

**In The Court of Commissioner, Saran Division, Chapra  
B.L.D.R. Appeal No. 157/2012**

**Sri kishun Singh**

**Vrs.**

**Madan Singh & ors.**

**ORDER**

03.10.2015- The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in BLDR case No. 164/2011-12 on 05.05.2012.

The brief facts of the case are that Srikishun Singh S/o Late Bhagola Singh R/o Vill-Chhap, P.S.-Meerganj, Dist-Gopalganj filed a case before DCLR, Hathua by making present respondents as o.p. with a prayer of recovery of possession over the land which came in his share after the gift deed and on the basis of order passed in partition suit No. 553/2002. The learned DCLR issued notice to the parties but as the o.ps did not turn up, he finally disposed of the case by an ex-parte order wherein he held that the dispute between the parties relates to their respective claim over the ancestral property, the same could not be decided on merit under the BLDR Act and this kind of dispute can only be resolved by Civil Court. Feeling aggrieved by the said order, the present appellants has preferred this appeal case.

Heard the learned counsel for the parties

The learned counsel appearing on behalf of the appellants assailed the impugned order by saying that the said order has been passed without applying judicial mind and even the required process for ensuring the presence of o.ps in the case was not followed. He further argued that the learned Court wrongly held that this case was not to be decided by the said Court rather it should have been held that such issue can be decided under the BLDR Act. The learned counsel further pleaded about details of the dispute relating to lands in question and how he got share in the said land and also went on explaining the genealogy of the ancestors and subsequently partition reached between them. He lastly prayed that the impugned order is fit to be set aside.

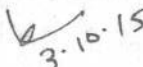
The learned counsel appearing on behalf of the o.ps, submitted that this appeal petition has been filed against the decree and judgment of T.S. No. 533/2002. He further submitted that the learned lower Court has rightly held that when there is litigation in respect of disputed land in Civil Court he has no jurisdiction to decide any dispute regarding these lands. He also argued that as no notice was served on the respondents so they had no knowledge of the case before DCLR and so they did not appeal before the learned lower Court and the order passed by DCLR is ex-parte. He lastly prayed that this appeal case is fit to be dismissed.

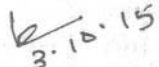
Considering the facts and circumstances of the case, material available on records and on perusal of the impugned order, it is quite obvious that in the instant

case, complex question of determination establish their right and title of the parties are involved. Both parties tried to establish their right and title over the land in question on the basis of judgment passed in T.S. No. 533/2002 or on the basis of so called partition reached between them. Obviously such complex issue neither can be decided by the DCLR under the provision of BLDR Act-2009 nor the said Act empowers the DCLR to deal with such issue. I find that the learned DCLR has rightly held that without determining the title of the parties, the issue brought before him for adjudication can not be decided on merit and accordingly he rejected the petition of the appellant. I do not find any illegality in the said order of DCLR as the same is very much in consonance with the observations made by the division bench of the Hon'ble High Court in CWJC No. 1091/2013 Maheshwar Mandal & ors Vrs The State of Bihar and ors.

Thus, for the aforementioned reasons, the impugned order is upheld and this appeal petition is rejected, accordingly.

Dictated and Corrected by me.

  
3.10.15  
Commissioner,  
Saran Division, Chapra

  
3.10.15  
Commissioner,  
Saran Division, Chapra