

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 65/2016

Harkesh Kamkar

Vrs.

Arbind Srivastva & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in BLDR case No. 33/2015-16 on 09.03.2016.

The brief facts of the case are that the present respondent Arbind Srivastva S/o Late Nawal Kishore Srivastva R/o Vill- Panchdeori, P.S.-Kateya, Dist-Gopalganj filed a case before DCLR, Hathua as petitioner and in the said case the present appellant Harkesh Kamkar and ors. were made as o.ps. In the said case the prayer of the petitioner (present respondent) was that the land appertaining to khata No. 79, R.S. plot No. 376, area 12 dhur situated in Mouza Panchdeori, which is his khatiyani land over which the present respondent claiming his right by making excess area of land in the exchange deed. The learned counsel after hearing the parties finally vide order dt. 09.03.2016 ordered for ensuring recovery of possession of the remaining 12 dhur land. Feeling aggrieved by the said order, the present appellant (respondent) before DCLR has approached this Court by filing the instant appeal under the BLDR Act.

Heard the learned counsel for the parties

The learned counsel appearing on behalf of the petitioner at the very beginning of his argument submitted that the said order is illegal and against the weight of evidence. He further submitted that the learned DCLR ought to have held that the disputes between the parties were related to determination of title and as such the same was not maintainable before the lower Court. The learned counsel also submitted that the learned Court below should not have discarded the deed of exchange brought into existence by one Vishnu Kumar Sharma and Harkesh Kamkar for the reason that the revenue Court has no jurisdiction to give findings with respect to sale deed or deed of exchange resulting in commission of error by the lower Court to exceed its jurisdiction. The learned counsel lastly prayed that the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondent while apposing the submission forwarded by the learned counsel for the petitioner submitted that the impugned order passed by DCLR, Hathua is legally valid and proper. He further submitted that the learned DCLR on careful consideration of all the relevant documents and after hearing the parties has passed the final order which is sustainable. The learned counsel later on briefly submitted the whole facts of the case as to how the different areas of the said plot was transferred exchanged and even sold out. He lastly submitted that as the order passed by DCLR, Hathua is just and proper, the same is fit to be upheld and this 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, it appears that in the instant case dispute between the parties basically relates to their respective claim over the disputed land which is stated to be raiyati land. The learned counsel for the appellant is of the view that the learned DCLR was not competent to resolve any dispute relating to raiyati land under the provisions of BLDR Act. The learned counsel for the appellant has also in his argument emphasized this point and also assailed the impugned order. From perusal of the impugned

order of DCLR it is seen that he went on to decide the dispute pertaining to raiyati land of which both parties put their claim either on the basis of their sale deed or exchange deed executed by the different branches of the descendants of the khatiyani raiyat. Obviously where such kind of complex issue relating to adjudication of title is involved as per the provision of section 4(5) of the BLDR Act, the learned DCLR should not have ordered for delivery of possession to the person on the basis of measurement alone. It is seen that the learned DCLR instead of going into this aspect of the case brought before him, he went into deal with the complex issue of title of the parties.

Thus, for the aforesaid reasons, the impugned order of DCLR 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.