

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. appeal No. 344/2013

Jhagru Bin & Ors.

Vrs.

Dina Nath Prasad & Ors.

ORDER

11-08-2015-

This instant appeal petition is directed against the impugned order passed by DCLR Mahrajganj in BLDR Case No. 62/2013-14 on 17.10.2013.

The brief facts of the case are that the present respondents Dina Nath Prasad S/o Mathura Prasad and ors. R/o Village- Purani Bazar, Maharajganj, P.S & Circle- Maharajganj, Dist- Siwan filed a case vide BLDR Case No. 62/2013-14 before DCLR, Mahrajganj against the present appellants. In the said case, the prayer of the present respondents (petitioners before DCLR) was that a piece of land measuring 13 Katha 09 dhur of Khata No. 23 Plot No. 565 was purchased by her mother through registered sale deed on 23.07.1958 from Jhapash Bind. The present appellants has filed soil and kept – palani illegally as such they be directed to remove their palani. Thereafter, the learned DCLR on hearing the parties finally passed order in the case on 17.10.2013 wherein he held that the present appellants have illegally occupied the land of the present respondents without any right and title which becomes a case of illegal occupation over the another person's land and also a case of trespassing. Accordingly, he also imposed a cost of rupees five thousand over the present appellants.

On being aggrieved by and dissatisfied with the said order of DCLR, the present appellants have preferred this appeal case before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants while throwing light on the facts of the case, submitted that the total area of Plot No. 565 is 1 bigha, 06 Katha 18 dhur recorded in R.S. Khatiyani in the name of Garib Bin S/o Jhagru Bin and Daulat and Ram Balak S/o Magani. He further said that Daulat and Ram Balak Bin died issueless and their share in that Plot devolved upon the heirs of Garib Bin and they owned and possessed the entire area of that Plot. He further submitted that return was submitted by the Ex-Landlord in the name of Ram Das Bin S/o Garib Bin at the time of vesting of the Zaminadari and accordingly Register-ii was opened in the name of Ram Das Bin with respect to 1 Bigha 6 Katha 18 dhur land and Jamabandi NO. 23/1 started in his name and after his death his heir are paying rent to the Govt. He further stated that Garib Bin never sold any land of Plot No. 565 to anybody rather some parts of that Plot was mortgaged by Garib Bin in the hands of Muneshra Devi which was redeemed by Suganit Devi paying the mortgage money to Dina Nath Prasad present respondent No. 1 and Devendra Prasad and both gave a written certificate on 13.01.2012. He further submitted that the impugned order of DCLR is illegal and without jurisdiction as the learned lower court has no jurisdiction to adjudicate any fresh right of any raiyat with respect of any land but the learned lower court went beyond its jurisdiction by passing the impugned order. He also argued that the learned lower court has also erred in not considering the rent receipt filed by the appellant which shows that Jamabandi No. 23/1 is still running in the name of Ram Das Bin with respect to entire area and they are paying rent uptill now. He further submitted that the learned lower court has also erred in holding that appellants have no title and possession over the land in question rather they are trespassers of that land and they have dispossessed the respondents illegally. He lastly submitted that in

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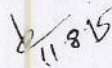
the instant case the matter involves determination of crucial question of title of the parties ;and DCLR was not competent anyway to decide such issue under the BLDR Act so the impugned order be set aside and this appeal be allowed.

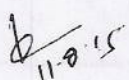
The learned counsel for the respondent while opposing the arguments forwarded by the learned counsel for the appellants, submitted that the present appeal petition is neither maintainable on facts nor in law and it is totally incorrect to say that the order of DCLR is illegal and without jurisdiction. He further argued that the learned lower court has not adjudicated fresh right of respondent but rightly held that the dispossession of respondents by the appellants is illegal and respondents are entitled to get recovery of possession over the disputed land. He also submitted that from the documentary proofs which were made available in the learned lower court was sufficient for passing an order in favour of the respondents as the sale deed dated 23.07.1958 executed by Garib Bin S/o Jhapas Bin in favour of Musmat Muneshwara Kuwer widow of late Mathura Prasad Sah was not challenged by any body in any competent court and the disputed land has been sold by Khatiyani raiyat Garib Bin to the extent of his half share in the disputed plots towards west and in the eastern boundary of the vended land name of Daulat Bin has been maintained who was also co-raiyat of half share. He also argued that sale deed dated 23.07.1958 executed by Garib Bin in faovur of Musmat Muneshara Kuer in respect of disputed land is genuine, legal and operative until it is set aside by any competent court. He lastly submitted that the impugned order is legal and proper hence the same is fit to be upheld.

Considering the facts and circumstances of the case, material on records and respective arguments forwarded by the learned counsel for the parties as well as on perusal of the impugned order, it is obvious that the dispute between the parties relates to their claim either on the basis of sale-deed or on the basis of entry made in the Khatiyani and existing Jamabandi with respect to the land in question. The prayer of the present respondents before the DCLR as only for removal of the encroachment alleged to have been made by the present appellants. The appellants dispute the claim of respondents that the sale deed dated 23.07.1958 is not genuine but it is also seen that the said sale deed has not been challenged by the appellant. The learned DCLR although confirmed the possession on the basis of sale deed of the respondents and rejected the claim of the appellants(respondents before DCLR). In fact, from the nature dispute between the parties, it is seen that the dispute is of somewhat complex in nature so far as determination of right and title seems to be involved. The dispute essentially involves willful dispossession over private land but the same is not maintainable under the BLDR Act.

It is well settled by now that the subject matter of adjudication under the BLDR Act does not include such matters. The Hon'ble High Court in its judgment in **CWJC No. 1091/2013 (Maheshwar Mandal and others vrs. The State of Bihar and others)** on 24.06.2014 has observed that the revenue authorities are not empowered to entertain matter not arising out of the six enactments mentioned in schedule- 1 of the BLDR Act- 2009. Obviously the instant matter does not fall under any of the said six enactments and as such it was not maintainable before the lower court.

Thus, for the aforesaid 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 set aside and the appeal is accordingly disposed of.
Dictated and Corrected by me.


Commissioner,
Saran Division, Chapra


Commissioner,
Saran Division, Chapra