In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 81/2015

Rajesh Pandey

Vrs.

Ramadhar Kumar & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Chapra Sadar in Land Dispute Resolution case No. 118/2013-14 on 23.01.2015.

The brief facts of the case are that one Dwarika Pandey S/o Late Ram Das Pandey, R/o Vill-Hariharpur, P.S.-Baniapur, Dist-Saran filed a case before DCLR, Chapra Sadar in which present respondents were made as o.ps. In the said case the relief sought for by the appellant was that the disputed land measuring 8 dhur of plot No. 1648, khata No. 285 was the purchased his land in the name of his brother which has been illegally encroached by the o.ps as such the said encroachment be removed. Thereafter, the learned DCLR after issuing notices to the o.ps, heard this case and finally dismissed the said case, vide order dt. 23.01.2015.

Feeling aggrieved by the said order an appeal petition was preferred by the original petitioner before this Court. But during the pendency of the instant appeal case, the sole petitioner died as a result of this his legal representative were made as appellant as the substitution petition allowed by this Court vide order dt. 10.08.17.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant in his brief argument submitted that the impugned order is illegal as the case of the appellant was disputed keeping in view the report filed by C.O. Baniyapur. He further argued that, although, the appellant as petitioner had orally requested to the Court for the appointment of survey knowing Commissioner to identify the land but his said prayer was turned down without any reason. He lastly prayed that the impugned order be set aside.

The learned counsel appearing on behalf of the respondent strongly opposed the argument forwarded by the learned counsel for the appellant and submitted that the appellant on the basis of wrong facts had filed the case. He further said that plot No. 1647 is situated in east of plot No. 1648 and the house of respondent is in plot No. 1647 and in the south the public road runs over which Govt. found has been spent and it is totally wrong to say that the respondent had filed soil on the said land. He lastly said this appeal case is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, claim and counter-claims made by the learned counsel for the parties and on perusal of the impugned order, it appears that in the instant case the dispute between the parties relates to 8 dhur of land belonging to the appellant which alleged to have been encroached by the respondent. But it is seen that the learned DCLR in order to resolve the dispute of the parties sought a report from C.O. Baniyapur and subsequently also based his findings on the said report. The findings arrived at by the learned DCLR reads thus:-

"अंचल अधिकारी, बनियापुर द्वारा अपने पत्रांक 523 दिनांक 25.07.14 के द्वारा प्रेषित प्रतिवेदन का अवलोकन किया। अंचल अधिकारी ने जॉचोपरान्त प्रतिवेदित किया है कि तकरारी भूमि तक सरकारी रास्ता है एवं उसके वाद,

वादी एवं प्रतिवादी की निजी भूमि है। उक्त प्रतिवेदन में वादी के जमीन पर रास्ता बनाये जाने का कोई उल्लेख नही है। उभय पक्षों के विद्वान अधिवक्ता को सुनने व अंचल अधिकारी के द्वारा प्रेषित प्रतिवेदन के अवलोकन के पश्चात् मैं इस निष्कर्ष पर पहुँचता हूँ कि वादी के जमीन से सटे सरकारी रास्ता है। वादी के जमीन का अतिक्रमण किये जाने का कोई प्रतिवेदन नही दिया है, न ही वादी ने इसे प्रमाणित किया है। उक्त परिस्थिति में वादी के आवेदन को खारिज किया जाता है।"

I do not find any infirmity in the said findings of DCLR which is a reasoned one. As such the same is upheld. On the other hand the learned counsel for the appellant failed to prove his case with respect to the claim that the said disputed land has been encroached by the respondent.

For the aforementioned reasons, there is no merit in the case hence this appeal petition is dismissed.

Dictated and Corrected by me.

01/02/2018

Commissioner
Saran Division, Chapra.

01/02/2018

Commissioner
Saran Division, Chapra.