

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 130/2015

Rabindra Pandey

Vrs.

Manoranjan Kumar Pandey

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in BLDR case No. 02/198/2014-15 on 16.04.2015.

The brief facts of the case are that the present respondent Manoranjan Kumar Pandey S/o Rajeshwar Pandey R/o Vill-Rafipur, P.S.-Hussainganj, Dist-Siwan filed a case bearing No B.L.D.R. case No. 2/198/2014-15 before DCLR, Siwan Sadar in which the present appellant, Rabindra Pandey was made as opposite party. Furthermore, in the said case, the prayer of the petitioner (present respondent) was that the disputed piece of land be measured and a boundary wall be constructed thereon. Thereafter, the learned DCLR after hearing the parties, finally vide his order dt. 16.04.15 held that the disputed piece of land is the ancestral land of the present respondent and the respondent (present appellant) has already filed a case bearing No. 779/14 before Sub-judge-1 Siwan. He further held that as no objection has been raised on the said measurement, he directed the local C.O. to assist in demarcation of the disputed land.

On being aggrieved by and dissatisfied with the aforesaid order dt. 16.04.15 passed by learned DCLR, Siwan Sadar, the present appellant has 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 impugned order is bad in law. He further said that the learned lower Court has no jurisdiction to decide case of encroachment where complicated question of title is involved. He also submitted that the Court below has erred in not considering that Civil suit has been pending in between the parties with respect to disputed land wherein title and possession of parties are in dispute. The learned counsel further submitted that the Court below ought to have considered that plot No. 876 and 874 which are south and west to the Dih Basgit land bearing plot No. 856 in which house of plaintiff is standing since last 80 years and case of demarcation and removal of construction can not be allowed on the house of the appellant when title and possession of the parties are in dispute and the matter is pending in Civil Court. He lastly prayed that as the impugned order is erroneous the same is fit to be set aside.

The learned counsel appearing on behalf of the respondent vehemently opposed the arguments forwarded by the learned counsel for the appellant and submitted that it is entirely wrong to say that in the instant case involves adjudication of complex question of right, title and possession of the parties over the disputed piece of land. Further, while tracing the genesis of the case the learned counsel submitted that initially this respondent has filed a petition before C.O. Hasanpura for carving out the boundary wall over plot No. 876 in its northern side after getting measurement of the land and for fixing of pillar thereon. He further said that there is dispute between the parties regarding the "dandars" of plot No. 876 and 856, so the respondent with a view to resolve the dispute for ever, filed a petition before the C.O.

Hasanpura and thereafter, Anchal Amin and survey experts measured the lands under dispute and pillars were fixed. He further submitted that the respondent approached the learned DCLR only for execution of the order of C.O. Hasanpur, passed in measurement case No. 3 of 2012-13. The learned counsel further said that the learned DCLR has not declared right title of any party regarding the land under dispute rather Court has only ordered for execution of C.O.'s order. He lastly submitted that the impugned order is just and proper having no infirmity and hence the same is fit to be upheld and this appeal petition based on erroneous facts is fit to be rejected.

Considering the facts and circumstances of the case, material available on records, respective submission made by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that the dispute between the parties basically relates to raiyati land and neither of them qualify as allottee or settlee as per the observation made by Hon'ble High Court in the case of Maheshwar Mandal and ors. Vrs The State of Bihar and ors. In fact, the case before DCLR itself was not maintainable in view of the observation made by the Hon'ble High Court, in the case referred above. Moreover, the instant case does not come under the purview of any of the six acts as mentioned in schedule-1 of the BLDR Act-2009. From the memo appeal petition, it is also seen that a Civil suit between the parties is pending in competent Court. Although, this fact was brought before the learned DCLR, as stated by the appellant, but the same was not taken into consideration and impugned order has been passed.

Thus, it is quite obvious that the case itself was not maintainable before the learned DCLR as per the observation made by the Hon'ble High Court while interpreting the various provisions of the BLDR Act-2009 while dealing with the case of Maheshwar Mandal, but the learned DCLR did not consider this important aspect while passing the impugned order.

For the abovementioned reasons, the impugned order is set aside and this appeal petition being devoid of any merit is also dismissed accordingly.

Dictated and Corrected by me.

Commissioner
Saran Division, Chapra.

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