

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

**B.L.D.R. Appeal No. 09/2019**

**Rudal Ray & ors.**

**Vrs.**

**Budh Nath Sharma & ors.**

**ORDER**

26.07.2019.

The instant appeal petition is directed against the impugned order passed by DCLR, Chapra Sadar in Land Dispute case No. 19/2018-19 on 24.12.2018.

The brief facts of the case are that the present respondent Budh Nath Sharma S/o Bhikhari Sharma, R/o Vill-Chaukhra, P.S.-Kopa, Dist-Saran filed a case before DCLR, Chapra Sadar u/s 4(A) of Bihar Land Dispute Resolution Act-2009. In the said case the present appellants were made as o.ps. the relief sought for by the petitioner (present respondent) was that the land measuring 4 bigha 10 katha 7 dhur of plot No. 413, khata No. 819 is recorded in khatiyan as Gair Mazurwa Malik land out of which 25 decimal land has been settled to his father Bhikhari Sharma through settlement record 16/1976-77 by C.O. Jalalpur and since then they are coming in possession over which the o.ps (present appellants) have forcibly kept Nad and khuta as such the illegal occupation be freed and his possession be delivered. Thereafter, the learned DCLR after hearing the case finally vide order dt. 24.12.2018 ordered C.O. Jalalpur to remove illegal occupation if any found on the disputed land.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted that the impugned order is an ex-parte order and even without making any inquiry with regard to physical possession of the appellant, the said order is fit to be set aside. He further submitted that the ex-landlord has settled 10 katha 3 dhur land towards north east in plot No. 413 to ancestor of the appellant in the year 1935 and since then the said land has been coming in his possession. He also argued that the respondent is now wrongly making claim of the land of the appellant as the said land has never been settled to the appellant and the same is never remained in his possession. It is further submitted by the learned counsel that a title suit case for declaration of title over the said land is also pending in Munsif Court, Chapra since 2008 and the appellant is contesting the said case. He also strongly argued that the title and possession of the disputed land is subject of title suit and order of the Court below is not just and proper to give delivery of possession to the respondents. He lastly said that the impugned order be set aside.

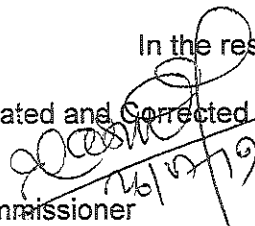
The learned counsel appearing on behalf of the respondent vehemently opposed the arguments forwarded by the learned counsel for the appellant and submitted that the present appeal petition is itself not maintainable before this Court as the same has been preferred on erroneous grounds. He further submitted that the present appellant as o.ps in the lower Court never attended the Court proceeding despite valid service of notice and did not file his reply also. He also submitted that the said disputed land is Gair Mazurwa Malik land which was settled to his ancestor by C.O. and as the appellant tried to forcibly but Nad, Khutha he has to move before DCLR for removal of such structure. The learned counsel lastly said that the impugned order is just, proper and valid having no illegality as such the same is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, pleadings forwarded by the learned counsel for the parties and on perusal of the impugned order, it is seen that both parties lay their claim over the disputed piece of land on the basis of so called settlement of the same in their favour. The claim of the appellant is that the said land was settled to his ancestor by the ex-landlord whereas the claim of the respondent is that the said land being Gair Mazurwa Malik land, as per entry in khatiyān, the same has been settled to his ancestor by C.O. Jalalpur. It is seen that the learned DCLR has passed a correct order in view of material facts available on records and on findings the bona-fide of the claim of the parties. I do not find any apparent error in the said findings of the learned DCLR.

For the aforementioned reasons, the impugned order is upheld.

In the result, this appeal petition stands dismissed.

Dictated and Corrected by me.

  
Commissioner  
Saran Division, Chapra.

  
Commissioner  
Saran Division, Chapra.