

In The Court of Commissioner, Saran Division, Chapra

**B.L.D.R. Appeal No. 246/2013**

**Ram Ishwar Prasad & ors.**

**Vrs.**

**Naintara Devi & ors.**

**ORDER**

08.06.2014- The instant appeal petition is directed against the impugned order passed by D.C.L.R. Maharajganj in BLDR case No. 193/2012-13 on 26.07.2013.

The brief facts of the case are that the present respondent Naintara Devi W/o Prabhunath Prasad R/o Mouza Lakdi Tola Madhopur P.S.-Basantpur, Dist-Siwan filed a case before DCLR 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 different areas of land appertaining to different plot Nos and having khata Nos of which some lands were transferred to her through gift deed by the rightful owner over which she had her residential house, on which the present appellants (o.ps before DCLR) were making forcible interference in her possession as such they be restrained from making any interference. Thereafter, the learned DCLR after issuing notices to the parties heard the case and finally vide order dt. 26.07.2013 allowed the said case wherein he held that the claim of the present respondent on the basis of gift deed and sale deed is proved over the disputed land. Feeling aggrieved by the said order, the present appellants preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant at the very outset of his argument submitted that in the instant case involves litigation with respect to right, title and interest in the disputed properties which can not be decided by the revenue Court as such the impugned order passed by the learned DCLR is without jurisdiction and fit to be set aside. He further submitted that when two civil cases are pending regarding genuineness of sale deed and gift deed executed in favour of the respondent, the revenue Court can not decide the share which may or may not fall in the share of the respondent. He also submitted that the validity of gift deed executed in state of jointness is questionable which can only be decided by civil Court and without partition by metes and bounds amongst the co-sharers none of the co-sharer can claim specific portion of the disputed plot. The learned counsel lastly submitted that as the Title suit No. 50/1996 between the parties is still pending in the Court of sub-judge xth, Siwan in that case the learned DCLR should not have entertained the issue under the BLDR Act as no such power is vested in him under the BLDR Act to decide the complex question of right, title and share of the parties as such the case before DCLR, itself was not maintainable.

The learned counsel appearing on behalf of the respondents while strongly opposing the arguments forwarded by the learned counsel for the appellants submitted



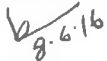
that the instant appeal case is not maintainable and fit to be dismissed for the reason that the impugned order has been passed by the learned DCLR after considering the pleadings of the parties and documentary evidences available on records. He further submitted that the respondent acquired the disputed land on the basis of gift deed as well as through sale deed from the rightful owner as such her claim can not be overlooked. He lastly submitted that as the impugned order is legal and valid, the same be upheld and this appeal lacking merit is fit to be dismissed.

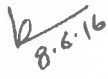
Considering the facts and circumstances of the case, material available on records, pleadings forwarded by the learned counsel for the parties, written statements filed by them and on perusal of the impugned order, it is quite obvious that the dispute amongst the parties relates to their respective claim of title over the disputed land which is stated to have been accrued to them on the basis of either gift deed/sale deed or being the descendants of the khatiyani raiyat. It is also seen that the learned DCLR has went to decide the claim of the respondent and rejected the claim of the present appellants over the disputed piece of land. Basically the case brought before DCLR for resolving the dispute relating to willful 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 also in the case of Maheshwar Mandal & ors. Vrs The State of Bihar & ors. has observed that revenue authorities are not vested with the power under the BLDR Act to entertain matters not arising out of the six enactments mentioned in schedule-1 of the BLDR Act-2009. Clearly enough the Instant matter does not fall under any of the six enactments and as such it was not maintainable before the lower court.

For the aforementioned 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 not sustainable and hence the same is set aside and the appeal is accordingly, disposed of.

Dictated and Corrected by me.

  
Commissioner,  
Saran Division, Chapra

  
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