

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 132/2014
Rajbanshi Yadav & ors.
Vrs.
Babunand Yadav

ORDER

14-12-2015

The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in BLDR case No. 166/274/2012-13 on 29.03.2014.

The brief facts of the case are that the present respondent Babunand Yadav S/o Late Ram Balak Yadav R/o Vill-Ujrahan, P.S.-M.H. Nagar, Dist-Siwan filed a case before DCLR, Siwan Sadar by making present appellants as respondent under the BLDR Act. In the said case, the prayer of the present respondent (petitioner before DCLR) was that the land in question appertaining to khata No. 109 plot No. 184, 487 area 11 katha in north and 5 katha 2 dhur in west situated in Mauza Ujrahan is recorded in the khatiyani as Gair Mazurawa Malik land and shekh Abdul Ahmad was the ex-intermediary. The disputed land was settled by the ex-landlord in favour of her mother Deepni Devi and after abolition of Zamindari return was filed and accordingly jamabandi No. 208 was created in her favour. His further case was that the present appellants are trying to make construction over the land by encroaching the said land as such the said land be measured and be freed from encroachment. The learned DCLR after hearing the parties finally vide order dt. 29.03.2014 allowed the said case and directed the concerned C.O. to get measure the land and if any encroachment is found the same be removed.

On being aggrieved by and dissatisfied with the aforesaid order, the present appellants have preferred this appeal.

Heard the parties.

The learned counsel appearing on behalf of the appellants submitted at the very beginning of his argument that the impugned order is erroneous and based on surmises and conjectures. He further submitted that in the instant case there involves determination of complex question of right and title of the parties over the disputed land and the learned DCLR has got no jurisdiction under the BLDR Act to decide such complicated question. He further submitted that both parties claim their right over the disputed piece of land on the basis of settlement and possession and such issue can not be decided by the DCLR or any revenue Court. He also submitted that the learned lower Court passed the impugned order without considering the various papers filed by the appellant before the DCLR. The learned counsel further stated that although the appellant filed his objection before DCLR stating therein that the case was not maintainable as complex question of title was involved and relief prayed for the respondent can not be granted by the revenue Court, but these facts were not considered at all by the DCLR. He further submitted that the said disputed land is recorded as Gair Mazurwa Malik land and the ex-landlord settled the disputed land to Khuba Chaudhary for nazrana of Rs. 7 and executed sada settlement deed as Hukumnama and then Khuba constructed his house and sahan over disputed land and since then khuba started residing there with family. Petitioner are having peaceful possession over the land in question. He further submitted that the Hon'ble High Court also in the case of Maheshwar Mandal Vrs The State of Bihar & ors observed that the



complex question of determination of right and title can not be adjudicated under the BLDR Act. He also submitted that the learned lower Court exceeded its jurisdiction by allowing the claim of the o.ps and ordering for the removal of encroachment. He further argued that the o.ps claiming his title on the basis of oral settlement and rent receipt which is not legally correct. He also submitted that a title suit bearing No. 222/2002 is pending in the competent Civil Court with respect to the land of the same khata so in that case the learned DCLR should not have decided the issue where complex question of title is involved. The learned counsel lastly prayed that the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondents while opposing the arguments advanced by the learned counsel for the appellant, submitted that the said disputed land was settled by Patta by Ex-landlord shekh Abdul Ahmad as per his share of 9 anna in the name of Deepani Devi, the mother of the respondent and she came in possession over the same. He further argued that the patta and rent receipt of the appellant is forged, fabricated one as the rest area of the disputed land was settled by other co-sharer of Ex-landlord to Sheogobind Ahir and Sheonadan Ahir but appellant is no where. He also submitted that on the basis of forged and fabricated sada patta and rent receipt, no one can be allowed to take possession over the land and hence the learned DCLR, Siwan rightly ordered the appellant to remove the construction over the disputed land which is quite legally correct and can not be disturbed. The learned counsel further submitted that T.S. No. 222/2002 filed before the Civil Court, Siwan but the disputed land has not been mentioned the same in schedule of the plaint and this point has been mentioned by the learned DCLR, Siwan in his order. He lastly submitted that the impugned order of DCLR is just and proper and in accordance with the provision of the BLDR Act-2009 as both parties come under the purview of settlee and hence the impugned order is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, respective arguments advanced by the learned counsel for the parties, written arguments filed by them and on going through the impugned order, it is quite obvious that both parties claim themselves to be the settlee of Ex-landlord of the same piece of disputed land. Obviously both parties claim that the said settlement of the disputed land has been made in the favour of the ancestor much before the abolition of zamindari. Naturally they can not claim themselves to be the settlee of Govt. land/Bhoodan land. It is also to be noted that a Civil suit bearing No. 222/2002 between the parties is pending in the competent Civil Court for the adjudication of title of the contesting parties. In that situation the learned DCLR should not have ordered for the removal of the construction existing on the disputed land until and unless the matter has been decided by the competent Civil Court. Moreover complex question of title can not be decided under the BLDR Act.

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.

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