

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 83/2013

Chhathu Bhagat & ors.

Vrs.

Sita Ram Singh

ORDER

18.03.2014 - The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in case No. 87/2012-13 on 28.01.2013.

The brief facts of the case are that the present respondent Sita Ram Singh S/o Late Saryug Singh R/o Vill-Sahashraw, P.S.-Bhagwanpur Hat, Dist-Siwan filed a case before DCLR, Maharajganj by impleading the present appellants as opposite party. The case of the respondent as petitioner before DCLR was that the land measuring 2 katha 19 dhur of survey plot No. 840 and khata No. 117 is his khatiyani land out of which 1 katha land from eastern side was sold by him to one Ram Kishore Mahto through registered sale deed and the remaining 1 katha 19 dhur in the western side has been coming in his possession and he used to pay the rent. His further case is that the present appellants (o.p. before DCLR) were bent upon for making illegal possession over the said land and in the process they forcibly ploughed the said land in which maize crops were grows by him and ultimately dispossessed him from the said land as such the illegal possession be removed and possession of the same be delivered to him. The learned DCLR after hearing the parties finally vide his order dt. 28.01.2013 held that the claim of the present appellants over the disputed land is baseless and he restrained the appellants from moving over the said land and also directed the C.O./O.C. of Bhagwanpur Hat to deliver the possession over the land in question. Feeling aggrieved by the said order, the present appellants have preferred this appeal case before this Court.

Heard the learned counsel for the parties.

The learned senior counsel appearing on behalf of the appellants submitted in details about the geneology of the appellants in order to substantiate his view that the said disputed land has been coming in possession of the appellants through Sikmi right before the R.S. and appellants are paying the rent to the respondent and prior to that to his ancestral. He further argued that in raiyati khata No. 117 there are several plots including the disputed land and all other plots except the disputed plot is recorded in khatiyani as Sikami in the name of Palakdhari Barai, ancestor of the appellant. He also submitted that Kastkari khata No. 117 is recorded in names of Ram Lagan Rai, Ramashish Rai, Ram Singar Rai, S/o Thakur Rai, ancestor of respondent and Sikmi khata of this khata No. is 42 which is recorded in the name of Palakdhari. He further clarified that the ancestors of the appellants were in possession of the disputed land as Sikmidar and Sikami rent was due with the appellants from 1986-2005, so they paid the rent of entire land recorded as Sikami in khatiyani including the disputed plot on 06.08.2005 to Kastkar, the respondents and they granted receipt for the same which clearly proves that the disputed plot was also in Sikami of the appellants ancestor and of the appellants. He further argued that the respondent by suppressing the real facts filed a case before DCLR for recovery of possession. Thus the possession of Sikamidar is admitted by the Kastkar. He further argued that the learned DCLR, without considering the fact that in the instant case right of the parties and their



possession can not be decided without evidence, he went on to decide the complicated question of law and fact as such the said order of DCLR is without jurisdiction and even against the provision of the BLDR Act.

The learned senior counsel appearing on behalf of the respondent at the very outset of his argument strongly opposed the submission made by the learned counsel for the appellants and submitted that in view of the case made out by respective parties the only point of consideration is to find out as to whether Chhathu Bhagat and ors. are Sikamidar or not of Sikami khata 42 which is under raiyati khata No. 117. He further argued that from perusal of R.S. khata No. 117 it would be found that the sharer of Kastkar namely Ram Lagan Rai and others have been mentioned and the Sikami khata 42 is under this khata which is recorded in the name of Palakdari Barai and ors as per Sikami khata 42 and under Sikami khata 42 R.S. 1071, 1119, 831 etc are also recorded as Sikami khata 42 but with respect to R.S. plot No. 840 there is no mention of anything as such this plot No. 840 is not under Sikami khata 42, hence the claim of Chhathu Bhagat and other is false. It is further argued by the learned counsel that apart from the question of title of Sikamidar with respect to their possession over R.S. plot No. 840 under Sikami khata 42 can not be entertained and which can only be decided after framing Civil Suit as the Civil Court has power to decide such complicated question of title as such the impugned order is proper and this appeal is fit to be rejected.

Considering the facts and circumstances of the case, material available on record and on going through the respective submission advanced by the learned counsel for the parties during their oral arguments as well as in the written statements, it is seen that the dispute between the parties mainly relates to right and recovery of possession over the disputed piece of land and its very nature as to whether the same is sikami or Raiyati land is under controversy. It is seen that the appellants claim is solely based on the point that they are the legal heirs of recorded Sikamidar as such they have got absolute right over the disputed land whereas the respondent's claim is based on the fact that the said disputed plot No. 840 is his khatiyani land and the same plot was not recorded under Sikami khata No. 42. Thus, it is quite obvious that in the instant case involves adjudication of complex question of right, title and possession over the disputed piece of land which can not be decided through summary proceeding under the BLDR Act-2009 as observed by the Hon'ble High Court in its judgment in CWJC No. 1091/2013 Maheshwar Mandal and ors. Vrs The State of Bihar & ors. But it is seen that the learned DCLR without considering this fact went on to settle the claim of right and possession of the parties over the disputed piece of land i.e. R.S. plot No. 840 and also ordered for delivery of possession.

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

Accordingly, this appeal petition is disposed of.

Dictated and Corrected by me.

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Commissioner,
Saran Division, Chapra

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Saran Division, Chapra