

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 14/2013

Bhagwan Lal Prasad & Ors.

Vrs.

Ram Ekbal Bhagat & Ors.

ORDER

15.01.2016 - The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in Case No. 93/2012-13 on 22.12.2012.

The brief facts of case are that the present respondent (petitioner before DCLR) Ram Ekbal Bhagat S/o Jadu Bhagat R/o Village- Nautan , P.S.- Tarwara Dist-Siwan had filed a case before DCLR, Maharajganj by making the present appellants as opposite party. In the said case, the prayer of the present respondent was that the disputed piece of land measuring 02 dhur which is situated in south- west corner of the plot No. 1842 Khata No. 393 whose total area is 16 dhur, is his purchased land through sale deed over which his possession be delivered and the opposite party be restrained from making any hindrance on his peaceful possession. Thereafter, the learned DCLR after, issuing notices to the opposite party heard the case and finally vide order dated 22.12.2012 allowed the case in favour of the present respondents. Feeling aggrieved by the said order of DCLR, the present appellants have preferred this appeal before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant at the very outset of his argument submitted that the learned court below believed the evidence and pleadings of the respondents and allowed the case in his favour which is illegal and bad. He further submitted in detail as to how the respondent after preparing a forged and fabricated sale deed claims his right over the disputed land. He further argued that during the existence of a sale deed no second sale deed can be executed and second sale deed becomes void ab-initio but the learned lower court did not consider on this point. He also argued that the learned lower court has no jurisdiction to restrain any person permanently but the impugned order has been passed restraining the appellant from going over his own land. He lastly submitted that the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondents, while opposing the arguments advanced by the learned counsel for the appellant, submitted that the impugned order is valid and proper and this appeal is not maintainable as the claim made by the appellant that Munilal Bhagat never became Karta of joint family after the death of Nagina Bhagat is not correct. He further argued that after the death of Nagina Bhagat, the disputed land was divided in four parts amongst all the four brothers as such the sale deed executed by Munilal Bhagat in favour of Prabhu Bhagat on 14.08.1973 in respect of 8 dhur is not genuine. He further submitted that the disputed land measuring 2 dhur is in the peaceful possession of the respondent

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having his sahan on the said land. He lastly submitted that the impugned order has been passed after, legal appreciation of facts, hence the same is fit to be upheld.

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 the instant case involves complex question of determination of right and title of the parties. It is well settled that such complex issue can not be decided by the revenue authority and this has been also observed by the Hon'ble High Court in several Judgements. Even the BLDR Act also does not permit the revenue authorities to adjudicate such a complex dispute relating to determination of the right, title and share of the parties. However, it is seen that the learned DCLR in his detailed order went on deciding the claim of the parties on the basis of alleged sale deed documents completely ignoring the relevant section 4 (5) of the BLDR Act- 2009 which clearly says that as soon as the competent authority comes to know that the matter brought before him involves complex question of title he would close the proceeding and direct the parties to approach the competent court for resolving their dispute.

Thus, for the aforementioned reasons, the impugned order of DCLR is not sustainable and hence the same is set aside and this appeal petition is disposed of accordingly.

Dictated and Corrected by me.

 15.1.16
Commissioner,
Saran Division, Chapra

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Commissioner,
Saran Division, Chapra