

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 137/2014

Sunita Devi

Vrs.

illa Giri

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Gopalganj Sadar in Land Dispute Resolution case No. 68/2013-14 on 13.02.2014.

The brief facts of the case are that the present respondent illa Giri w/o Yaduvansh Giri, R/o Saryea ward No. 3, behind Minz Stadium, Dist-Gopalganj filed a case u/s 4(1) of the BLDR Act-2009, as petitioner before DCLR, Gopalganj Sadar in which present appellant was made as o.p. In the said case the prayer of the present respondent (petitioner before DCLR) was that she had three pieces of land through their sale deeds measuring 1 katha from plot No. 1059 and 3 katha 10 dhur from plot No. 1058 and after amalgamating the said pieces, she made the land as one unit upon which she built a house. Her further prayer was that as the present appellant has illegally encroached her 5 dhur land by construction a brick wall, the said encroachment be renounced after measurement by a survey knowing Commissioner. Thereafter, the learned DCLR after issuing notice to the o.p. heard the case and finally vide order dt. 13.02.2014 allowed the said case and also directed the local C.O. to re-measure the land and by removing encroachment the matter be resolved between the parties. Feeling aggrieved by said order, the present respondent (before DCLR) has approached this Court by way of filing appeal.

Heard the learned counsel for the parties.

The learned counsel for the appellant at the very outset of his argument submitted in detail about the factual matrix of the case and also submitted that the impugned order is illegal and without jurisdiction. He further said that the forum chosen by the respondent for redressal of her alleged grievance was not proper. The learned Court below had no jurisdiction to pass order for restoration of possession to the respondent over the alleged disputed land. He further submitted that both appellant and respondent are the purchaser of Sirikant Pandey and his legal heirs and at best it was a case of declaration of title and recovery of possession. He also argued that the report of Anchal Amin was *exparte*, wrong and collusive and no reliance should have been placed on that by the learned DCLR. He lastly submitted that as the impugned order is arbitrary the same is fit to be set aside.

The learned counsel appearing on behalf of the respondent strongly opposed the arguments forwarded by the learned counsel for the appellant and submitted that the impugned order is valid and legal having no infirmity. He further submitted that the instant appeal petition is hopelessly time barred and even no petition for condonation of delay has been filed. He also argued that in the instant case no dispute of title is involved but the fact is that the title 5 dhur of respondent is admittedly correct and it has not been denied any way and the said 5 dhur land has been encroached by the appellant. He also said that the said encroachment has been found true in the report of Amin also. He lastly said that the appeal petition filed by the appellant lacks merit and is fit to be set aside.

Considering the facts and circumstances of the case material available on records, claims and counter claims made 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 basically relates to 5 dhur of land in the same plot from which both parties stated to have purchased the land. It is also seen that the present respondent had approached the learned DCLR under the BLDR Act with a prayer for removal of alleged encroachment made by the present appellant over 5 dhur of her land. It is important to note that the learned DCLR after thoroughly going through the dispute and on being satisfied with the report of Amin finally concluded thus:-

"अभिलेख, अभिलेख में संलग्न कागजात उभय पक्षों के लिखित बहस एवं अंचल पदाधिकारी के प्रतिवेदन के अवलोकन से ऐसा प्रतीत होता है कि उभय पक्ष द्वारा विवादित खेसरा में खतियानी रैयत के वंशजों से भूमि क्रय किया गया है। आवेदिका द्वारा अपनी भूमि में से 5 धुर भूमि पर अतिक्रमण का आरोप विपक्षी पर लगाते हुए वाद दायर किया है। अंचल अधिकारी, गोपालगंज के स्पष्ट प्रतिवेदन के आधार पर वाद स्वीकृत करते हुए अंचलाधिकारी को निदेश दिया जाता है कि विवादित खेसरा की भूमि को उभय पक्ष को पूर्व सूचना देकर पुनः मापी करवाकर उभय पक्षों के खरीदगी दस्तावेज में वर्णित चौहदी के अनुसार अतिक्रमण को मुक्त कराते हुए उभय पक्ष के बीच उत्पन्न विवाद का निपटारा कराये। यह आदेश तब तक लागू रहेगा जब तक कि कोई शीर्ष न्यायालय अन्यथा आदेश पारित न कर दे।"

Obviously, I do not find any infirmity in the said findings of learned DCLR. Hence, the impugned order is upheld.'

In the result this appeal petition is dismissed.

Dictated and Corrected by me.


Comissioner
Saran Division, Chapra.


01/06/2018
Commissioner
Saran Division, Chapra.