

**In The Court of Commissioner, Saran Division, Chapra**

**B.L.D.R. Appeal No. 297/2014**

**Musmat Suchitra Sinha & Ors.**

**Vrs.**

**Satya Prakash Sinha & Ors.**

**ORDER**

26.10.2015 — This instant appeal application is directed against the impugned order passed by DCLR Maharajganj in BLDR Case No. 36/2014-15 on 22.09.2014.

The brief facts of the case are that the present respondents filed a case before DCLR Maharajganj by impleading present petitioners as O.ps. In the said case the relief sought by the present respondent was that the land in question measuring 9 katha 18 dhur of khata No. 980plot No. 1818 has been in possession much before the survey operation and the O.Ps. have no right and title as such the sale-deed of O.Ps. with respect to the said land be declared illegal. Thereafter, the learned DCLR heard the parties, perused the documents filed by them and finally held that the raiyati right of the present respondents are established on the basis of possession and O.Ps. have no right to dispossess the present respondents (petitioner before DCLR). Feeling aggrieved by the said order the present appellants have filed this appeal before this court.

Heard the parties.

The learned counsel for the appellant while assailing the impugned order, submitted that the case filed before the DCLR, Maharajganj was not legally maintainable as relief sought by the present respondents for declaration that appellants have no title and possession over the disputed land and also for declaration that sale deed executed in favour of respondents is wrong, illegal and without consideration. He also submitted that the learned court below had no jurisdiction to decide the vexed question of title and declaration of the sale deed as wrong and illegal. He further argued that the respondents claimed title over the disputed land on the basis of sada Ekarnama dated 17.03.1923 alleged to have been executed by the ancestors of the appellants but the said Ekarnama includes several plots of different persons who were not co-shares of the parties and were not signatories to the agreement. He also submitted that the respondents alleged before DCLR that R.S. entry and showing possession of the ancestors of the appellants was wrong and the learned court believed the same whereas the learned DCLR had no jurisdiction to decide about the correctness of the entry made in the R.S. Khatiyani. He also submitted that the learned DCLR has wrongly held that the respondent has raiyati right over the disputed land as such the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondents while vehemently opposing the pleadings made by the learned counsel for the appellants submitted that the appellants are not concerned with the disputed land by any way rather respondents have got right, title and possession over the same and on that

ground appellants have got no legal right to file this appeal against the order passed by the DCLR. He further submitted that the lower court order is within its jurisdiction under the provision of section 4(1)(b) of the BLDR Act-2009. He also argued that there is no reliable evidence in support of appellants to claim over the disputed land and as such all contentions mentioned by appellant in their favour are neither admissible nor worth consideration any way. He also submitted that the disputed plot was wrongly mentioned in R.S. Khatiyani in the name of Brij Bahadur and others but the same was belonging to Raghubir Sharan Sinha which was solved between the parties in the year 1923 by an agreement of partition between the parties and it was partitioned in three parties by way of three schedules. He also argued that the land in question is not only given to the respondent by way of agreement but also respondent pays rent to the state and Jamabandi is existing in their name. He further submitted that the dispute arose due to illegal execution of sale deed by present appellants to said Muna Rai whereas the appellants have got no right to execute sale deed rather the disputed land is in exclusive possession of respondents since long time back. The learned counsel lastly said that the order of DCLR is genuine and maintainable as such the same be upheld.

Considering the facts and circumstances of the case, material available on records, claims and counter claims 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 raiyati land over which both parties claim their right and title either on the basis of entry in the khatiyani or on the basis of alleged partition by the ancestors. It is also evident that the present respondents had approached the competent authority, (the DCLR) for the declaration of their right over the disputed land on the ground that the entry in the R.S. khatiyani with respect to the said land exists in the name of their ancestor and furthermore, the said land fell in their share after partition. The learned DCLR has decided the title of the parties on the basis of said documents the genuineness of which was disputed by the appellants. The learned counsel for the appellants also raised the question of maintainability of this case before DCLR under the BLDR Act inasmuch as in the said case determination of complex question of right and title was involved. This contention of the appellants seems to be correct to the extent that the impugned order itself shows that the learned DCLR has went on declaring the right of the parties rather than closing the proceeding and asking the parties to approach the competent civil court for adjudication of their dispute. Although, the learned DCLR directed the appellant to approach the civil court in his final order but what was required that he should have resisted himself from declaring the right and title of the parties also. In fact, he should not have decided the complex question of title, right of the parties through his bulky order and lastly directing the parties to approach the civil court for the determination of the same. I find that this approach of learned DCLR is certainly not appropriate and can not be appreciated also as such the same can not be upheld too.

For the aforementioned reasons, the impugned order is set aside and accordingly this appeal is disposed of.

Dictated and Corrected by me.

*26-10-15*  
Commissioner,  
Saran Division, Chapra

*26-10-15*  
Commissioner,  
Saran Division, Chapra