

**In The Court of Commissioner, Saran Division, Chapra**

**B.L.D.R. Appeal No. 04/2012**

**Ramjash Sah**

**Vrs.**

**Bipin Bihari & ors.**

**ORDER**

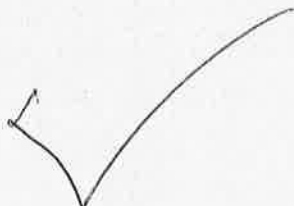
The instant appeal petition is directed against the impugned order passed by DCLR on 15.12.2011 in BLDR case No. 97/2011-12.

The brief facts of the case are that the present respondent Bipin Bihari S/o Late Ram Naraiyan Sah R/o Vill-Rudrapur, P.S. Kateya, Dist-Gopalganj filed a petitioner u/s 4 of BLDR Act-2009 in which the present appellant Ramjash Sah S/o Late Chilar Sah, R/o same village was made as o.p. In the said case the prayer made was that the Jamabandi No. 761, 762, 763 in the name of Ramjash Sah be included in original Jamabandi No. 287 and further C.O. be directed to create boundary after measurement of land following in the share of the present respondent. Thereafter, the learned DCLR after hearing the parties, finally vide order dt. 15.12.2011 allowed the said case and also directed the present appellant (o.p. before DCLR) not to making disturbance in the possession of the present o.p. (petitioner before DCLR) and further more to C.O. Kateya to make correction in the Jamabandi of the present appellant and also to create boundary after measurement of the disputed land. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal petition before this Court.

Heard the learned counsel for the parties.

The learned senior counsel appearing on behalf of the appellant at the very outset of his argument submitted that the case filed before DCLR, involved adjudication of complex question of title as the same was not maintainable. He further said that the case relating to correction of Jamabandi was to be filed before Addl. Collector. He also strongly argued that as the case involves complicated question of law and fact so the DCLR had no jurisdiction to try this case as such the order passed by DCLR is without jurisdiction and void. The learned counsel further submitted in details about the whole issue involved in the case and how the different areas of land was transferred to the different branch through sale deed and also discussed about the genealogy of the family. He also said that the learned lower Court has entered into merits of the sale deed and indirectly has set aside the sale deed of the appellant in respect of  $\frac{3}{4}$  share which he had no jurisdiction. The learned counsel also argued that the learned lower Court ought to have held that the appellant's sale deed is valid and has title in the suit land and he is in possession. He lastly said that as the impugned order is illegal and jurisdiction, the same is fit to be set aside.

The learned counsel appearing on behalf of the respondent on the other hand, strongly opposed the arguments forwarded by the learned counsel for the appellant and submitted that it is wrong to say that in the instant case involves any question of determination of title rather o.p. has approached the learned DCLR for correction of Jamabandi and at that time the DCLR was vested with power to deal with such matter. He further said that in this case share of four brothers are involved and one brother has transferred his own share in favour of other brother so the order of DCLR is correct and fit to be upheld. He also said that the impugned order is correct and fit to be upheld.



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 khatiyani land what stated to have been acquired by them through inheritance or through purchase by the rightful owner. Furthermore, dispute relating to Jamabandi existing with respect to certain land needs to be cancelled and measurement of the land to be done as prayed for by the present respondent before the learned DCLR. Obviously the instant dispute between the parties is not covered by any of the six enactments mentioned in schedule-1 of the BLDR Act. In fact the learned DCLR should not have entertained the said case under the BLDR Act. Prior to coming up of the Bihar Land Mutation Act.2011, Bihar Tenants Holdings (maintenance of Records) Act, 1973 with Rules were operative for dealing with the question of dispute relating to creation/cancellation/correction in Jamabandi. Dispute relating to cancellation of Jamabandi is by no way covered under the BLDR Act. It is also to be noted that the learned counsel for the appellant laid maximum emphasis on the point that the dispute between the parties relates to determination of title over the disputed land. This plea seems to be true in view of the fact that the plea raised by the parties before the competent authority related to their possession over the land and they tried to prove their possession over the land in question through different ways like inheritance, purchase and execution of gift deed to their kith and kin. The learned DCLR should not have looked into such kind of dispute under the BLDR Act.

Thus, for the aforesaid reason, the impugned order is not sustainable and hence the same is set aside.

Accordingly, this appeal application is disposed of.

Dictated and Corrected by me.

  
Commissioner  
Saran Division, Chapra.

  
Commissioner  
Saran Division, Chapra.