

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 250/2013

Lal Muni Kunwar & ors.

Vrs.

Munna Lal Gupta & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Marhaurah in Demarcation case No. 35/2011-12 on 25.01.2013.

The brief facts of the case are that initially the present respondent No. 1 Munna Lal Gupta and some others filed a case before DCLR, Marhaurah in which Raghubansh Prasad & ors. were made as o.ps. The said case was named and numbered as Balabandi case No. 35/2011-12. In the said case the relief sought for by the present respondent was that the land in question measuring 1 katha 7 dhur of khata No. 68 R.S. plot No. 167 was a purchased land in his mother's name and Jamabandi also created in her favour and having their peaceful possession, as the present appellants (o.ps before DCLR) were trying to amalgamate the said land by removing the Darar, his said land be measured scientifically and for that a survey knowing Commissioner be appointed. Thereafter, the learned DCLR after hearing the case, ordered for the measurement of the said land by a survey knowing commissioner. After measurement, the survey knowing Commissioner submitted his report and then the learned DCLR heard the counsel for the parties and finally vide order dt. 25.01.2013 confirmed the measurement report of the survey knowing Commissioner. Feeling aggrieved by the said order, the husband of the present appellant, Raghubansh Prasad and others preferred the instant appeal case before this Court. Meanwhile, during pendency of this appeal case, the appellant No. 1 died and as such his legal representative have been substituted as appellants in the case.

Heard the learned counsel for the appellant only as the learned counsel for the respondent remained absent despite being given last chance on earlier date.

The learned counsel appearing on behalf of the appellants while assailing the impugned order of learned DCLR, submitted that the same is legally not sustainable and fit to be dismissed. He further argued that the respondents have failed to produce any documents relating to their title over the said land but the learned DCLR did not consider this facts and passed the impugned order. He further submitted that the Court below neither considered the direct and circumstial evidence before reaching at the conclusion which makes the impugned order arbitrary. The learned counsel further strongly submitted that the learned Court ignored the important fact that the same person (the present respondent No. 1 and others) had filed a case before the same Court vide Demarcation case No. 01/2011-12 with respect to the same disputed land which was dismissed on merit vide order dt. 28.11.2011 as such the Demarcation case No. 35/2011-12 was also fit to be dismissed again because the earlier case was dismissed on merit. He also submitted that the appellants were not granted any opportunity to file objection on the report of survey knowing commissioner and even the lower Court failed to consider the point that during pending of the demarcation case No. 08/1970 in civil Court, this case should not have been decided. The learned counsel lastly submitted that as the impugned order is illegal, arbitrary and without jurisdiction the same is fit to be set aside.

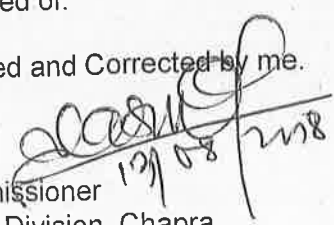
Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the appellants and on perusal of the impugned order, it is seen that in the instant case dispute relates to confirmation of

measurement report of the survey knowing Commissioner by the learned DCLR. The primary grievances of the appellants are that once the case of the respondent No. 1 was decided on merit by the same Court, the said Court should not have decided the same again. In support of the said claim the learned counsel of the appellants has filed the copy of the order dt. 28.11.2011 passed by DCLR, Marhaurah in Demarcation case No. 01/2011-12 in which the petitioner and respondents were same. He also assailed the impugned order on the ground that he has not been afforded any opportunity of hearing and the said order relating to confirmation of the measurement report submitted by the survey knowing Commissioner has been passed. Obviously, the plea of the petitioner seems to be acceptable in the facts and circumstances of the case in view of the fact that the present appellant was not heard. In the instant appeal also the impugned order of learned DCLR, Marhaurah passed in Demarcation case No. 35/2011-12 is under challenge in which the petitioner and respondent are same as in the earlier demarcation case No. 01/2011-12.

For the aforementioned reasons, I am not inclined to uphold the impugned order. Hence, the same is set aside and the case is remitted back to DCLR, Marhaurah to pass a fresh order in accordance with law after affording sufficient opportunity of hearing to both parties.

With the aforesaid observations and directions, the instant appeal petition is disposed of.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


13/08/2018
Commissioner
Saran Division, Chapra.