

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 62/2013

Gorakh Prasad & ors.

Vrs.

Chandrika Sah & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in BLDR case No. 82/115/2011-12 on 30.01.2013.

The brief facts of the case are that one Chandrika Sah & ors. (petitioner before DCLR) R/o Vill-Makhunpur Mathiya, P.S.-Pachrukhi, Dist-Siwan filed a case before DCLR Siwan Sadar by impleading the present appellant as respondents and in the said case he sought relief to the extent that the disputed piece of land encroached by o.ps by constructing room, the same be vacated and his title may be declared. Thereafter the learned DCLR after hearing the parties finally directed the local C.O. to get measure the land in presence of the parties and if any encroachment is found the same may be removed and accordingly the dispute between the parties be settled. This order was passed on 30.01.2014. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal before this Court.

Heard the learned counsel for the appellant only as no one was present to plead the case on behalf of o.ps.

The learned counsel appearing on behalf of the appellant in his brief argument mainly stressed on the point that his case was not maintainable before learned DCLR in view of the fact that the present respondent had approached the learned DCLR for seeking relief with regard to declaration of title over the land in question. He further argued that in view of the order passed by Hon'ble High Court in the case of Maheshwar Mandal & ors. Vrs The State of Bihar & ors. right, title and possession can not be adjudicated by the Revenue Court under the relevant provisions of BLDR Act. 2009 and also filed a copy of the said order in support of his argument. He lastly argued that since the impugned order is illegal, arbitrary and beyond jurisdiction, the same is fit to be set aside.

Although, no one appeared on behalf of the respondents during final hearing, but the rejoinder petition filed earlier by the respondents has been taken for consideration for the sake of justice. In the said rejoinder, the stand taken by the respondents is that the said disputed land is his ancestral land and the appellants got a forged sale deed with respect to the disputed land fraudulently on 10.01.1970 only with a view to harass the o.ps. His further stand is that on the basis of said forged sale deed no title can be achieved as such the impugned order is legal and valid.

Considering the facts and circumstances of the case, material available on records, argument forwarded by the learned counsel for the appellant and contents of the rejoinder petition, as well as on perusal of the impugned order, it is quite obvious that the dispute between the parties basically relates to adjudication of their claim over the raiyati land and both parties lay their claim on one or another basis over the said

portion of land. However, it is seen that the present respondent had moved before the DCLR for declaration of title over the disputed land and clearly this relief itself makes the case before DCLR as not maintainable under the BLDR Act. The learned counsel for the appellant has also in his argument emphasized this point and also assailed the impugned order. Obviously this plea of the appellant's counsel can not be ignored in view of the observation made by Hon'ble High Court in the case of Maheshwar Mandal & ors. Vrs The State of Bihar & ors.

It is well established that the subject matter of adjudication under the BLDR Act does not include such matters. The Hon'ble High Court in its judgment in CWJC No. 1091/2013 (Maheshwar Mandal & ors Vrs The State of Bihar & ors.) on 24.06.2014 has observed that the revenue authorities are not empowered to entertain matter not arising out of the six enactments mentioned in schedule-1 of the BLDR Act-2009. Obviously the instant matter does not fall under any of the said six enactments and as such it was not maintainable before the lower Court.

Thus, for the aforesaid reasons and keeping in view the observation made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and this appeal petition is accordingly disposed of.

Dictated and Corrected by me

Commissioner
Saran Division, Chapra.

Commissioner
Saran Division, Chapra.