

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

**B.L.D.R. Appeal case No. 203/14**

**Raj Kumar Singh**

**Vrs.**

**Rajendra Singh & ors.**

**ORDER**

The instant appeal petition is directed against the impugned order passed by DCLR, Sonpur in Land Dispute case No. 13/2012-13 on 31.01.2014.

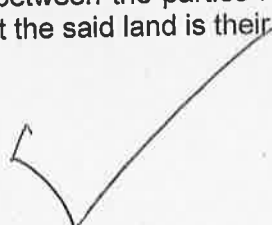
The brief facts of the case are that the present appellant Raj Kumar Singh and Tara Singh, both S/o Hari Charan Singh R/o Vill-Miyabag, P.S. & circle Sonpur, Dist-Saran filed a case before DCLR, Sonpur in which present respondents were made as o.ps. In the said the relief sought for by the petitioner was that certain lands, spread plot No. 754, 750, 753, 749 appertaining to khata No. 614, 613 and 617 respectively and having area 14 katha 11 dhur of which some lands are khatiyani and some lands were purchased by the ancestors. His further claim was that as the o.ps hence encroached upon some area of the said land and there is dispute relating to boundary of the said land, as such the said land be measured by appointing a survey knowing commissioner. Thereafter, the learned DCLR, heard the case and finally vide order dt. 30.01.2014 rejected the said case on the ground of defective case and also based on wrong facts. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant while assailing the impugned order, submitted that the learned lower Court misunderstood the scope of the case and evidence required for the same. He further submitted that the learned lower Court erred in not legally interpreting the Jamabandi of disputed land and rent receipt filed by the petitioner. The learned counsel also submitted that the learned lower Court erred in not considering the rent receipt document and possession whereas rent receipt proves that plot No. 748 in possession of the appellant and respondent No. 1-4 and even not accepted the plea of portion as stated by the petition. Apart from that he also argued that the admitted facts by both parties that they have constructed house, which itself is a best proof of partition. He further argued that the learned lower Court ought to have allowed the partition and should hence directed the C.O. to get the boundary fixed by the Anchal Amin or should have directed the parties to get their dispute resolved by Civil Court. He lastly prayed that the impugned order is fit to be set aside.

The learned counsel for the o.p. on the other hand, vehemently opposed the pleadings forwarded by the learned counsel for the appellant and submitted that the case brought before DCLR was not maintainable and even no documents were attached. He further submitted that the case of the appellant relates to dispute pertaining to title and he also sought recovery of possession. He lastly said that the impugned order is just and proper having no infirmity as such the same is fit to be upheld and this petition lacking merit is fit to be dismissed.

Considering the facts circumstances of the case, material available on records, pleadings forwarded by the learned counsel for the 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 said disputed land on the basis that the said land is their khatiyani land and some



are purchased by their ancestors. It is also an admitted facts by the parties that they have got their possession over that. The dispute basically relates to the question that some area of the said land has been encroached by the other party as such the said land be measured. The learned DCLR in his detailed order analysed the whole facts of the case and finally concludes that the case itself is defective and based on wrong facts resulting in dismissal of the said case. The learned counsel for the appellant failed to point out as how the said findings of the learned DCLR was wrong on the other hand, the learned counsel for the o.p. is of the firm view that the case was neither maintainable before the lower Court nor before this Court in view of the complex nature of the case which can not be resolved by the learned DCLR. It is pertinent to reproduce here the concluding paras of the impugned order of learned DCLR which reads thus:-

"प्रथम दृष्टया ऐसा प्रतीत होता है कि वादीगणों एवं प्रतिवादीगणों के बीच प्रश्नगत भूमि का बंटवारा नहीं हुआ है और यदि कोई मौखिक बंटवारा हुआ भी है तो वादी एवं प्रतिवादी फरिक्केन में सहमति नहीं है। वादी ख़ाता सं०-625 खेसरा सं०-748 की पैमाईश करने का अनुरोध किया है जो गलत है क्योंकि उक्त भूमि वादी की न होकर अन्य व्यक्तियों के नाम से है।"

The above conclusion of the learned DCLR seems to be just and proper in the facts and circumstances of the case as such the same is upheld.

In the result, this appeal petition being devoid of any merit, stands dismissed.

Dictated and Corrected by me.

Commissioner  
Saran Division, Chapra.

Commissioner  
Saran Division, Chapra.