

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 327/2014

Kishor Ram

Vrs.

Birbal Ram

ORDER

22.12.2015 - The instant appeal is directed against the impugned order passed by DCLR, Maharajganj in B.L.D.R. case No. 76/2014-15 on 22.10.2014.

The brief facts of the case are that the present respondent Birbal Ram S/o Late Mahendra Ram R/o Vill-Jamo Bajar, P.S.-Jamo Bajar, Dist-Siwan filed a case before DCLR, Maharajganj under the BLDR Act wherein the present appellant was the opposite party. In the said case the prayer of the present respondent was that the land in question measuring 2 decimal, appertaining to khata No. 277 R.S. plot No. 2234 was settled to him by Land settlement case No. 17/1996-97 and the said land be measured and possession be delivered besides the o.p. be restrained from making any hindrance. Thereafter the learned DCLR hearing the parties finally vide order dt. 22.10.2014 allowed the said case and directed the C.O. Goreyakothi to demarcate the land after measurement and the said land be freed from any encroachment and also initiate proceeding for cancellation of jamabandi No. 268 standing in the name of present appellant (o.p. before DCLR)

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

Heard the learned counsel for the parties.

The learned senior counsel appearing on behalf of the appellant submitted in detail as to how the respondent by duping the authorities got the parcha issued in his name with respect to 2 decimal of land of plot NO. 2234, katha No. 277 which is used as sahan and approach path to village road. He further submitted that when the appellant filed an appeal against the said settlement before Addl. Collector vide Appeal No. 419/99 then the learned Addl. Collector, settled one decimal each to both parties and accordingly parcha for one decimal was issued in favour of the appellant. He further submitted that against the said order of Addl. Collector, the respondent filed appeal before Collector, Siwan who reversed the order of Addl. Collector and thereafter, the DCLR vide order dt. 22.10.14 cancelled the parcha of the appellant. The learned counsel further argued that the impugned order of DCLR is against the documentary evidence on the record and also erred in converting the case into BLDR Act whereas the case should have been decided under the settlement law. He further argued that complicated question of law and fact is involved in this case so the DCLR has no jurisdiction to decide this case under the BLDR Act. He lastly prayed that the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondent while supporting the impugned order submitted that the impugned order is just, valid and

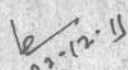
proper and the appellant has no right to claim over the said land as the earlier 1 decimal of land settled to him has been cancelled by the learned D.M. Siwan. He further submitted that the respondent filed a case before DCLR for removal of illegal possession from the said land and also for the demarcation of the same. He further argued in detail as to how the respondent came to get 2 decimal of land through settlement and his possession was also found over the same in the spot verification by various authority.

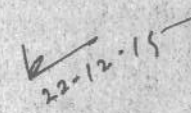
Considering the facts and circumstances of the case, material available on records, claims and counter claims advanced by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that both parties claim to be settlee of the Govt. land of plot No. 2234, khata No. 277. It is seen that it was the respondent who got settled 2 decimal of land way back in the year 1996-97 and when the present appellant questioned the said settlement in favour of the present respondent before Addl. Collector, he divided the said 2 decimal land and ordered for settlement of 1 decimal of land to each party and accordingly parcha was issued by the concerned circle officer in favour of the present appellant. However, the said order of Addl. Collector, was reversed by the D.M. Siwan in Appeal. Obviously this case has may twists and turns right from the first settlement as both parties claim their respective possession over the said land and the same has also been found to be true in the local inspections of various authorities and on that basis parcha was also issued to both parties on different times. Thus, it appears that the matter has not yet been finally settled between the parties as both parties are still in possession over their respective 1 decimal of land after the order of the Addl. Collector. It is also to be noted that the contradictory finding of facts by the different level authority relating to possession of the parties over the land in question, has complicated the issue more than to resolve the same. In fact continuous possession over a land makes a person to claim settlement but this does not give any unbridled right to a person to get the land settled with some ulterior motive by misleading the authorities. In this case it appears that some mischief has been played in getting the settlement otherwise contradictory report relating to possession could not have been sent to the authority, with respect to the possession over the said land which is in use as a connecting path to reach the village road. The learned DCLR has failed to arrive at a correct findings of fact relating to actual possession of the parties of the disputed land.

Thus, for the aforesaid reasons, the impugned order of DCLR is set aside and matter is remitted back for fresh consideration with a direction to ascertain the actual possession of the parties over the disputed land and after hearing the parties dispose of the case in accordance with law.

This appeal petition is disposed of accordingly.

Dictated and Corrected by me.


22-12-11
Commissioner,
Saran Division, Chapra


22-12-11
Commissioner,
Saran Division, Chapra