

**In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 219/2011**

Bechu Singh & ors.

Vrs.

Nand Kishore prasad

ORDER

16-07-2015- The instant appeal petition is directed against the impugned order passed by DCLR, Hathua on 29.10.2011 in BLDR case No. 59/2011-12.

The brief facts of the case are that present respondent Nand Kishore Prasad S/o Late Garju Prasad R/o Vill-Jansar Bazar, P.S.-circle uchakagaon, Dist-Gopalganj had filed a petition before DCLR, Hathua wherein his prayer was that a piece of land whose total area is 14 dhur, appertaining to Khata No. 416 plot No. 2881 on which the presents appellants made illegal occupation be removed. The learned DCLR, Hathua initiated a case vide BLDR case No. 59/2011-12 and after issuing notices to the present appellants heard the case and finally disposed of vide order dt. 29.10.11. whereby and whereunder he allowed the case and also directed the C.O. Uchakagaon to remove the said illegal occupation. Feeling aggrieved by the said order, the present appellants have preferred this appeal before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants submitted in the very beginning of his argument that the impugned order is erroneous and otherwise motivated inasmuch as the impugned order is without jurisdiction and against the statutory provision. The learned counsel further argued that it is an admitted fact that the appellants have got their house in the east of the land in question and was possessed by them on the basis of unregistered exchange deed dt. 15.06.1930 and since then the appellants father and the appellant's too are continuing their title and possession. But the learned DCLR did not appreciate the case of the appellants and wrongly ordered for the removal of their physical possession. He also argued that this case does not come under the purview of section 4 of BLDR Act as under the provision of BLDR Act, title can not be decided. The learned counsel further clarified that exchange dt. 15.06.1930 was reached with Brahma kamkar, Rucha and Phulchand Rout through which plot No. 2881 under khata No. 416 measuring 14 dhur amalgamated with 9 dhurs of plot No. 2863 and was given to Rucha and Phulchand upon which they constructed their house and resides and appellants being the heirs are residing and in exchanges they gave their 10 dhurs of land of plot No. 2884 and 2887 in which Baharan Kamkar constructed his house and the respondent is still residing by constructing his house. He also argued that the learned Court below should have considered and accepted that the possession of these appellants over plot No. 2883 and 2881 is not on the basis of encroachment rather by virtue of exchange with plot No. 2884 and 2887 and the DCLR should not have considered and acted on the report of Anchal Amin regarding report of encroachment. He lastly prayed that the impugned order is fit to be set aside as the same is extra-jurisdictional order.

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The learned counsel appearing on behalf of the respondent, on the other hand while opposing the submission forwarded by the learned counsel for the petitioner, submitted that the land in question is the home stead land which is recorded in R.S. Khatiyani in the name of his ancestor Baharan Kamkar and the area is of 16 dhur but it is only 14 dhur as per map. He further submitted that as per the report of Anchal Amin it is clear that the present appellants have illegally occupied the 10 dhur land and the learned DCLR on finding the claim of the respondent as true allowed the case in his favour and also ordered for the removal of encroachment. He further argued that the so called exchange deed dt. 15.06.1930 is forged, fabricated, false and antedated document. He also argued that in fact the appellants never objected on the report of Anchal Amin and contested the case only on the basis of forged and fabricated exchange deed inspite of knowing the facts that plot No. 2884 and 2887 is also in his possession, so the story of exchange is totally wrong. He lastly submitted that the appellants claim is based on baseless grounds hence, this appeal is fit to be dismissed.

Considering the facts and circumstances of the case, material on records and respective arguments advanced by the learned counsel for the parties, it is seen that the dispute between the parties relates to a small piece of land on the question of their title and possession. The appellants claim that they came on possession over the disputed land on the basis of so called exchange deed dt. 15.06.1930 whereas the respondents claim on the basis that the said disputed land is their ancestral property and the very claim of exchange deed is false and fabricated. From the impugned order and findings arrived at by the learned DCLR, it is seen that his findings are based on the report of Anchal Amin wherein it was reported that the said disputed land was in the illegal possession of the appellants. However, the learned counsel for the appellant states that the case before DCLR was not maintainable as he has got no jurisdiction to decide title of the parties under the provision BLDR Act. Obviously from nature of dispute between the parties, it appears that it involves complex question of right and title of the parties because appellants claim their possession on the basis of exchange deed and respondent claims on the basis of entry in Khatiyani. In view of the nature of dispute between the parties, it is obvious, that such complex issue of title can not be decided under the provision of BLDR Act-2009 but learned DCLR went on deciding issues relating to title of the parties, who are staking their claims on the lands in question.

For the aforesaid reasons, the impugned order of DCLR, is not sustainable, Hence, the same is set aside.

Accordingly, this appeal is disposed of.

Dictated and Corrected by me.

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Saran Division, Chapra

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