No. 1091/2013 (Maheshwar Mandal and others Vrs The State of Bihar and others) 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 matter does not fall under any of the said six enactments and as such it was not maintainable before the lower Court.

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

Dictated and Corrected by me.

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