

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 240/2013

Shankar Singh & ors.

Vrs.

Mohan Singh

ORDER

28.05.2016 - The instant appeal petition is directed against the impugned order passed by DCLR, Marhaurah, in Land Dispute case No. 65/2012-13 on 21.05.2015.

The brief facts of the case are that the present respondent Mohan Singh S/o Late Jalandhar Mahto R/o Vill-Fakuli, P.S. Panapur, Dist-Saran had filed a case before DCLR, Marhaurah, in which present appellants were made o.ps. In the said case the prayer of the present respondent (petitioner before DCLR) was that the land bearing plot No. 199, area 9 katha 3 dhur under khata No. 50 be demarcated and recovery of possession be passed in favour of him. Thereafter, the learned DCLR after issuing notices to the o.ps (the present appellants) heard the case and finally vide order dt. 21.05.2013 allowed the said case and also directed the o.ps (the present appellants) to remove the said encroachment made by them within a month. Feeling aggrieved by the said order, the presents appellants 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 at the very outset of his arguments, submitted in details, about his claim over the disputed land which was settled to their ancestor and ever since then they are coming in possession and neither the ancestor of the respondent nor the present respond had raised any claim against his oral sale deed and now the title of the appellant is confirmed by adverse possession. He further assailed the impugned order by saying that the same is without jurisdiction as the learned lower Court below has no power to restore possession of the respondent. He also submitted that in this case involves the complicated question of law and fact which can be adjudicated by civil Court only. He further argued that the learned lower Court ought to have believed the case of the present appellants, who were o.ps and should have dismissed the suit.

The learned counsel appearing on behalf of the respondent, while opposing the arguments forwarded by the learned counsel for the appellants, submitted that the appeal petition itself is neither factually nor legally maintainable. He further submitted that the disputed land belonged to the grand father of the o.p. Bahadur Koeri and in his name R.S. Khatian has been prepared and after his death his only son Jalandhar Mahto came in possession over his father properties including the disputed plot and thereafter in the possession of

his legal heirs. He further submitted that the present appellants dispossessed the respondent and his brothers from disputed land so the respondent filed a case under the BLDR Act for getting possession over the disputed land. He also submitted that the learned DCLR after hearing both the parties ordered for restoration of possession to the respondent and the order of the learned lower Court is just, proper, legal and valid and also found that the rent receipt issued by Karamchari in favour of the appellants as forged, fabricated, collusive and not worth reliance. He lastly submitted that there is no requirement of any interference in the impugned order by this Court as such the same be upheld.

Considering the facts and circumstances of the case, material available on records, claim and counter claims made by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that both parties lay their claim over the disputed piece of land on one or another basis. The appellants claim is based on the ground that the said land was orally settled to his ancestor by the Ex-landlord and since then they are coming in peaceful possession over the same and have also acquired title by adverse possession. On the other hand, the claim of the respondent is that the said disputed land belonged to his ancestor and the same was recorded in khatiyani also. Thus, it appears that the nature of dispute between the parties itself reflects that in the instant case involves adjudication of complex question of right, title and possession over the raiyati land. The dispute essentially involves willful dispossession over private land but the same is not maintainable under the BLDR Act. It is also an admitted fact that the present respondent had approached the learned DCLR for recovery of possession over the disputed land.

It is well established that the subject matter of adjudication under the BLDR Act does not include such matters. The Hon'ble High Court in its judgment in CWJC No. 1091/2013 (Maheshwar Mandal and others Vrs. The State of Bihar and others) on 24.06.2014 has observed that the revenue authorities are not empowered to entertain matter not arising out of the six enactments mentioned in schedule-1 of the BLDR Act-2009. Obviously the instant matter does not fall under any of the said six enactments and as such it was not maintainable before the lower Court.

Thus, for the aforesaid reasons and keeping in view the observations made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and this appeal petition is accordingly disposed of.

Dictated and Corrected by me.

29.5.16
Commissioner
Saran Division, Chapra

29.5.16
Commissioner,
Saran Division, Chapra