

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 33/2012

**Laljee Manjhi
Vrs.
Most. Lal Muni Kuar & ors.
ORDER**

31.03.2016 - The instant appeal petition is directed against the impugned order passed by DCLR, Marhaurah in Misc. case No. 15/2011-12 on 10.12.2011.

The brief facts of the case are that the present respondent Most. Lal Muni Kuar w/o Bhukal Manjhi R/o vill-Mubarakpur Kharauhi, P.S.- Marhaurah, Dist-Saran filed a case before DCLR Marhaurah under the BLDR Act. The case of the present respondent (petitioner before DCLR) was that the land measuring 4 katha 18 dhur, whose description is as follows:- khata No. 138 plot No. 801, area 3 katha 5 dhur and khata No. 162, plot No. 803, area 1 katha 13 dhur was purchased by her late husband Bhukal Manjhi through registered sale deed on 27.05.1977 from one Fulmati Devi W/o Sheojee Singh of the same village and since then she has been coming in possession over the same. Her further case was that after the death of her husband, the present appellants (o.ps before DCLR) forcibly captured the said land. Thereafter, the learned DCLR issued notice to the o.ps but the o.ps filed their presence on only one occasion and thereafter, they neither filed any rejoinder nor contested the case as a result the said case was disposed of through ex-parte order dt. 10.12.2011 and the learned DCLR directed the concerned C.O. to get measure the said land and also to remove encroachment and to deliver the possession of the same to the petitioner. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant at the very beginning of this argument submitted that the impugned order is illegal and without jurisdiction. He further argued that the learned DCLR ought not have heard the case as no notice was served properly to the appellants, who were made o.ps in the case before DCLR. He also submitted that the case was barred by defects of the parties because all necessary parties have not been impleaded as o.ps in the proceeding. He further argued that the said disputed land was the joint property of the family as the same was purchased by the earning of Sheo Mangal Manjhi but the Bhukhal Manjhi was a clever man who got the land registered in his own name. He also submitted that the said land was being cultivated jointly by the family members and this appellant has got 1/3 share in the said land. He also argued that after the death of Bhukhal Manjhi, her wife in collusion with the appellant's enemy filed a case before DCLR in which although, the appellant was made o.p. his present address was

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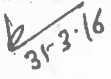
not given only with a view of obtain ex-parte order in the case. He lastly submitted that the said impugned order is fit to be set aside as the same is illegal and arbitrary.

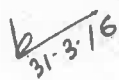
The learned counsel appearing on behalf of the respondent vehemently opposed the arguments made by the learned counsel for the appellant and submitted that the impugned order is just, proper and valid having no illegality so the same is fit to be upheld. He further submitted that the said disputed land was purchased by the respondent's husband through registered sale deed on 27.05.1977 from his own consideration and the said land was also in his exclusive possession during his life time and after his death the same came in the possession of her wife. He further argued that it is entirely wrong to say that the said property is a joint family property and was purchased from the income of Sheo Mangal Manjhi as such so other persons had any possession over the said land rather the same was remained exclusively in the possession of Bhukhal Manjhi. He further submitted that the appellants intentionally ignored to contest this case before the lower Court and the plea that they could not know about the case due to non-service of notice is entirely wrong but the fact is that they were made parties and their permanent village address was given in the petition. He lastly submitted that as the ground taken by the appellant in the instant appeal is baseless, incorrect and against the actual state of affairs, the same can not be considered and this appeal petition is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, rival submissions forwarded by the learned counsel for 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 aforesaid raiyati land. Obviously such kind of dispute can not be resolved under the BLDR Act-2009 as held by the Hon'ble High Court in the case of Maheshwar Mandal & ors. Vrs The State of Bihar & ors.

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

Dictated and Corrected by me.


31-3-16
Commissioner,
Saran Division, Chapra


31-3-16
Commissioner,
Saran Division, Chapra