

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 317/2013

Ram Bahadur Singh.

Vrs.

Bhagwan Sharma & ors.

ORDER

25.07.2016 — The instant appeal petition is directed against the impugned order passed by DCLR, Maharajanj in BLDR case No. 252/2012-13 on 07.10.13.

The brief facts of the case are that the present respondents Bhagwan Sharma and Rameshwar Sharma, both sons of Late Bhagani Sharma R/o Vill-surbir, P.S.-Maharajanj, Dist-Siwan filed a case before DCLR Maharajanj by making the present appellant as o.ps. the case of the present respondents (petitioner before DCLR) was that the land in question measuring 7 katha appertaining to khata No. 355 plot No. 1718 basically belonged to Ex-landlord Bhagwan Sharma which was settled through patta in favour of Ghamandi Mia and later on who in turn sold the same to the maternal Grand father of the present respondents and ever since then the said land has been coming in possession to them after inheritance. His further case was that as the o.ps (present appellant) were trying to forcibly grab the said land, they be restrained from making any disturbance. Thereafter, the learned DCLR after hearing the case and finally through a detailed order held the claim of the petitioner (present respondents) as correct and restrained the o.ps from making any interference vide order dt. 07.10.2013. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal before this Court.

Heard the learned counsel for the appellant only as the learned counsel the respondents were absent on the day of hearing, despite being given last chance on previous date.

The learned counsel appearing on behalf of the appellant submitted at the very outset of his argument that the impugned order is illegal and without jurisdiction. He further argued that the learned lower Court has erred in allowing the petition of respondents without considering the papers of appellants with regard to settlement made by the Madhurani Kuar for 6 katha 5 dhur land of the said plot on 20.03.23 and again for 7 katha on 23.05.1938 to the ancestor of the appellant. He further submitted that the respondents claim that the said 7 katha land was settled to Ghamandi Mia on 16.03.1944 which was much after the date of settlement made in favour of appellant's ancestor. He further submitted that in this way altogether 13 katha 5 dhur land was settled to the ancestor of the appellant and remaining 1 katha 16 dhur of plot No. 1718 has already been auctioned sold in execution case to one Jaglal Singh and in this way ancestor of appellant got title and possession over the entire area of 15 katha 1 dhur of plot No. 1718 and now nothing is left in that plot for settlement in favour of other person which clearly shows that the claim of the respondents are wrong that their ancestor was settled with 7 katha of land from the same plot. The learned counsel lastly submitted that in the instant case involves adjudication of complex question of right, title and possession as such the DCLR was not competent to decide as question rather it is the Civil Court got power to deal with such issue and in support of that he also referred to a reported judgment of Hon'ble High Court 2015(1) PLJR page No. 823.

Considering the facts and circumstances of the case, material available on records, arguments advanced by the learned counsel for the appellants and on perusal of the impugned order, it is quite obvious that in the instant case dispute between the parties relates to their respective claim over the land in question on the basis of alleged settlement/sale deed stated to have been made in favour of their ancestors by the so called Ex-landlord. Thus it appears that there is serious dispute of title over the disputed land and obviously such kind of dispute can not be resolved under the provision of BLDR Act as observed by the Hon'ble High Court in the case of Maheshwar Mandal & ors Vrs State of Bihar. The learned counsel for the appellant also expressed the similar view in his written statement.

Thus, for the aforesaid reasons, the impugned order of DCLR is set aside and accordingly this appeal petition is disposed of.

25.4.16

Dictated and Corrected by me.

25.4.16

Commissioner,
Saran Division, Chapra

Commissioner,
Saran Division, Chapra