

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 331/2014

Omprakash Gupta

Vrs.

Nasir Ahmad & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in B.L.D.R. case No. 35/2014-15 on 18.10.2014.

The brief facts of the case are that the present respondent Nasir Ahmad S/o Late Wakil Mia, R/o Vill-Mustafabad, P.S. & circle-Goreyakhothi, Dist-Siwan filed a case before DCLR, Maharajganj under the relevant section of Bihar Land Dispute Resolution Act, 2009 and in the said case, the present appellants were made as o.ps. In the said case the relief sought was that the disputed land measuring 1 katha 18 dhur west of R.S. plot No. 1905 khata No.420, situated in Mouza Mustafabad to be measured and boundary be fixed and the o.p. (present appellant) be restrained from disturbing his title as the said land was settled to his father and they used to pay rent to the Govt. Thereafter, the learned DCLR after hearing the case finally vide order dt. 18.10.2014 allowed the said case. Feeling aggrieved by the said order, the present appellants have preferred to file the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants, while assailing the impugned order, submitted that the same is illegal, erroneous and without jurisdiction. He further submitted in detail as to how a total of 2 katha 2 dhur land out of plot No. 1905 of khata No. 420 was settled to one Paltan Sah by the Ex-landlord and accordingly after vesting of Zamindari, the landlord submitted his return in favour of Paltan Sah with respect to the said land and later on Jamabandi No. 494 was created and the appellants being descendants of the settlee, are paying rent. He also argued that the present respondent filed a case before DCLR for declaration of legal right, title over the disputed land as well as for fixing boundary over 1 katha 18 dhur land of the said plot which total area is 3 katha 5 dhur. He also argued that there is no block of 1 katha 18 dhur in R.S. plot No. 1905, khata No. 420 ever settled to anybody as claimed by the respondent and even the claim of encroachment over the said land is also a contradictory claim. The learned counsel further argued that the learned DCLR without looking into documents and without properly considering the arguments advanced on behalf of contesting o.p. (present appellant) has allowed the petition which is incorrect. He also submitted that the learned lower Court ought to have verified the boundaries of the disputed land in settlement by himself rather than relying on the reports of subordinates. The learned counsel lastly said that as the impugned order has been passed by DCLR exceeding the jurisdiction by the impugned order is fit to be set aside as complex question of right, title and interest can not be resolved by the revenue authority as such the impugned order is fit to be set aside and this appeal petition be allowed.

The learned counsel appearing on behalf of the respondent while vehemently opposing the arguments forwarded by the learned counsel for the appellants, submitted that the impugned order is just, proper and valid as such the same is fit to be upheld. He further argued that the disputed land of khata No. 420, plot No. 1905, total area 3 katha 5 dhur is recorded in R.S. khatiyon as Gair Mazurwa Malik land, out of this land 7 decimal (1 katha 8 dhur) western portion was settled by Govt. of Bihar vide settlement case No. 26/1988-89 in the name of father of the respondent and subsequently jamabandi No. 1759 was opened and he used to pay rent and after his demise the respondent being his son coming in possession over the said land. He further strongly submitted that the claim of appellant that from the same plot 2 katha 2 dhur land was settled by the Ex-landlord to one Paltan Sah is a false claim as the Ex-landlord had no right

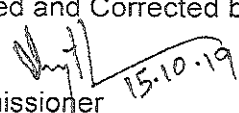
to settle the Gair Mazurwa land and hence the settlement claim is not a valid claim. He also argued that documents like rent receipt filed by the appellant in support of his claim has been found as forged and fabricated by the learned lower Court. The learned counsel further submitted that the final order of DCLR has been passed on the report of Halka Karmchari and after verifying all the relevant documents as such there is no scope of any interference in the said order of learned DCLR as the same is cogent, reasoned and valid also. He also said that the present appeal is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, rival submission forwarded by the learned counsel for the contesting parties and on perusal of the impugned order, it is seen that in the instant case the dispute, between the parties basically relates to possession over the disputed land and its identification existence and location in the plot No. 1905 of khata No. 420. The claim of the appellant is that the Ex-landlord had settled 2 katha 2 dhur from the said plot before abolition of Zamindari and after abolition of Zamindari, the return was field leading to creation of Jamabandi No. 494 and the said land is in their possession. On the other hand, the claim of the respondent is that from the same plot 1 katha 18 dhur land has been settled to his father vide settlement proceeding case 26/1988-89 and accordingly the said land has been coming in their possession and they are paying rent also. Obviously, both parties are laying their claim over their respective possession on the basis of alleged settlement to done in the same plot No.1905. It is important to see that it has been admitted by the parties that the total area of the said plot is 3 katha 5 dhur and if as per respective claim of the parties the said claims are taken to be correct and total area of land settled is added together then the total area becomes 4 katha, 15 dhur, more than the actual area of plot No. 1905. It is also important to note that both parties lay their claim over respective area on the basis of possession and alleged settlement in the same plot. Certainly, on the basis of alleged settlement claim of the parties, the entire claim of both parties becomes complicated and the same can only be resolved after local inspection and scientific measurement of the total area of plot No.1905. It appears that actually the very location of the land measuring 1 katha 18 dhur is also under dispute in the plot No. 1905. Although, learned DCLR has tried to settle the dispute after considering the documents of the parties and also on the basis of report submitted by Halka Karamchari but he failed to identify the said areas of disputed land and over which both parties lay their claim in plot No. 1905, with respect of possession stated to have been acquired on one or another basis. Thus, it seems that the actual disputed area needs to be located and identified from the said plot first and only after that the dispute can be resolved appropriately. The learned DCLR has failed to touch or record any findings on this crucial point which needs serious consideration to arrive at the final findings of fact regarding the validity of the claim and counter-claim of the parties.

For the aforementioned reasons, the impugned order passed by DCLR, Maharajganj is not fit to be upheld and hence the same is set aside. The case is remitted back to DCLR, Maharajganj for fresh consideration and to pass a fresh order in accordance with law after making a local inspection of the said disputed land by himself and after verifying relevant documents of the parties and also affording opportunity of hearing to all concerned.

With the aforementioned observations and directions, this appeal petition is disposed of

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


15.10.19
Commissioner
Saran Division, Chapra.