

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 302/2014

Rahmat Hussain & ors.

Vrs.

Mumtaj Ali Aansari & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in BLDR case NO. 42/2014-15 on 14.08.2014.

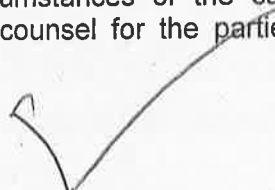
The brief facts of the case are that the present respondents Mumtaj Ali Aansari S/o Ismail Mia and his son Izharul Haque Aansari filed a case before DCLR, Maharajganj under the BLDR Act-2009 in which present appellants were made as o.ps. In the said case the relief sought for by the present respondent, as petitioner, was that the land in question measuring 8 katha 01 dhur, appertaining to khata No. 45, R.S, plot No. 1405 and 1406 situated in Mouza Bangeara, circle-Daraundha, Dist-Siwan was transferred to them on 16.02.1998 by rightful owner, Manager Singh upon which their possession be declared and o.ps (present appellants) be restrained from making any interference. Thereafter, the learned DCLR after hearing the matter finally vide order dt. 14.08.2014 allowed the said case. Feeling aggrieved by the said order, the present appellants (o.ps before DCLR) have preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant while assailing the impugned order submitted that the same is erroneous and without jurisdiction. He further argued that the learned lower Court did not take into consideration about the fact that if any property is purchased by joint Hindu family in the name of any member, then there is presumption that the said property belongs to all members of the family. He also argued that in the instant case involves determination of complex question of right, title and possession and for that a Civil suit has also been filed in the competent Civil Court and as such the learned DCLR should not have dealt with the matter. He further argued that there was never any agreement between Manager Singh and his sons and Manager Singh never remained in possession over ancestral land. The learned counsel lastly said that as the impugned order is beyond jurisdiction the same is fit to be rejected.

The learned counsel appearing on behalf of the respondent vehemently opposed the arguments advanced by the learned counsel for the appellant and submitted that it is wrong to say that in the instant case there was any dispute relating to determination of title. He further argued that the respondents case is that he purchased the said land from Manager Singh and his sons and since then they are in peaceful possession over the said land. He also argued that the appellants never remained in possession over the said land and as the appellants created disturbance in their peaceful possession, the present respondents had approached the learned DCLR for declaration of their possession over the said land and also for restraining the present appellant from making any interference. He lastly said that the impugned order is legally valid and having no illegality, the same is fit to be upheld and this appeal petition being devoid of any merit is fit to be dismissed.

Considering the facts and circumstances of the case material available on records, pleadings advanced by the learned counsel for the parties and on perusal of the



impugned order it appears that in the instant case both parties lay their claim over the land in question on the basis of their sale deed stated to have been executed by the rightful owner. The main contention of the appellant is that the case brought before the learned DCLR for resolution involved issue of complex question of title and the learned DCLR was no way competent to deal with such kind of dispute. This contention of the 'appellant prima-facie seems to be correct. However, it is seen that the learned DCLR instead of taking into account the fact that the matter brought before him for adjudication involved determination of complex question of title, he went on to decide the claims and counter claims of the parties with respect to right over the disputed land and finally confirmed the claim of present respondent on the basis of alleged sale deed. In fact, the learned DCLR is no way competent to deal with such complex nature of dispute of the parties in view of the clear provisions of section 4(5) of the BLDR Act-2009. As per the said provision the learned DCLR ought to have closed the proceeding and directed the parties to approach the competent Civil Court for redressal of his grievances. It is seen that the learned DCLR has miserably failed to follow the said provision of the Act. It is also surprising to see that the learned DCLR in overzeal even he went on to make his order immune which is quite apparent from the relevant portion of his order which reads thus:-

“मोकदमा संख्या-442/2014 व्यवहार न्यायालय सिवान के वाद बी०एल०डी०आर० के तहत वाद दाखिल होने के बाद दायर किया गया है अतः उसका कोई असर इस वाद के न्याय निर्णय पर नहीं होगा”

For the reasons stated above, the impugned order is not sustainable and hence the same is set aside.

Accordingly, this appeal petition is disposed of.

Dictated and Corrected by me.

Commissioner
Saran Division, Chapra.

Commissioner
Saran Division, Chapra.