

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 242/2012

Suresh Chaudhuri & ors.

Vrs.

Rakesh Kumar & ors.

ORDER

13-04-2016- The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in BLDR case No. 41/2010-13 on 28.08.2012.

The brief facts of the case are that the present respondents Rakesh Kumar S/o Late Hari Shankar Lal Srivastva, R/o Vill-Jagarnatha, P.S.-Uchakagaon, Dist-Gopalganj and Bidya Yadav S/o Nathuni Yadav of village-Bairia Durg, P.S.-Uchakagaon of Dist-Gopalganj, Jointly filed a petition before DCLR, Hathua with a prayer that the present appellants (o.ps before DCLR) be restrained from making any interference in their possession over the land in question measuring 2 katha 14 dhur towards north in plot No. 298, katha No. 123 the total area of which is 5 katha 8 dhur situated in Mouza Uchakagaon, Tola Jagarnatha. Thereafter, the learned DCLR initiated the proceeding under the BLDR Act and issued notices to the parties and finally after hearing the case vide order dt. 28.08.2012 held that the interference by the o.ps over the land purchased through sale deed by the present respondents (petitioners before DCLR) was illegal and directed that no interference be made. Feeling aggrieved by the said order, the present appellants have preferred the instant appeal petition before this Court.

Heard the learned counsel for the appellant only as the learned counsel for the respondents was absent despite being given last chance on 08.01.2016.

The learned counsel appearing behalf of the appellant while assailing the impugned order passed by learned DCLR, Hathua, submitted that the said order is illegal and bad in law as the learned lower Court did not consider the required evidence needed for arriving at the final findings of fact of the case. He further submitted in detail as to how the descendants of the khatiyani raiyat of the said plot sold their share to one Rambha Devi W/o Satish Kumar Srivastva and who in turn sold the 3 katha 6 dhur of land towards east to Jonhia Devi W/o Chabila Choudhary on 15.04.1993. He further submitted that the said land was also mutated in the name of purchaser and jamabandi has been created and the said land is coming in the possession. He further argued that respondents have filed a false case on wrong grounds. It is also stated by the learned counsel that the learned lower Court has failed to appreciate the points raised during pleading. The learned lower Court ought to have considered that there is no block of 2 katha 14 dhur land in the north in the disputed plot rather there is a block of 3 katha 6 dhur towards east which is in possession of the mother of the appellant. He further submitted that the Court below ought to have considered that there is a registered sale deed executed on 15.04.1993 of area 3 katha 6 dhur towards east by a rightful owner and the



respondents claim of purchasing 2 katha 14 dhur towards north from Daya Shankar Prasad who had no right and title to execute any sale deed in favour of the respondent as such the said sale deed is null and void document. The learned counsel lastly submitted that the respondents as petitioners before DCLR, although, failed to advance any oral evidence to prove their title and possession over the disputed land, the Court below has passed the order in his favour which is erroneous and fit to be set aside. He also submitted that the dispute in the instant case is of Civil nature and right title can not be decided in summary proceeding under the BLDR Act.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the appellants and on perusal of the impugned order, it is quite obvious that in the instant case dispute between the parties relates to their respective claim over different area of the same plot No. 298 which is stated to have been purchased by them through registered sale deed from the persons who had their share in the said plot on different occasions. Clearly enough, such kind of dispute in which determination of complex question of right, title and possession is involved can not be decided under the provision of BLDR Act. The dispute essentially involves wilful dispossession over private land but the same is not maintainable under the BLDR Act.

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 other 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 observation made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and the appeal is accordingly disposed of.

Dictated and Corrected by me.

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