

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 208/2011

Gutmut Choudhary & ors.

Vrs.

Sri Kishun Choudhary & ors.

ORDER

06-02-2016 - The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in Land Dispute Resolution case No. 62/2011-12 on 04.11.2011.

The brief facts of the case are that the present respondents had filed a case before DCLR, Hathua by impleading the present appellants as o.ps. In the said case the prayer of the petitioner before DCLR was that the land mentioned in schedule-I situated in Mouza Kusaudhi having plot No. 787, khata No. 301 measuring 1 decimal was allotted to him through Bhoodan certificate No. 5341 on 16.07.1978 and having his possession over that and rent has also been fixed and the land mentioned in schedule-II is his own land which have been acquired by him after private partition and over which his possession has been running since 1976. Further case of the respondent was that the said land mentioned in two schedules have been amalgamated and he has laid the foundation for construction of his house and the present appellants (o.ps before DCLR) are creating obstruction in his construction work as such they be directed not to make any obstruction in the rightful possession over the said land. Thereafter, the learned DCLR after issuing notices to the o.ps heard the case and finally vide order dt. 04.11.2011 allowed the said case in favour of the present respondent. Feeling aggrieved by the said order, the present appellants have preferred this appeal petition before this Court.

Heard the learned counsel for the parties.

The learned senior counsel appearing on behalf of the appellant at the very outset of his argument, submitted that appellants and respondents are the legal heirs of a common ancestor and further how their share was divided as per entry made in the khatiyan and the respondents had claimed entire 16 dhur and the learned lower Court had given decree to the respondent of entire 16 dhur which is against the entry in R.S. khatiyan. He further submitted that the Bhoodan Yagana Committee had settled 18 decimal land of khata No. 301 plot No. 799 and 1 decimal land of plot No. 787 and granted certificate No. 5340 dt. 16.07.1978 in the name of Laldeo Choudhary, appellant No. 2 and respondent No. 1 has no right, title and interest. He further submitted that as complicated question of law and fact is involved in this case, so the learned lower Court had no jurisdiction to decided the case. The learned counsel also argued that the learned lower Court erred in holding that by partition the entire land of schedule No.2 has fallen in the share of respondent No. 2. He also argued that the learned lower Court ought to have disbelieved the story of partition as alleged by the respondent and should have held that in schedule-2 land is half of appellants and half of the respondent NO.1 and should have decreed the suit in favour of the respondent No. 1 in respect of only 8 dhurs land of schedule No. 2. He lastly prayed that the impugned order is fit to be set aside.

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
The learned counsel appearing on behalf of the respondent while strongly opposing the arguments advanced by the learned counsel for the appellant, submitted that the appeal is neither maintainable in law or on facts of the case and the ground set forth for this appeal is false and baseless and is not tenable in the eyes of law. He further argued that as a matter of fact the lands settled by Bhoodan Committee is the personal or self acquired property of respondent No.1 and the family members of Banshi Ahir have got no title nor possession with settled land. He also argued that schedule-2 land is adjacent to schedule-1 land on the eastern side schedule-1 land has been acquired from Bhoodan Committee. Respondent No. 1 has got schedule-2 land by family partition and is having his possession since 1976 and this schedule-2 property is the ancestral property. He further argued that the paper of private partition by way of family arrangement is admitted by both parties and which bears the date as 03.12.1976 and schedule-1 property was acquired on 16.07.1978 much after the partition, hence schedule-1 property can not be assumed to be the joint family property as such the claim of the appellant is not tenable and liable to be rejected.


Considering the facts and circumstances of the case, material available on records, claims and counter claims made by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that in the instant case the dispute pertains to both Bhoodan and private land. The claim of the appellant is that the said Bhoodan land is the joint family property whereas the claim of the respondent is that the schedule-1 land is acquired by him from Bhoodan Yagana Committee much after partition of ancestral property. However, the learned DCLR went on resolving the dispute of the contesting parties over both kind of lands. Obviously the learned DCLR should not have dealt with such a complex nature of dispute under the BLDR Act which clearly forbids the revenue authority to deal with the complex question of right and title or partition over the raiyati land. No doubt the respondent is the Bhoodan settlee but as both Bhoodan and land private land has been amalgamated into one block, the issue becomes more complex to resolve the same, although, the Bihar Bhoodan Act is among those six enactments mentioned under schedule-1 of the BLDR Act upon which the learned DCLR has been vested with the power to adjudicate the dispute arising out of those six enactments.

For the aforementioned reasons, I am not constrained to uphold the impugned order as a whole. However, the claim of the respondent pertaining to Bhoodan land is upheld as the same has been decided appropriately by the learned DCLR.

Accordingly the impugned order of DCLR is upheld to the extent mentioned above and this appeal petition is disposed of.

Dictated and Corrected by me.


Commissioner,
Saran Division, Chapra


Commissioner,
Saran Division, Chapra