

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 309/2014

Saroj Devi & ors.

Vrs.

Pankajesh Pran Ranjan Diwedi & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in BLDR case No. 46/2014-15 on 29.09.14.

The brief facts of the case are that the present respondent Pankajesh Pran Ranjan Diwedi S/o Diwakar Diwedi, R/o Vill-Paterha, Maharajganj, Dist-Siwan filed a case before DCLR, Maharajganj vide BLDR case No. 46/2014-15 by impleading the present appellants as o.ps. In the said case the prayer of the present respondent as petitioner was that the sale deed executed by Chandra Devi and Poonam Mishra in favour of the present respondent which has been declared illegal by C.O. Maharajganj be cancelled and the said sale deed be declared legal and his possession be delivered over the disputed piece of land measuring 2 katha of khata No. 287, survey plot No. 3441; khata No. 146, survey plot No. 3376 and 3377 having 8 katha 7 dhur situated in Mouza Paterha. Thereafter, the learned DCLR, issued notices to the present appellants (o.ps before DCLR) and after hearing the case finally vide order dt. 29.09.14 disposed of the said case with the observation that the petitioner can approach the civil Court for determination of his title and delivery of possession. Feeling aggrieved by the said order, the present appellants have preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted at the very outset of his argument that the order dt. 29.09.14 passed by learned DCLR, Maharajganj is without jurisdiction, illegal and against the object of BLDR Act-2009. The learned counsel further submitted that the appellants appeared before learned lower Court and had submitted written statements stating therein that the present case is not maintainable during pendency of T.S. No. 739/2009. He further submitted that it was also argued before the learned lower Court that the appellant asserted their right, title and interest in the land in question on the basis of gift deed dt. 11.01.2002 and the case itself does not fall within the ambit of BLDR Act-2009 because complicated question of law and title is involved in the case. He also submitted that the learned lower Court has failed in considering the division bench decision of the Hon'ble High Court reported in PLJR, 2014 vol-3, page No. 281. He further submitted that the learned DCLR has framed issues first regarding the nature of dispute brought before him adjudication and then went on to pass order in four fold and even rejected the report of police authority also which is not just and proper. The learned counsel also submitted that the learned lower Court without assigning any cogent reason has rejected the written statement. He lastly submitted that the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondent strongly opposed the arguments forwarded by the learned counsel for the appellants and submitted that the case of the petitioner has already been dismissed by the learned DCLR on finding that in the said case involved complicated question of title and for that the appellants were directed to approach the



competent civil Court. He further submitted that the appellants talked of T.S. No. 739/2009 in which the appellants are not petitioner rather they are respondents in which the relief sought for with respect to the cancellation of the alleged gift deed and no injunction order has been passed by the competent Court from execution of sale. The learned counsel lastly submitted that the impugned order is just and proper having no illegality as such the same is fit to be upheld.

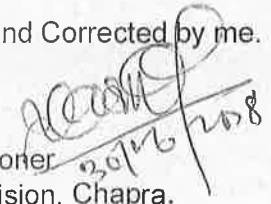
Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it is quite apparent that in the instant case involves determination of complex question of title with respect to the disputed piece of land. Both parties claim their right over the said land on one or another basis. Even it is an admitted fact by the contesting parties that a T.S. No. 739/2009 is pending in the competent civil Court. However, the learned counsel for the appellant is of the view that the learned DCLR was not competent to reject the police report submitted earlier in different context in different case with regard to present dispute. This plea seems to be correct as such the said part of the order can not be upheld. The learned DCLR has also observed that the dispute relates to determination of the respective share in the disputed land between the descendants of khatiyani raiyat and for that civil suit is pending in the civil Court and for that reason he also directed that the party can approach the competent civil Court.


In view of the aforesaid position, the impugned order of the learned DCLR, seems to be proper so far as his findings that in the instant case determination of complex question of title is involved.

As such the impugned order is upheld.

Accordingly, this appeal petition is disposed of.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


30/12/2008
Commissioner
Saran Division, Chapra.