

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

**B.L.D.R. Appeal No. 325/2014**

**Gautam Prasad**

**Vrs.**

**Mukti Nath Prasad**

**ORDER**

15.12.2015- The instant appeal petition is directed against the impugned order passed by DCLR, Mahrajganj in case No. 72/2014-15 on 24.10.2014.

The brief facts of the case are that the present respondent Mukti Nath Prasad S/o Late Bhabhikan Sah R/o Village- Masharakh Takht P.S.- Mashrakh, Dist-Saran filed a case before DCLR, Mahraurah by making present appellant as opposite party. In the said case the prayer of the present respondent (petitioner before DCLR) was that the land in question appertaining to Khata No. 860 plot No. 7074 having area 13 dhur is the purchased land of his father over which the present appellant (respondent before DCLR) has illegally put Nad, Khunta and Tiles thereby obstructed the road as such the said encroachment be removed and possession be delivered to him. Thereafter, the learned DCLR after issuing notice to the parties heard the case and finally vide order dated 24.10.2014 ordered for the removal of the Nad, Khunta etc from the said land and allowed the case.

On being aggrieved by and dissatisfied with the aforesaid order, the present appellant has preferred this appeal case before this court.

Heard the parties .

The learned counsel appearing on behalf of the appellant submitted that the impugned order has been passed without appreciating the facts of the case as such the same is not maintainable. He further argued that it is almost settled in law that wherever there is a dispute relating to determination of title, the same can not be decided by the revenue authority but the learned lower court overlooking the same passed the order which is quite illegal and without jurisdiction. He also argued that the learned lower court without considering the documentaries filed by the appellant allowed the case and did not discuss the relevant legal points in the final order. The learned counsel also submitted in details as to law the legal heirs of Khatiyani raiyat of the disputed plot transferred their respective share to different persons. He lastly submitted that the impugned order is not fit to be upheld as such the same deserves to be set aside.

The learned counsel for the respondents while vehemently opposing the arguments forwarded by the learned counsel for the appellant, submitted that the impugned order passed by DCLR is based on the facts and is very much in accordance with law. He further submitted that the issue raised by the appellant in his memo of appeal petition is partly true and partly wrong. He further submitted that the area of the disputed land as per Khatiyani is 2 katha 14 dhur but on the spot it is only 2 katha 11 dhur of which the khatiyani raiyat Harihar Prasad transferred 3 dhur from eastern side to

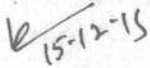
Bhabhikan Sah through sale deed on 18.08.1970 and later on Bhabhikan Sah also purchased 10 dhur from the Kola Devi and amalgamated the same with 3 dhur as one unit of 13 dhur. The learned counsel lastly submitted that the impugned order of DCLR is just and proper as the said order has been passed after considering all the relevant facts of the case and the stand taken by the appellant is not fit to be considered as the same is false and concocted.

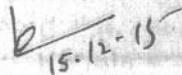
Considering the facts and circumstances of the case, material available on records, claims and counter claims made by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case involves adjudication of complex question of title between the parties. The learned counsel for the appellant also states that a civil suit is pending before the competent court with respect to the disputed land as such the instant proceeding may be dropped. It is also seen from the impugned order of DCLR that neither of the parties comes under the category of allottee and settlee as mentioned in the BLDR Act. The learned DCLR should have taken into account that the case brought before him involves adjudication of complex question of right and title of the parties and the same is not maintainable 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.*

Thus, for the aforementioned reasons, the impugned order of DCLR is not sustainable. Hence the same is set aside.

Accordingly this appeal petition is disposed of.

Dictated and corrected by me.

  
15-12-15  
Commissioner,  
Saran Division, chapra

  
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Saran Division, Chapra