

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 266/2013

Dilip Basfor & ors.
Vrs.
Sadhana Srivastva & ors.
ORDER

31.03.2016— The instant appeal is directed against the impugned order passed by DCLR Maharajganj in BLDR case No. 104/2012-13 on 01.08.2013.

The brief facts of the case are that the present respondent Sadhana Srivastava W/o Satish Kumar Saran D/o Late Ram Prasad Srivastava R/o Vill-Pandepur Agarauli, P.S. & Circle-Daraundha, Dist-Siwan filed a case before DCLR with dispute over three separate piece of land by making three different groups of people as o.ps. Thereafter, the learned DCLR after issuing notices to the o.ps heard the case and finally vide his order dt. 01.08.2013, allowed the said case but for clarification of the said order he bifurcated the nature of dispute involved in each piece of land and accordingly he passed his final findings of fact. Feeling aggrieved by the said order, the present appellants (o.ps before DCLR) have preferred the instant appeal petition before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants submitted at the very outset of his argument submitted that the impugned order has been passed without considering the relevant facts of the case and even without considering the various documents of the appellants. He further argued that in the instant case involves complex question of right and title over the disputed land as such the learned DCLR was not competent to decide the case but instead of sending the matter to the competent Civil Court for its adjudication he decided the complex issue as such the said order is fit to be set aside. He further submitted that the disputed plot No. 630 under khata No. 90 having area of 15 katha 7 dhur is recorded in R.S. khatiyan in the name of Palki Dom and Sita Dom, who were full brothers, and they used to render their service to the owner of the land one Rakatu Lal ancestor of the respondents, and in lieu of their services the said plot No. 630 and 628 were given to them and ever since them they have been coming in possession over the said land and they have also perfected their title on the basis of adverse possession. He further argued that earlier a case u/s 144 Cr.P.C. was filed by the mother of the respondent before SDO, Maharajganj and the said proceeding was converted into u/s 145 Cr. P.C. and later on possession of the appellants were found and subsequently Cr. Rev. filed by the respondent was dismissed. The learned counsel further submitted that, although, the respondent has failed to prove his possession and also failed to deny that the ancestors of the appellants did not render any service, despite the impugned order has been passed by the learned DCLR without considering the facts and circumstances of the case as such the impugned order not fit to be upheld.

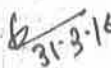
The learned counsel appearing on behalf of the respondent while strongly refuting the arguments advanced by the learned counsel for the

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appellant, submitted that the impugned order of DCLR, Maharajganj dt. 01.08.2013 is just, proper and legal and is based on natural justice. He further submitted that the appellants do not have any reliable documents in support of their claim whereas this respondents have sufficient evidence to prove that the land in question are the property of the respondent. He further submitted that it is entirely wrong submission that Palki Dom and Sita Dom were full brothers rather the fact is that the case of Palaki Dom was entered in R.S. Khatiyani only on the basis of his service to the said Rakatu Lal and the same has been entered as "Khidamatidar" and the said Palaki Dom died issueless and after that the said land automatically came under the possession of the ancestor of the respondent and till now the same is in the possession but the appellants on the basis of false claim bent upon to occupy the said land. He further submitted that Criminal Revision No. 31/04 was filed by the respondent which was allowed in their favour by order dt. 07.06.2008 by Fast track Court No. 05 Siwan so it is wrong to say that respondents have lost their Criminal Revision case. He further submitted that the present appeal has been filed only against the plot No. 630 and 620 of khata No. 90 and as such the order passed by DCLR with respect to other disputed plot is acceptable to this appellant.

Considering the facts and circumstances of the case, material available on records, respective claims of the parties and on perusal of the impugned order, it is seen that the dispute between the parties relates to their respective claim over the said disputed lands on one or another basis. The appellants lay their claim on the ground that they being the descendants of the Palaki Dom, who was the khatiyani raiyat of the said plot, have come to acquire the said land after his demise and they have perfected their right on the basis of continuous possession. On the other hand, the claim of the respondent is that the said land is recorded in khatiyani in the name of the ancestor Rakatu Lal and the name of Palaki Dom was recorded in khatian as khedmatidar and as he died issueless the said land automatically came in the possession of the respondent and the claim made by the appellants is totally baseless and misleading. However, from the impugned order it is seen that the learned DCLR has passed a detailed order wherein he held that the present appellants have encroached some part of plot No. 594 and 595 of khata No. 90 and he also directed the appellants to remove the same. At the same time he also held that on plot No. 626 (area 2 katha 19 dhur), plot No. 627 (5 dhur) plot No. 628 (1 katha 2 dhur) the appellants house exists as such settlement parcha be issued in the favour of the appellants and he accordingly directed the C.O. to take initiative in this connection. Clearly enough, the impugned order does not seem to be erroneous or arbitrary so far as the final findings of fact relating to dispute between the parties are concerned. Accordingly, the impugned order is upheld and hence the appeal petition is disposed of.

Dictated and Collected by me.


31.3.16
Commissioner,
Saran Division, Chapra


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Commissioner,
Saran Division, Chapra