

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 98/2013

Nihora Rai & ors.

Vrs.

Sunita Devi

ORDER

25-04-2014 - The instant appeal petition is directed against the impugned order passed by DCLR, Sonpur in BLDR case No. 22/2011-12.

The brief facts of the case are that the present respondent Sunita Devi W/o Munna Rai, R/o Vill-Parmanandpur, P.S.-Sonpur, Dist-Saran filed a case before DCLR, Sonpur in which the present appellants were made o.ps. In the said case, the prayer of the present respondent (petitioner before DCLR) was that the land in question having area 5 katha 7 dhur 10 dhurki of plot No. 684, khata No. 293, the total area 10 katha 15 dhur, situated in Mouza Parmanandpur be measured by a survey knowing Commissioner. Her further prayer was that if any illegal structure is found there, the same may be demolished and the possession of the land be delivered to him. Thereafter, the learned DCLR after hearing the parties, finally passed order regarding the appointment of one Sri Shayam Bahadur Giri, as survey knowing Commissioner. Feeling aggrieved by the said order, the present appellants (o.ps before DCLR) have preferred the instant appeal case before this Court.

Heard the learned counsel for the appellants only as the learned counsel for the respondent was absent despite being given last chance on previous date.

The learned counsel appearing on behalf of the appellants at the very outset of his argument submitted that the impugned order is legally not valid as the same has been passed without mentioning any date. He further submitted that after completion of hearing the case was posted for 16.01.12 for passing the order and after a long gap the impugned order has been passed in haste without mentioning any date on the said order. The learned counsel further submitted in detail as to how he came to acquire the said disputed land by purchase through sale deed and ever since then he has been in possession over the same and the same is also mutated in his favour. He further submitted that the respondent had earlier filed a case u/s 144 Cr. P.C. before SDM, Sonpur for the said land which was disposed of on 09.11.2009 with the observation that the said dispute between the parties relates to title but the respondent instead of filing a case in Civil Court preferred a case before DCLR by giving wrong boundary of the land under the provision of BLDR Act, seeking wrong reliefs. He lastly submitted that as the impugned order of the learned DCLR is improper and against law, the same is fit to be set aside.

Considering the facts and circumstances of the case, material available on records, arguments forwarded by the learned counsel for the appellant in support of his contention and on perusal of the impugned order, it is seen that the learned DCLR has passed order only with respect to the appointment of a survey knowing Commissioner for measurement

of the disputed piece of land. The claim of appellants is that the said order of DCLR does not show the date on which it was passed but this averment does not seem to be true on perusal of the lower Court record. Moreover, the impugned order is not a final order rather the same is an interim order and normally no appeal is permissible against an interim order. Thus, in view of the facts mentioned above, the matter is remitted back to the learned DCLR, Sonpur to dispose of the matter after obtaining the report of survey knowing Commissioner and after giving sufficient opportunity to the parties for hearing on the said report of survey knowing Commissioner.

With the aforesaid observations, this appeal petition is dispose of.

Dictated and corrected by me.

b/25-4-16
Commissioner,
Saran Division, Chapra

b/25-4-16
Commissioner,
Saran Division, Chapra