

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 336/2014

Bijali Sah

Vrs.

Munshi Sah & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in Land Dispute Resolution case No. 81/2014-15 on 10.11.2014.

The brief facts of the case are that the present respondents Munshi Sah and his two brothers, all S/o Bhuteli Sah, R/o Vill-Usari, Circle-Maharajganj, Dist-Siwan filed a case before DCLR, Maharajganj in which present appellants were made as o.ps. In the said case the prayer of the petitioners (present respondents) was that the land in question measuring 1 katha 17 ½ dhur of khata No. 186, plot No. 257 was purchased by their father by one Jileba Kuwar on 06.07.1977 by sale deed over since then the said land remained in the possession of their father and after his death they came in possession over which the o.ps (present appellants) are bent upon to grab possession as such they be restrained from making any disturbance. Thereafter, the learned DCLR after hearing the case finally vide order dt. 10.11.14 and confirmed the claim of the petitioner and also directed the o.ps from making any obstruction thereupon. Feeling aggrieved by the said order, the present appellants (o.ps before DCLR) has preferred the instant appeal case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants while assailing the impugned order submitted that the said order is against the facts and circumstance of the case and the same is also without jurisdiction. He further argued that the case filed before the learned DCLR involved adjudication of complex question of title and possession of the parties and in that situation the learned DCLR should not have dealt with the case under the provisions of BLDR Act. He further argued that the respondents claim over the land in question in based on a sale deed alleged to have been executed by Jileba Kunwar alleging her to be daughter of recorded tenant Nanda Mishra but the case of the appellant is that the said Jileba Kunwar was not the daughter of the Nanda Mishra. The learned counsel further argued that the learned DCLR ought to have held that the recorded tenant Nanda Mishra had died in estate of jointness, issueless with his brother Raj Kumar Mishra in 1933 and thus the entire property of the branch of Nihora Mishara including the disputed plot No. 857 came in his possession. He also argued that the very sale deed alleged to have been executed in favour of Bhuteli Sah is forged, fabricated and inoperative. He also submitted that the decision passed in T.S. No. 145/1982 is not binding upon the appellants. Apart from this, the learned counsel also submitted that the learned DCLR has wrongly interpreted the whole facts of the case and in the process he held the claim with regard to possession over the disputed land of the respondents. He lastly said that as in the instant case determination of complex issue of title and possession are involved the learned DCLR instead of passing any order should have directed the parties to file appeal before the competent civil Court for resolving the dispute.

The learned counsel appearing on behalf of the respondent while opposing the arguments forwarded by the learned counsel for the appellant submitted that the disputed land

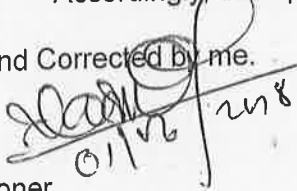
was belonging to Nihora Mishra and respondents ancestor had purchased the said land from Jileba Kunwar on 06.07.1977 and subsequently Jamabandi was created and thereafter the descendents of Bhuteli Sah has been coming in possession. He further argued that ADJ-V-Siwan has decided in favour of the Brij Nandan Pandey holding that the gift deed executed by Jileba Kunwar as true while deciding the partition suit No. 145/1982. The learned counsel also argued that now no question can be raised on the said sale deed executed by Jileba Kunwar. He lastly submitted that the present appeal petition is fit to be dismissed.

Considering the facts and 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 quite obvious that the case brought before learned DCLR by the present respondent relates to determination of complex question of right, title and possession of the parties over the disputed land. But it is seen that the learned DCLR, instead of closing the proceeding and directing the parties to seek remedy before the competent Civil Court, went on to decide the matter for which he was no way competent as per the clear provision of section 4(5) of the BLDR Act. In the instant case both parties claim to have acquired title over the disputed land on the basis of sale deed executed by the descendents of rightful owner to their ancestors. However, the very fact as to whether one Jileba Kunwar stated to have executed the sale deed in favour of the ancestors of the present respondent is correct or not this is an issue appears to be highly controversial as the very existence of the said Jileba Kunwar is questioned by the appellant for the reason that her father stated to have been died issueless. This complicated issue is the centre point of all dispute of the present case. Obviously, such kind of disputed question with respect to claim of title can not be decided in a summary proceeding under the provisions of BLDR Act-2009. It appears that the learned DCLR has completely ignored the mandatory provision of section 4(5) of the BLDR Act-2009 and went on to determine the complex question of right and title of the parties. It is to be noted that section 4(5) of BLDR Act-2009 has clearly envisaged that under all circumstances where issue relating to title arise would have to be mandatorily closed by the competent authority. It is seen that the learned DCLR has not considered this provision of the act while disposing of the case.

For the reasons stated above, the impugned order of DCLR is not sustainable and hence the same is set aside.

Accordingly, this appeal petition is disposed of.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.