

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 272/2013
Kamlawati Devi
Vrs.
Ashrafi Prasad
ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in Land Dispute Resolution case No. 37/2013-14 on 21.08.2013.

The brief facts of the case are that the present appellant Kamlawati Devi, W/o Jaishankar Prasad, R/o Vill-Molanapur, P.S.-Basantpur, Dist-Siwan filed a case before DCLR, Maharajganj in which the present respondent was made as o.p. In the said case the petitioner sought relief with respect to removal of the Palani and recovery of possession over 11 dhur land of khata No. 52 R.S. plot No. 1177 which has been come to her through gift deed by her husband. Thereafter, the learned DCLR heard the case and finally vide order dt. 21.08.2013 rejected the said case on the ground that the said gift deed was not executed by the rightful owner. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal petition before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted that the learned DCLR without considering the facts of the case appropriately dismissed the case which is illegal and unjust. He further argued that the learned lower Court ought to have held that the property in question was self acquired property of her husband through registered sale deed dt. 25.11.2004 and he has rightly gifted the same to his wife through gift deed dt. 13.06.2011. He also submitted that the learned lower Court should have held that the appellant being the donee has got right, title, interest and possession over the disputed land and encroachment made by respondent was illegal and the same was liable to be removed. The learned counsel further argued that the learned DCLR decided the case in haste without giving opportunity of adducing evidence to the appellant. He lastly said that as the impugned order is illegal, arbitrary and without merit, the same is fit to be dismissed.

The learned counsel appearing on behalf of the respondent submitted that the appellant filed a case before DCLR for declaration of title and possession as well as relief regarding permanent injunction which can not be adjudicated under the provision of BLDR Act. He further submitted that the learned DCLR has got no power or jurisdiction to pass order in this kind of dispute under the BLDR Act so the impugned order, dismissing the case of the appellant is in accordance with law. He lastly submitted that this appeal petition being devoid of any merit is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records pleadings made by the learned counsel for the parties and on



perusal of the impugned order, it is quite obvious that in the instant case dispute between the parties relates to their respective claim over the private land. The claim of the appellant is that the said disputed land belongs to her as the same was gifted to her by her husband by registered deed of gift after purchasing the same from someone else. On the other hand the claim of the respondent is that the said land is joint property.

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 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 observations made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and the appeal is accordingly disposed of.

Dictated and Corrected by me.


Commissioner 26/09/2017
Saran Division, Chapra.


26/09/2017
Commissioner
Saran Division, Chapra.