

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 169/2013

Sudama Rai & ors.

Vrs.

Kashi Rai & ors.

ORDER

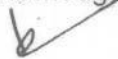
28.05.16, The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in case No. 98/2012-13 (Kashi Rai vrs Lalan Rai & ors) on 14.09.2012.

The brief facts of the case are that the present respondent Kashi Rai S/o Late Hari Charan Rai, R/o Vill-Marsara ke Tola, P.S.-Daraunda, Dist-Siwan filed a petition before D.M. Siwan which was subsequently transferred to the DCLR, Maharajganj for taking legal action which led to initiation of a case vide case No. 98/2012-13. In the said case, the claim of the present respondent (as petitioner before DCLR) was that the land in question measuring 3 katha 19 dhur, appertaining to khata No. 38, plot No. 906 & 907 and of khata No. 95, plot No. 910, was purchased by him through registered sale deed in the name of his wife Rita Devi on 07.07.2008 and jamabandi of the said land is also running in the name of his wife. His further case was that the present appellants (o.ps before DCLR) have illegally dispossessed him from his house which was built on the said land as such his locked house be opened. Thereafter, the learned DCLR issued notices to the ops but the o.ps did not appear in the case which led to disposal of the case by an ex parte order on 14.09.2012 wherein the o.ps were directed to vacate the said house and C.O. Daraunda and O.C. Daraunda were also directed to deliver the possession of the said house. Feeling aggrieved by the said order, the present appellants have preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants while assailing the impugned order, submitted that the ex-parte order of lower Court is bad in law and without jurisdiction. He further submitted that the disputed plot No. 907 and 906 are the ancestral land of the parties and the khatian is recorded in the name of Sheogobind Rai and others, but respondent No.1 has wrongly mentioned that this is the purchased land from Hari Charan Rai who had no right to execute the sale deed regarding plot No. 906 and 907 alongwith other land and he had not executed any sale deed on 07.07.08 but the said sale deed is totally forged and fabricated document. He further argued that the story of dispossession is totally false and baseless rather the learned lower Court should have held that the house standing in plot No. 906, 907 and 910 is ancestral house and common house of the parties. He lastly submitted that the learned DCLR has got no jurisdiction to pass order upon the raiyati land as such the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondents while strongly opposing the arguments forwarded by the learned counsel for the appellants, submitted that the instant appeal is not maintainable on facts and law for the reason that wrong ground has been taken having no knowledge of the case before DCLR. He further



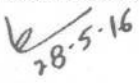
submitted that the vendor Hari Charan Rai has got right and interest in the disputed plot No. 906, 907 and 910 and he has rightly executed the sale deed and the said sale-deed is genuine and valid and on the basis of sale deed the respondent has acquired possession. He further submitted that the appellants had forcibly locked the house as such the respondent filed a petition before D.M. Siwan and it was on the direction of D.M., the case was initiated by DCLR, Maharajganj in which even after valid service of notice to the appellants they deliberately preferred to remain absent from the proceeding which ultimately resulted in passing of the ex-parte order. He lastly submitted that the impugned order is valid and legal having no illegality the same be upheld and this appeal be dismissed.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it is seen that the dispute between the parties basically relates to their respective possession over the house standing in plot No. 906, 907 and 910. The appellants claim is that the very sale deed executed by one Hari Charan Rai in favour of the respondent No.1 is not a valid sale deed as the Hari Charan Rai has got no right to execute sale deed with respect to the said disputed land. On the other hand, the respondents claim is that the said Hari Charan Rai being a co-sharer of the common property, executed a sale deed in favour of his wife Rita Devi and after that she came in possession over that. Thus, it appears that the nature of dispute between the parties itself reflects that in the instant case involves adjudication of complex question of right, title and possession over the raiyati land. The dispute essentially involves willful dispossession over private land but the same is not maintainable under the BLDR Act. It is also an admitted fact that the present respondent had approached the learned DCLR for recovery of possession over the disputed land.

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) on 24.06.2014 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 this appeal petition is accordingly disposed of.

Dictated and Corrected by me.


Commissioner,
Saran Division, Chapra


Commissioner,
Saran Division, Chapra