

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 02/2012
Rama Shankar Chaudhary & ors.
Vrs.
Mohan Chaudhary & ors.
ORDER

05.11.2015 - The instant appeal is directed against the impugned order passed by DCLR, Hathua in BLDR case No. 93/2011-12 on 14.12.2011.

The brief facts of the case are that the present respondent No. 1 Mohan Chaudhary S/o Late Bhoj Chaudhary R/o Vill-Kushaudhi, P.S.-Mirganj, Dist-Gopalganj filed a case before DCLR, Hathua under the BLDR Act by making present appellants as o.ps. In the said case his prayer was that the disputed piece of land measuring 2 decimal in plot No. 632 khata No. 301 situated in Mauza Kushaudhi over which the forceful possession of the present appellants be declared illegal and possession be delivered to him and the Bhoodan certificate with respect to 1 decimal of land also be cancelled. Thereafter, the learned DCLR heard the parties and finally vide order dt. 14.12.2011 allowed the case in favour of the present respondent (petitioner before DCLR) wherein he ordered for the re-demarcation of the disputed land. Feeling aggrieved by the said order, the present appellants (respondent before DCLR) has preferred this appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant assailed the impugned order by stating that the learned lower Court misunderstood the scope of the case and evidence required for the same. He further submitted that the learned lower Court erred in not relying on the pleader Commissioner's report nor learned lower court has not given any reason for rejecting the pleader Commissioner's report if the said report was un-scientific and against the actual state of affairs existing on the spot. He also submitted that Amin has not given the length and breadth of the road which is in disputed land. The learned counsel further submitted that the learned lower Court without any reason has disbelieved the Bhoodan Praman Patra of the appellant in respect of 1 decimal of land and has believed Praman Patra in respect of 5 decimal of land issued in the name of the father of the appellant but the lower Court held that the appellant could get only $4\frac{3}{4}$ decimal of land which is wrong. He also submitted that the pleader Commissioner had reported that it was respondent who has encroached 447 kadi land of the said 6 decimal of the land settled in favour of the father of the appellants by the Bhoodan Committee and which was measured in presence of the parties and no objection to that report was filed by any party which shows that both parties had admitted the correctness of the pleader Commissioner's report. He also argued that the findings of the learned lower Court about encroachment as alleged by present respondent No. 1 is against the documentary evidence an record as such the impugned order is liable to be set aside.

The learned counsel appearing on behalf of the respondent while opposing the arguments made by the learned counsel for the appellants, submitted that the impugned order of DCLR is legal valid and operative as such the appeal is liable to be dismissed. He further submitted in detail as to how the appellant's father Bhoj Chaudhary came to acquire the 16 decimal of land from Bhoodan Yagan Committee in plot No. 632, khata No. 301 and the total area of which is 2 Bigha 14 katha 11 dhur in the year 1978. He also submitted that there is one village road east to west in the said plot which divides the land into two parts viz-north of village road and south of village road. The disputed land falls in south of village road having area of $20\frac{3}{4}$ decimal out of which 16 decimal of land was settled to the father of the respondent and subsequently Jamabandi No. 760 was created and rent fixed. He further argued that the claim of the appellant that he has also been settled 5 decimal and 1 decimal of land from the same plot by the Bhoodan Committee is not correct as after deduction of 16 decimal from the said plot only $4\frac{3}{4}$ land left which is in the possession of the appellants. He further argued that despite

measurement of the land, the appellant has forcibly encroached 2 decimal of his land and for which he filed a case before DCLR and the learned DCLR has passed a legal and valid order. He also submitted that under the provision of BLDR Act the respondent has a right to claim possession as legal settlee when he is dispossessed as such the impugned order is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, respective oral arguments advanced by the parties, written statements submitted by them and on perusal of the impugned order, it is seen that in the instant case the dispute between the parties relates to their respective claim over the actual area of land which is stated to have been settled to their father by the Bhoodan Yagna Committee. The claim of the respondent is that his father was settled with 16 decimal of land by Bhoodan Committee in the year 1978 and after that the said land was mutated in favour of his father and he used to pay the rent. On the other hand, the appellants claim as that his father was also settled with 6 decimal of land by Bhoodan Committee on two different times firstly by 5 decimal and secondly by 1 decimal. It is also seen that the said land was measured by the pleader Commissioner as well as by Amin in the past where in he came to find that the actual area on the spot is $20 \frac{3}{4}$ decimal instead of 21 decimal as per the Bhoodan certificate of the parties. Thus, it appears that although, the respondent does not dispute the claim of 5 decimal of land settled to the appellants but at the same time he disputes the claim of 1 decimal land stated to have been settled to the appellant in the year 2002. I find that the dispute between the parties mainly concerns with their respective possession over the settled land. The appellants is claiming 06 decimal land whereas the respondent claims 16 decimal but both parties admit that a village road east to west divides the said big plot of khata No. 301 leaving only the land settled to them which is actually $20 \frac{3}{4}$ decimal as per measurement. But no body talks as to how much land has been gone into village road from that big plot. I feel that this kind of dispute where the actual area of land falls short from the area settled to the parties, can only be resolved by scientific measurement and demarcation of the land on the basis of documentary evidence rather than on the basis of possession alone. The learned DCLR although dealt with the issue in depth but the same has been done only on the basis of the averments made by the parties and material placed before him without assessing the genuineness of the Bhoodan certificate of the parties. This itself makes the impugned order defective.

For the aforementioned reasons and discussion made therein, the impugned order is not sustainable and hence the same is set aside. Moreover the matter is remitted back in the Court of DCLR, Hathua for reconsideration and dispose of the matter afresh only after re-measurement of the said disputed land settled to both parties as well as the village road existing on the said plot and also after verifying the genuineness of the Bhoodan certificate of the parties from the Bhoodan Yagan Committee Gopalganj.

With the aforesaid observations and directions, this appeal petition is disposed of.

Dictated and Corrected by me.

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Saran Division, Chapra

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