

**In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. appeal No. 188/2011
Moti Lal Sah**

Vrs.

Ram Darshan Sah & others

ORDER

The instant appeal is directed against the impugned order passed by DCLR, Hathua on 29.10.2011 in BLDR case No. 63/2011-12


The brief facts of the case are that Moti Lal Sah S/o kishan Dayal Sah R/o Vill-Barirai Bhan, P.S-Hathua, Dist-Gopalganj filed a case before DCLR, Hathua, Vide BLDR case No. 63/2011-12 with a prayer that the present respondent be disposed from the part of the plot No. 1957, appertaining to khata No. 419 and having total area 13 katha 9 dhur, of which 3 katha 7 ¼ dhur land which is the exclusive share of the appellant has been forcibly captured by the respondents. The learned DCLR after hearing the parties at length passed a detailed order on 29.10.2011 wherein he held that the claim of the appellant is baseless and he has got no right to claim such relief whereas, the claim of the respondents are based on valid documents and they also proved their case absolutely and accordingly the case of the appellant was dismissed.

On being aggrieved by and dissatisfied with the aforesaid order dt. 29.10.2011, passed by DCLR, Hathua, the present appellant has preferred this appeal before this Court.

Heard the parties

The learned counsel appearing on behalf of the appellant while assailing the impugned order submitted that the said order is against law and fact of the case. He further submitted in detail about the genealogy of the family and the respective shares of the descendents in order to prove that the appellant's ancestor was the khatiyani raiyat of the disputed plot. He further argued that from khatian it would be clear that the respondents have no right, title and interest in the disputed land and in fact the OP -----forcibly dispossessed the appellant. He further submitted that the Hon'ble Court has held that there is strong presumption of correctness of the entry in khatian and the person who wants to rebut that presumption will have to prove his case with strong evidence and the respondents has not adduced any oral or documentary evidence to rebut the correctness of entry made in R.S Kathian. The learned counsel further said that as the order of the learned lower Court is against justice, equity and good conscience as such the impugned order be set aside and this appeal be allowed.

The learned counsel appearing on behalf of the OP while controverting the arguments advanced by the learned counsel for the appellant, submitted that the instant appeal is not tenable in law or on facts of the case as the appellant has no locus standi to file a BLDR case against the respondent on imaginary facts. He further argued that in



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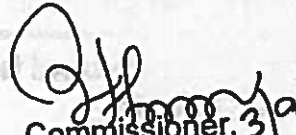
fact, there is no sub plot at the spot having an area of 6 katha 14 ½ dhur and 3 katha 7 ¼ dhur of plot No. 1957 under khata No. 419 in village Mirjapur as alleged by the appellant. He further threw light on the genealogical table as prepared by the appellant and argued that the appellant has not impleaded his brother Hiralal as a party in the proceeding and suppressed other material facts of the case. He also argued that the claim of the appellant is far away from the truth and actual state of affairs and his claim based on entirely wrong footing. He further said that the learned lower Court has passed order after careful consideration of all relevant facts as such there is no requirement of any interference and the appeal preferred by the appellant before this Court is fit to be dismissed in limine

Considering the facts and circumstances of the case material on records and on going through the arguments forwarded by the learned counsel for the contesting parties, it is seen that the claim of the appellant is mainly based on the presumption that his share of 3 katha 7 ¼ dhur has been forcibly occupied by the OP. But, the appellant has failed miserably to prove his case beyond all reasonable doubts before the DCLR as well as before this Court. On the other hand, the OP has proved his case absolutely before the lower Court with documentary evidence. I also find that the learned DCLR has passed the order after considering all the relevant facts as such I do not find any infirmity in the said order. Even the learned counsel for the appellant failed to prove otherwise that the impugned order is arbitrary or illegal.

Thus, for the aforementioned reasons, I am not inclined to interfere with the impugned order. Accordingly, the same is upheld and this appeal being devoid of merit is dismissed.

Dictated and Corrected by me.


Commissioner, 3/9/14.
Saran Division, chapra


Commissioner, 3/9/14.
Saran Division, Chapra