

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. appeal No. 322/2012

Lakhpati Devi & ors.

Vrs.

Manoranjan Kumar Singh.

ORDER

18.08.2015- The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in case No. 103/2012-13, Manoranjan Kumar Singh Vrs Dharmnath tiwary & ors on 29.10.2012.

The brief facts of the case are that the present respondent Manoranjan Kumar Singh, S/o late Dinanath Singh, R/o Vill-Shadipur, P.S.-Goreya Kothi, Dist-Siwan filed a case before DCLR, Maharajganj against Dharmnath Tiwary and ors. In the said case, the prayer of the present respondent was that the disputed land was the part of plot No. 1525, Khata No. 523 whose total area is 2 bigha 11 katha and 13 dhur which came to Bhagwan Singh, grand father of the present respondent, in the year 1920 from Ex-landlord and from the said land 3 katha 4 dhur has been illegally occupied by the defendants as such possession of said land be delivered to him. Thereafter, the learned DCLR after hearing the parties finally vide order dt. 29.10.2012 held that the present appellant does not have any right over the land in question and accordingly his application for impleading him as a party in the said case was dismissed. Feeling aggrieved by the said order, the present appellant has preferred this appeal.

However, during pendency of this appeal before this Court, the sole petitioner died and his legal heirs were substituted in his place vide order dt.12.12.14 in the appeal.

Heard the learned counsel for the parties.

The learned counsel for the appellant submitted that the land in question of khata No. 523, plot No. 1525 is the ancestral Khatiyani property of appellant and respondent no.3. He further highlighted his claim on the basis of geneology of the family and submitted that a case was filed in the Court of SDM, Maharajganj and during the pendency of said case the present respondent No.3 mischievously filed the petition before the DCLR, Maharajganj to remove illegal encroachment from the land in question but he did not make party to the appellant in the said case. He further submitted that as soon as the appellant learnt regarding the present proceeding, he filed a petition before DCLR, Maharajganj praying therein that he be made also party but after hearing and without appreciating the fact the said petition was rejected. He further argued that the learned lower Court ought to have held that the appellant has possession, right and title in the land and he should have also been made a necessary party in the case as such the said order is fit to be set aside.



The learned counsel for the respondents submitted that this appeal is not maintainable. He further submitted that the appellant filed the petition before DCLR, for being added as party in the case which was rejected and against that order the present appeal has been filed. He also submitted that the appellant has got no share in the property and even if the appellant got the share, the appellant was neither necessary party nor a proper party and hence the petition of appellant was rightly rejected by DCLR.

Considering the facts and circumstances of the case, material on records and on perusal of the impugned order, it appears that in the instant case, determination of right and title of the parties are involved inasmuch as both parties claim their right over the disputed plot on one or another basis. However, the present appellant has come before this Court with a limited prayer that his petition for making him a party in the proceeding before learned DCLR was rejected as such the said order of the learned DCLR be set aside. I find that in view of the nature of dispute between the parties, the learned DCLR should not have entertained the matter itself and in fact, he should have directed the parties to approach the competent Civil Court for resolving of the disputes which is largely related to adjudication of complex issue of right and title. The learned DCLR without going into intricacies of the issue brought before him for adjudication and without considering the important of the claim made before him by the present appellant, disallowed his petition for impleading him as a party in the case. Thus, it is quite obvious that the learned DCLR has exceeded his jurisdiction firstly by entertaining a case involving adjudication of complex issue of right and title and secondly by out rightly rejecting the prayer of the appellant without any valid reasons. It is almost settled that the DCLR has to look into cases only under those six enactments included in schedule-1 of the BLDR Act. as observed by the Hon'ble High Court in the case of Maheshwar Mandal Vrs The State of Bihar & ors (CWJC No. 1091/2013).

For the aforementioned reasons, the impugned order of DCLR is not sustainable, hence the same is set aside.

Accordingly, this appeal application is disposed of.

Dictated and Corrected by me.

b/13.8.15
Commissioner,
Saran Division, chapra

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Commissioner,
Saran Division, Chapra