

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

B.L.D.R. Appeal No. 77/2015

Ram Bilash Manjhi & ors.

Vrs.

Gorakh Prasad Soni

**ORDER**

The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in BLDR case No. 236/414/2013-14 on 23.01.2015.

The brief facts of the case are that the present respondent Gorakh Prasad Soni S/o Dina Nath Prasad Soni, R/o vill-Andar, Dist-Siwan filed a case before DCLR, Siwan Sadar under the provisions of BLDR Act-2009. in which present appellants were made as o.ps. In the said case the relief sought for by the present respondent (petitioner before DCLR) was that the land in question appertaining to khata No. 1871, plot No. 4303, 4304 having total area 8 bigha 14 katha 10 dhur situated in Mauza Sahuli and from that he purchased some land through registered sale deed on 22.07.2009 and having his Jamabandi created and the o.ps (appellants before this Court) made threat to cut the crops as such the said land be freed from illegal possession. Thereafter the learned DCLR after hearing the parties finally vide order dt. 23.01.2015 disposed of the matter with categorical observation that in the said case so long the o.ps (present appellants) do not get their title decided by the competent civil Court they would not makes any interference in the possession of the petitioner (present respondent). Feeling aggrieved by the said order, the present appellants have filed the instant appeal petition 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 earlier.

The learned counsel appearing on behalf of the appellant at the very outset of his argument, submitted that the respondent on the basis of a forged, fabricated, void, inoperative and without consideration sale deed No. 9595 dt. 22.07.2009 stated to have been executed by the power of attorney holder which is a wrong claim. He further submitted that the land in question is the ancestral properly of the appellant as the said property was settled to Ratan Dusadh and Tinal Dusadh on being pleased from their service towards the Ex-landlord and since then they came in possession and after the demise of ancestor the said land is in possession of the appellants. He also argued that Ladmuni Devi had no title over the land and she has got no right to execute any sale deed. The learned counsel further argued that the learned lower Court ought to have considered that there is title dispute between parties and for that remedies lie before competent civil court. But the learned DCLR went on to restrain the appellant from going on their own land as such the impugned order being illegal, erroneous and without jurisdiction is fit to be set aside.

The learned counsel for the appellant in his written submission described the whole story relating to genesis of the present dispute and also narrated in detail as to how after completion of every formalities the circle office created the jamabndi in his favour. He further mentioned that the appellants have no legal right on the disputed land and their claim over the said land is based on forged, fabricated patta and it is for that to approach the competent civil Court for adjudication of title. He lastly mentioned that as per section 4(5) of the BLDR Act-

2009, the appellants claim of title can not be decided by the learned DCLR so the learned DCLR has rightly held that the appellant should get their title decided first from civil Court.

Considering the facts and circumstances of the case, material available on records, claims and counter claims of the contesting parties and on perusal of the impugned order, it is seen that in the instant case, dispute between the parties relates to their respective claim over the land in question on one or another basis. The claim of the appellant is based on the ground that the said land was settled to their ancestor by the Ex-landlord through patta and ever since than they are coming in possession over that. On the other hand the claim of the respondent is that the said land was purchased by him through the representative of rightful owner of the khatiyani raiyat. It is seen that the learned DCLR has decided the matter in the light of the complexity of the issue as well as the relief sought for by the present respondent as petitioner. Obviously, I do not find any apparent error in the said findings of the learned DCLR which reads thus:-

“ उभय पक्ष की सुनवाई एवं अभिलेखबद्ध कागजातों का अवलोकन किया गया। विवादित भूमि गैरमजरूआ मालिक खाते की एराजी है, जिसकी जमाबंदी संख्या-418 लालमुनी देवी जौजे गोपाल जी प्रसाद के नाम चलती थी। लालमुनी देवी के गोखतरेआम मीबू श्रीवास्तव से दिनांक 22.07.2009 को दस्तावेज संख्या-9595 द्वारा विवादित भूमि आवेदक द्वारा क्रय की गयी है, जिसके आधार पर उनके नाम दखिल खारित होकर जमाबंदी संख्या 163 चलती है। विपक्षीगण द्वारा विवादित भूमि अपने पूर्वजों के पक्ष में भूतपूर्व मध्यवर्ती द्वारा बन्दोवस्त बताया गया है। जब तक विपक्षीगण अपने पूर्वजों के पक्ष में बन्दोवस्त भूमि पर सक्षम व्यवहार न्यायालय से स्वत्व निर्धारण नहीं करा लेते हैं, तब तक विवादित भूमि पर आवेदक के शान्तिपूर्वक दखल कब्जे में मोजाहिमत करना वैध नहीं है। अतः उपर्युक्त विवेचना के आलोक में वाद स्वीकृत किया जाता है। आदेश की प्रति अंचलाधिकारी/थाना प्रभारी, हुसैनगंज को भेजे।”

The learned counsel for the appellant failed to point out any lacuna in the said findings of the learned DCLR.

For the aforementioned reasons, the impugned order is upheld.

Accordingly, this appeal petition is dismissed for want of merit.

Dictated and Corrected by me.

Commissioner  
Saran Division, Chapra.

Commissioner  
Saran Division, Chapra.