

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 104/2014

Tahir Hussain

Vrs.

Shamsher Ali & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajanj in Land Dispute Resolution case No. 29/2013-14 on 14.08.2013.

The brief facts of the case are that the present respondent Shamsher Ali, S/o Shamshul Hoda and Md. Serajuddin S/o Md. Ibrahim, all R/o vill-Jalalpur, P.S.-Basantpur, Dist-Siwan filed a case before DCLR, Maharajanj in which the present appellant Tahir Hussain S/o Late Imamul Haque and Md. Ishteyaq S/o Tahir Hussain of the same village were impleaded as o.ps. In the said case relief sought by the present respondent (petitioner before DCLR) that the oral exchange of 8 dhur land of plot No. 1179 and 1180 between the parties over which the petitioner having possession but the present appellant (o.ps before DCLR) has encroached 5 dhur of the said exchanged land fallen in his share by putting a Palani over that. He further prayed that the said palani be removed. Thereafter, the learned DCLR issued notice to the o.ps but as the o.p. failed to appears on several dates, finally the learned DCLR disposed of the case vide exparte order on 14.08.2013. Feeling aggrieved by the said order, the present appeal has filed the instant appeal before this Court.

Heard the learned counsel for the appellant only as the learned counsel for the respondent remained absent on the day of final hearing despite being given last chance on previous date.

The learned counsel appearing on behalf of the appellant while assailing the impugned order submitted that without giving any opportunity of hearing to the appellant, the learned DCLR has disposed of the case which is illegal and wrong. He further argued that the learned DCLR has wrongly believed the story of oral exchange whereas as par section 118 of T.P. Act, the exchange must be registered. He also argued that the learned Court below ought to have held that the dispute between the parties is of Civil nature and no order for recovery of possession can be given rather the said relief can only be given by competent Civil Court. He lastly said that as the appellants and o.ps are the heirs of khatiyani raiyat their share could not have been disputed.

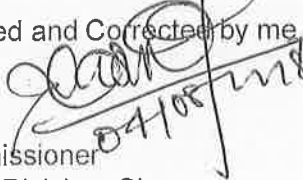
Considering facts and circumstances of the case, material available on records and on perusal of the impugned order it is seen that the dispute between the parties relates to encroachment of 5 dhur of land over the land which came in the possession of the respondent after oral exchange. It is seen that the present respondent had approached the learned DCLR for removal of the alleged encroachment under the BLDR Act. The learned DCLR after considering the whole facts relating the dispute between the parties finally resolved the dispute. The learned counsel for the appellant opposes the said finding of DCLR that in the said case dispute was of Civil nature and the learned DCLR has no jurisdiction to resolve such kind of dispute. I find some merit in the claim of the appellant. In fact, the learned DCLR should not have passed order keeping in view the complexity of the dispute and relief sought for and rival claim made by the parties. But it is seen that the learned DCLR instead of closing the

proceeding brought before him for adjudication went on to justify the claim of present respondent despite being the fact that the dispute between the parties relates to their respective claim over some area of land transferred to each other through oral exchange. It is also to be noted that section 4(5) of the BLDR Act expressly prohibits the competent authority to deal with any dispute in which complex question of title etc. is involved.

For the aforementioned reasons, the impugned order is not sustainable and hence the same is set aside.

Accordingly, this appeal petition is disposed of.

Dictated and Corrected by me,


04/08/18
Commissioner
Saran Division, Chapra.


04/08/18
Commissioner
Saran Division, Chapra.