

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 70/2014

Ganesh Rai & ors

Vrs.

Ram Balak Rai

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Sonpur in Land Dispute case No. 100/2011-12 on 10.01.2014.

The brief facts of the case are that the present respondent Ram Balak Rai S/o Late Bhagwat Rai, R/o Vill-Rahar Diara P.S. & circle-Sonpur, Dist-Saran filed a case before DCLR, Sonpur in which present appellants were made as o.ps. In the said case the prayer of the petitioner (present respondent) was that the land in question measuring 3 katha 18 dhur of plot No. 297, khata No. 345 situated in Mouza Nazarmira was their khatiyani land of his share over which the o.ps (present appellants) were making illegal claim and also making disturbances as such the said land be measured by any survey knowing Commissioner and if it was found that he has been dispossessed from some area of the said land, his possession may be delivered. Thereafter, the learned DCLR after hearing the case, finally vide order dt. 10.01.2014 appointed an advocate Commissioner for conducting the measurement of the disputed land and also directed him to file report. Feeling aggrieved by the said order, the present appellants have preferred the instant appeal case before this Court.

Heard the learned counsel for the appellant only as the learned counsel for the o.p. remained absent despite being given last chance.

The learned counsel appearing on behalf of the appellant at the very outset of his argument submitted that the impugned order has been passed without considering the relevant facts of the case properly and also without appreciating the documentary evidences produced by the appellants as o.ps before the lower Court. He further submitted in detail as to how the said disputed land and some other lands came to their ancestors and the present respondents have no right to claim their share in the same. He also argued that the learned Court below wrongly believed the theory of partition set up by respondent that the lower Court wrongly believed the registered sale deed dt. 01.06.1976 and 30.09.1978 in which the name of respondent has been mentioned in the boundary of the sale deed but he was no where in the boundary. The learned counsel lastly said that the learned DCLR has wrongly held that the case of the respondent was on better footing than the case of the appellants. He also argued that as the impugned order is bad in law, the same is fit to be set aside.

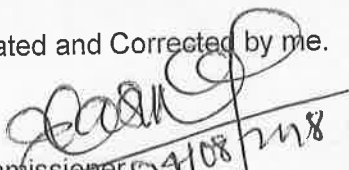
The learned counsel for the respondent filed his rejoinder petition on 29.04.16 in which he has discussed in detail about the facts of the case in order to substantiate his claim over the land in question. He further wrote that in compliance to the order of the learned DCLR, the survey knowing Commissioner visited the spot, done measurement and fixed pillar and accordingly submitted his report but the learned appellants instead of filing any objection petition on the said report preferred to file this appeal which is prematured. He further mentioned that the case of the appellants are entirely false, concocted and against the actual state of affairs at the spot whereas the order of learned DCLR is based on sound principle of law and facts and does not require any interference.

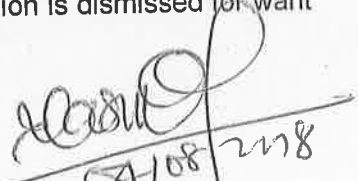


Considering the facts and circumstances of the case, material available on records, pleading made by the learned counsel for the appellants, averments of the respondents in rejoinder petition and on perusal of the impugned order, It is quite obvious that the present respondent had approached the learned DCLR for measurement of the said disputed land through a survey knowing Commissioner. The learned DCLR while considering the prayer ordered fro the appointment of the survey knowing Commissioner and also directed to file the report. On the other hand, it appears that the present appellant instead of contesting the case before the DCLR, after submission of the measurement report by survey knowing Commissioner, choose to prefer the instant appeal before this Court against the interim order of trail Court. Obviously the instant of appeal is not maintainable against the interim order in view of the fact that appeal always becomes maintainable against any final order.

For the aforementioned reasons, the instant appeal petition is dismissed for want of maintainability.

Dictated and Corrected by me.


Commissioner 04/08/2018
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.
04/08/2018