

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 236/2014

Sheojee Khan & ors.

Vrs.

Indu Kunwar

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in BLDR case No. 19/194/13-14 on 14.08.2013.

The brief facts of the case are that the present respondent Indu Kunwar W/o Late Manan Singh R/o vill-Sawana, P.S.-Barharia, Dist-Siwan filed a case before DCLR, Siwan Sadar in which present appellants were impleaded as o.ps. In the said case the present respondent as petitioner sought relief to the extent that the land measuring 1 katha 15 dhur of plot No. 1488, 1498 of khata No. 274 belonged to her ancestors and she being the only descendents having her possession over that but the present appellant cut a tree of the said land and also wants to forcibly capture the land as such they be restrained and her right be declared. Thereafter, the learned DCLR after hearing the case finally vide order dt. 14.08.2013 allowed the said case and accordingly declared the right of the present respondent over the said disputed land. Feeling aggrieved by the said order, the present appellant's (o.ps before DCLR) have preferred the instant appeal before this Court.

Heard the learned counsel for the respondent only as the learned counsel for the appellant instead of making any oral submission agreed to file his W.S.

The learned counsel for the appellant in his memo of appeal petition as well as in the W.S. discussed in detail about the genealogy of the parties in contest and how they claim their title over the said land. He further stated that the learned DCLR without considering the relevant facts of the case and documentary evidence produced by the present appellant as o.p., has passed the impugned order which is illegal and erroneous. He further mentioned that the learned DCLR wrongly and illegally held that both the plot belongs to the respondent ignoring the fact that residential house of appellant exists on plot No. 1488 and sahan of the appellant over plot No. 1498. It has also been mentioned that in the instant case dispute between the parties relates to adjudication of complex question of right, title and possession which can not be resolved in summary proceeding and a title suit case filed earlier by the respondent has been dismissed by the competent civil Court.

The learned counsel appearing for the respondent in his brief argument submitted that the learned DCLR after hearing the parties and perusing the evidence and paper of the parties declared the right and possession over the land in favour of the respondent as such the said order is fit to be upheld. He also submitted that the appellant after filing the present appeal tried to construct a boundary wall over the said land which was later on stopped by the police after seeing the order of the learned DCLR. He further submitted that the present appeal being devoid of any merit is fit to be dismissed.

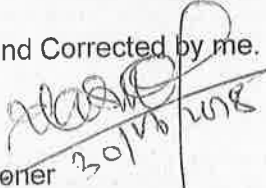
Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case dispute between the parties relates to their

respective claim over the land in question on one or another basis. The present respondent as petitioner had approached the learned DCLR for declaration of her right over the said land which stated to have belonged to her ancestor. On the other hand, the learned counsel for the appellant is of the view that the case brought before the learned DCLR involved determination of complex question of right and title of the parties and same could not have been adjudicated in summary proceeding under the BLDR Act. There is some substance in the said argument in view of the fact that the such kind of dispute pertaining to determination of title has been kept outside the purview of the BLDR Act-2009. In fact the learned DCLR should not have dealt with such a complex issue.

Thus, for the reasons stated above, the impugned order is not sustainable. 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.