

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 141/2013

Thakur Dubey & ors.

Vrs.

Kailash Pati Dubey

ORDER

16.03.2016— The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in B.L.D.R. Case No. 73/110/-2011-12.

The brief facts of the case are that the present respondent kailashpati Dubey S/o Late Ram Chhabila Dubey R/o Village- Rahtauwa, P.S- Darauli, Dist- Siwan filed a case before DCLR, Siwan Sadar by making the present appellant, Thakur Dubey & Ors. as O.P. In the said case a prayer was made that the present respondent be restrained from making any obstruction in the flow of discharged water of his house through big drainage and also be restrained from allowing the flow of dirty water of his house near the foundation of the boundary wall of his house. Thereafter, the learned DCLR, heard the case and finally vide order dated 26.12.2012 held that the disputed land belongs to the petitioner (the present respondent) in which a drainage exist through which the dirty water falls in the main drainage which has been encroached by the O.Ps. (the present appellants) which is illegal and accordingly he directed the C.O./ O.C, Darauli for the removal of said encroachment. Feeling aggrieved by the said order, the present appellants has preferred this appeal petition before this court.

Heard the learned counsel for the parties.

The learned senior counsel appearing on behalf of the petitioner at very outset of his argument submitted that the impugned order is illegal, erroneous and extra jurisdictional as the learned DCLR was not competent to decide the complex question of right and title inasmuch as the very cause of dispute between the parties relates to their respective claim over plot No. 719. He further argued that it is also admitted that a proceeding u/s 133 of Cr.p.c. was pending before SDM Sadar Siwan prior to this BLDR Case and the learned lower court despite having knowledge of the case passed the impugned order which is not sustainable in the eyes of law. He also submitted that in view of the nature of dispute between the parties, the learned lower court should have referred the case to the competent civil court for its adjudication but instead of doing so the impugned order was passed which is illegal and improper as per the observations made by the Hon'ble High Court in the case of Maheshwar Mandal & Ors. Vrs. The State of Bihar & Ors. He lastly submitted that the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondent, while strongly opposing the arguments forwarded by the learned counsel for the appellant submitted that it is totally wrong to say that the instant case involves



adjudication of complex question of right and title but the fact is that the dispute relates to encroachment of the land through which the drainage runs and the appellants have obstructed the flow of water of the respondent by filling soil on the exit point. He further argued that even the impugned order also does not talk of any title dispute. He lastly submitted that the impugned order is just and proper as such 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 contesting parties and on perusal of the impugned order, it is seen that according to respondent the dispute between the parties relates to alleged encroachment of private drainage which is stated to have been constructed by the appellant in the land belonging to the respondent thereby creating obstruction in the easy flow of water of the respondent's house in the Govt. drainage. The appellants claim is that the dispute between the parties mainly relates to the claim of title over plot No. 719 as such the learned DCLR was not competent to decide the same under the BLDR Act. However, from the impugned order it appears that the learned DCLR has held that the 3 feet wide road left by the present respondent in plot No. 719 is also being claimed by the appellants as their land. Thus, it appears that in the instant case involves determination of complex question of title of the parties over the disputed land and obviously such kind of dispute can not be resolved under the BLDR Act as observed by the Hon'ble High Court in CWJC No. 1091/2013, Maheshwar Mandal & Ors. Vrs. The State of Bihar & Ors.

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

Dictated and Corrected by me.


Commissioner,

Saran Division, Chapra


Commissioner,

Saran Division, Chapra