

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 184/14

Rama Shankar Singh & ors.

Vrs.

Shambhu Prasad Gupta & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in Land Dispute case No. 91/2013-14 on 22.04.2014.

The brief facts of the case are that the present respondents Shambhu Prasad Gupta & ors. all R/o Vill-Baghawa, P.S.-Kateya, Dist-Gopalganj, filed a case before DCLR, Hathua as petitioners in which present appellants were made as o.ps. In the said case the prayer of the present respondents (petitioner before DCLR) was that the 5 dhur of land left out in southern side of his house over which the o.ps (present appellants) have illegally captured over which they do not have any title, as such his possession be recovered over the same. The learned DCLR after hearing the parties finally vide order dt. 22.04.2014 allowed the said case. Feeling aggrieved by the said order the present appellants have preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel for the appellants at the very outset of his arguments strongly submitted that the impugned order is without jurisdiction. He further submitted that the appellants and o.ps have purchased the disputed land through registered sale deeds from the same family and claiming title then how can it be said that the sale deed of o.ps are genuine and sale deed of appellants are false in a summary proceeding under the BLDR Act. The learned counsel also argued that the learned DCLR failed to consider that the description of disputed plots are vague in the sale deed documents as such no proceeding should have been initiated by him under the provision of BLDR Act and nor he was competent to do so. He also said that although it was brought in his notice that a Civil suit is pending relating to disputed plot, he did not consider the same and passed the order. The learned counsel lastly said that as the impugned order is beyond jurisdiction the same is fit to be set aside.

The learned counsel for the respondents, on the other hand submitted that the appeal petition itself is not maintainable as the same has been filed after much delay. He further argued in detail about the whole matrix of the case and said that the order passed by the learned DCLR is legal based on sound principle of law and fit to be confirmed. He lastly said that this appeal petition being devoid of any merit is fit to be rejected.

Considering facts and circumstances of the case, material available on records, pleadings made by the learned counsel for the parties and on perusal of the impugned order, it is seen that the dispute between the parties relates to their respective claim over the land in question what stated to have been purchased by them through sale deeds. In fact, it is correct to say that the disputed land is of raiyati nature and non of the contesting parties come under the purview of allottee and settle as

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mentioned in the BLDR Act so their claim should not have been fit to be decided under the said Act. However, it is seen that the learned DCLR went on to pass order with regard to recovery of possession with respect to disputed land. Obviously such kind of order can not be upheld under the BLDR Act as observed by the Hon'ble High Court in the case of Maheshwar Mandal & ors. Vrs The State of Bihar & ors.

For the aforesaid reasons, the impugned order is not sustainable and hence the same is set aside and accordingly this appeal petition is disposed of.

Dictated and Corrected by me.


Commissioner 31/08/2017
Saran Division, Chapra.


31/08/2017
Commissioner
Saran Division, Chapra.