

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

**B.L.D.R. Appeal No. 62/2015**

**Dindayal Rai & ors.**

**Vrs.**

**Birendra Rai & ors.**

**ORDER**

The instant appeal petition is directed against the impugned order passed by DCLR, Sonpur in Land Dispute case No. 118/2011-12 on 25.10.2013.

The brief fact of the case are that the present respondent Birendra Rai, S/o Late Baidya Nath Rai, R/o Vill-Bajahia, Circle-Dariyapur, Dist-Saran filed a case before DCLR, Sonpur in which the present appellants were made as o.ps. In the said case the prayer of the present o.p. as petitioner was that the description of land given in schedule II and III be measured by a survey knowing Commissioner as other boundary man creates dispute with respect to boundaries. Thereafter, the learned DCLR after hearing the parties, finally vide order dt. 25.10.2013 allowed the said relief sought for and also appointed Santosh Kumar Singh as Survey knowing pleader Commissioner. Feeling aggrieved by the said order the present appellants have preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant at the very outset of his argument assailed the impugned order by saying that the same is beyond jurisdiction as the learned DCLR under the BLDR Act-2009 has no right to decide title and possession. He further argued that the learned lower Court has erred in holding that partition has already been taken place and the purchased lands were self acquired property of Birendra Rai without any basis. It has been further argued that the settled principle of Hindu law is that the presumption of jointness of Hindu family and the person who claimed partition has to prove it by adducing cogent evidence and that principle has been totally ignored by the learned lower Court. He also submitted that the learned DCLR has also erred in appointing survey knowing advocate Commissioner for demarcating the schedule-II and III lands rather such details lands are not available on the spot. The learned counsel lastly said that the impugned order is the clear violation of the present statue and the same is erroneous also and for that reason the impugned order is fit to be set aside.

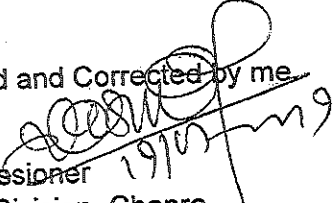
The learned counsel appearing on behalf of the respondent strongly opposed the arguments forwarded by the learned counsel for the appellant and also questioned the very maintainability of the instant appeal petition on the ground that the impugned order itself is an interim order rather appeal under the BLDR Act is only maintainable against any final order. He further contended that the appeal is also time barred as the same has been filed after a lapse of one and half year. He also argued that the original case has been filed for demarcation of land and the same is admissible under the provision of BLDR Act. The learned counsel further submitted in details as to how the disputed land in question in schedule II and III are the purchased land of the respondent. He lastly submitted that the impugned order is just, proper and valid and the said order is not even affected by the order passed by Hon'ble High court in the case of Maheshwar Mandal & ors Vrs The State of Bihar & ors.

Considering the facts and circumstances of the case, material available on records, rival submission forwarded by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that the disputed land is private land over which both parties lay their claim on one or other basis. In fact none of the parties come under the purview of allottee or settle and even their case does not come under any of the acts mentioned in schedule-I of the BLDR Act-2009. The sole contention of the appellant is that there is no infirmity in the order of DCLR as the same is limited to the appointment of a survey knowing Commissioner for demarcation of land. On the other hand the claim of the respondent is that the impugned order of DCLR being an interim order and against such order no appeal is maintainable. I find some substance in the said contention of the learned counsel for the respondent. As such the learned DCLR's findings can not be taken as a correct findings. In fact, the case brought before DCLR was not maintainable itself in view of the fact that none of the parties qualify to be considered as allottee or settlee. The dispute pertains to raiyati land and obviously such kind of dispute can not be resolved under the BLDR Act.

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 recent judgment in CWJC No. 1091/2013 (Maheshwar Mandal & ors. Vrs The State of Bihar & ors.) on 31.07.2018 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.