

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 95/2012

Sipahi Rai & ors.

Vrs.

Bishwanath Rai.

ORDER

25.04.2014

The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in B.L.D.R. case No. 38/2011-12 on 03.01.2012.

The brief facts of the case are that Sipahi Rai and Daroga Rai, both sons of Suraj Rai, R/o Vill-Lohijara Tole Bali Chapar, P.S. Sidhwalia, Dist-Gopalganj filed a case before DCLR, Gopalganj under the provisions of BLDR Act-2009 by making the present respondent as o.p. In the said case, the relief sought for by the present appellant, inter alia that the land measuring 9 bigha of plot No. 4505, khata No. 343 situated in Mouza Lohijara was the joint property and over the said land their houses are located from which the present respondent (o.p. before DCLR) has wrongly got settled some part of the land in his name in order to capture the property belonging to him and also got jamabandi created in his name with respect to the said land as such the existing jamabandi be cancelled. Thereafter, the learned DCLR after issuing notices to the parties, heard the case and finally vide his order dt. 03.01.2012 dismissed the said case holding that the claim of the petitioner was based on baseless ground. 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 submitted that the impugned order is illegal, bad and erroneous. He further submitted that the appellants filed a case before DCLR, Gopalganj for the cancellation of the jamabandi relating to plot No. 4505 khata No. 343 a Gair Mazurwah Malik land area 10 kathas of out of 9 bigha on knowing that settlement for the disputed land was obtained by the respondent and for which a proceeding u/s 144 Cr. P.C. was also initiated. He further submitted that the contesting parties are the legal heirs of one common ancestor and all the legal heirs have constructed their houses in different areas of the said big plot and in the middle of the said plot a road having brick soling runs, dividing the land in northern and southern part. He further submitted that the respondent in order to grab the land of the appellants got settled 10 katha land fraudulently without showing any boundary of the said settled land so as to same can be identified on the spot. He further assailed the impugned order by saying that the learned DCLR should have verified the actual physical possession of the persons before disposing of the case. He lastly submitted that as the impugned order is arbitrary and illegal, the same is fit to be set aside.

The learned counsel appearing on behalf of the respondent strongly opposed the arguments forwarded by the learned counsel for the appellants and submitted that this appeal petition has been filed on wrong and frivolous grounds and the same is fit to be dismissed. He further argued that in respect of his claim of title and possession over the disputed land the respondent had filed documents regarding settlement of 37 decimal of land including the disputed land by the state of Bihar and for which parcha was granted by the state in favour of the respondent and since the date of settlement the respondent is paying rent to the state. He further submitted that the ground taken by the appellant that the said settled land could not be

identifiable in absence of boundary is totally wrong as in the settlement document the said boundaries have been mentioned. He lastly submitted that the learned lower Court had no right to set aside the settlement done by the state Govt. in favour of the respondent as such the learned DCLR has rightly rejected the claim of the appellants so the impugned order is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, respective submissions made by the learned counsel for the parties and on perusal of the impugned order, it appears that in the instant case dispute between the parties relates to settlement of 10 katha of Gair Mazurwah Malik, land of plot No. 4505 of khata No. 343 of Mouza Lohijara. The appellants claim is that the said settlement was obtained fraudulently by the respondent and even the said land is not identifiable on the spot whereas the claim of the respondent is that the said settlement was made by the state and a parcha was issued in his favour and he also pays rent. It is seen that the learned DCLR in his detailed order rightly held that the claim of the appellant over the said settled land is baseless and he accordingly rejected the said petition which basically relates to cancellation/correction of jamabandi with respect to the said settled land. Obviously, I do not find any infirmity in the said findings of the learned DCLR. Furthermore, the learned counsel for the appellants also failed to set forth any good ground for any interference in the impugned order as such the same is upheld.

With the aforesaid observations, this appeal petition is disposed of.

Dictated and Corrected by me.

Commissioner,
Saran Division, Chapra

25-4-14
Commissioner,
Saran Division, Chapra