

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 40/2013

**Jagat Mishra
Vrs.
Tapsi Dixit & ors.
ORDER**

18-01-2016 — The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in BLDR case No. 104/2012-13 on 08.01.2013.

The brief facts of the case are that the present appellant Jagat Mishra S/o Late Raj Kumar Mishra, R/o Vill-Penual Ramsen, P.S. Fulwariya, Dist-Gopalganj filed a case before DCLR, Hathua by making present respondents as opposite party. In the said case the prayer of the petitioner was that the disputed piece of land of 19 plots of khata No. 20 of Mauza Penula Ramsen was purchased by him through sale deed from one Lakhindra choubey, son of the daughter of khatiyaraiyat Changur Mishra. But Jamabandi was wrongly done in favor of one Kalawati Devi which was subsequently corrected and after that he was being threatened to be dispossessed from the said land as such the o.ps be restrained from dispossessing him. The learned DCLR after issuing notices to the parties, heard the matter and finally vide order dt. 08.01.2013 came to the conclusion that the claim of dispossession was wrong and baseless as such the petition filed by the present appellant was not held to be acceptable and accordingly he rejected the said case. Feeling aggrieved by the said order of DCLR, Hathua the appellant has preferred this appeal petition before this Court.

Heard the parties.

The learned counsel appearing on behalf of the appellant while assailing the impugned order, submitted that the learned Court has passed the order without considering the documents available on record. He further submitted that the learned Court would have considered that Kalawati Devi D/o Babunand Mishra and Babu Nand Mishra had no concern with the land of Changur Mishra because the R.S. Khatiyaraiyat was prepared separately in the name of Raj Ram Mishra and of Ram Sewak Mishra and Ram Sevak Mishra was grand father of Kalawati Devi. He also stated that the learned Court below did not consider the fact that Changur Mishra died leaving behind his only daughter Fulenia and Lakhindra Choubey, the vendor of the disputed land, is the son of Fulenia and after purchasing the land by the appellant he was in peaceful possession over the same. He also argued that the learned DCLR did not consider further that Kalawati Devi was declared stranger by DCLR, Addl. Collector and also by Commissioner of Saran Division in Mutation case No. 82/1987-88. The learned counsel lastly submitted that the impugned order is erroneous, illegal and fit to be set aside.

The learned counsel appearing on behalf of the respondents at the very outset of his arguments, strongly submitted that this appeal petition is not legally maintainable and the appellant has no right, title, interest and possession over the disputed land hence this appeal petition is fit to be dismissed. He further argued that the appellant had filed T.S. No. 71/88 which was dismissed on 21.08.2002 and as no appeal

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has been filed by the appellant against the said order, the order passed in T.S. No. 71/88 has become final. The learned counsel further submitted in detail with the help of geneology of recorded tenant Changur Mishra who died unmarried and how his share devolved upon others. He further submitted that the appellant has set up his own sister namely Fulenia as daughter of Changur Mishra and got a sale deed executed by the son of Fulenia. He also submitted that the C.O. has reported on 08.08.2011 vide his letter No. 322 that half portion of the land was in the possession of respondent and wheat crop was found grown in that. He further stated that Jamabandi of the disputed land is standing in the name of Ramawati Devi W/o Tapsi Dixit and she is paying rent to the state. He lastly prayed that as the lower Court has rightly passed the order, the same be upheld and this appeal devoid of any merit is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, claims and counter claims raised by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that both parties claim their right and title over the disputed land on one and another basis. The appellants claim his title on the basis of alleged sale deed executed by the son of Fulenia Devi, the daughter of recorded tenant of the disputed land. The respondent controverts this claim on the ground that the said recorded tenant, Changur Mishra died unmarried and the appellant has set up a false claim by making her own sister to be the daughter of Changur Mishra. Whatever may be the contentions of the parties regarding their claim of title over the land of recorded tenant but it is important to note that the complex issue of title between the parties has been decided by the Civil Court in T.S. No. 71/88 which was filed by the appellant and against which no appeal has been filed by the appellant in the Court of competent jurisdiction. However it is also seen from the impugned order that the learned DCLR has decided the complex question of title under the BLDR Act whereas the relevant provision of the said Act itself prohibits the DCLR to deal with such issue where involves adjudication of complex issue of right and title over the raiyati land. In fact, it has now been settled after the observation made by the Hon'ble High Court in the case of Maheshwar Mandal & ors Vrs the State of Bihar and ors. That revenue authority is not empowered to adjudicate the complex question of title under the BLDR Act.

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

Dictated and Corrected by me.


18.1.16
Commissioner,
Saran Division, Chapra


18.1.16
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