

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 305/2013

Gopal Sah

Vrs.

Deepana Devi

ORDER

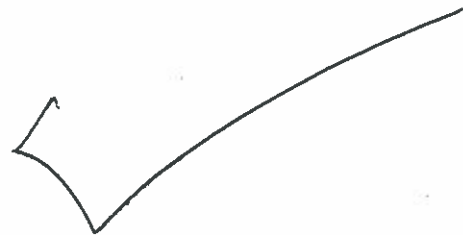
The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in BLDR case No. 23/2013-14 or 27.09.2013.

The brief facts of the case are that the present respondent Deepana Devi W/o Baliram Sah, R/o Vill-Daraudha tola Hardiara, P.S. & circle-Daraudha, Dist-Siwan filed an application in the Janta Darbar of D.M. Siwan and thereafter, a proceeding under the provisions of BLDR Act-2009 was initiated by DCLR Maharajganj. In the said case the prayer of the present respondent was that, the present appellant (o.p. before DCLR) be restrained from entering in the disputed land over 2 dhur 10 dhurki land of plot No. 202, khata No. 30, situated in Mouza Daraundha ka Tola Hardiara as the said land belonged to her and furthermore her possession over the said land be decided. Thereafter, the learned DCLR, issued notice to the other side and heard the case and finally vide order dt. 27.09.2013 allowed the said case and also directed the concerned circle officer to initiate the proceeding regarding the correction of jamabandi with respect to the disputed land. 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 submitted in detail about the claim over the disputed land. He further submitted that the learned DCLR ought to have held that the present appellant is in possession over the suit land and as such jamabandi can not be created in the name of the respondent. The learned counsel further strongly submitted that the learned DCLR ought to have held that a complex question of law in respect of title is involved in this case and which is beyond his jurisdiction to adjudicate. He further argued that the learned DCLR has erred in directing C.O. for correction of jamabandi already running in name of the appellant as he has got no jurisdiction for correction of jamabandi. He lastly submitted that the impugned order is illegal and beyond jurisdiction, the same is fit to be dismissed.

The learned counsel appearing on behalf of the respondent while opposing the arguments forwarded by the learned counsel for the appellant that the grounds taken by the appellant in this appeal are baseless and illegal whereas the order of learned DCLR is correct and legal. He further submitted that the appellant is not a privileged person under the provision of Bihar Privileged persons Homestead Tenancy Act and even the parcha



issued under the said Act in his favour is illegal as the same has been obtained through illegal activities. He further submitted that 2 dhur 10 dhurki land is the purchased land of the respondent and for which even a proceeding vide case No. 23/2012 was also initiated before Gram Panchayat sarpanch which was decided in the favour of the respondent. The learned counsel lastly prayed that the impugned order is legal and valid as such same is upheld.

Considering the facts and circumstances of the case, material available on records, claim and counter-claim made by the learned counsel for the parties and on perusal of the impugned order, it is seen that the dispute between the parties relates to their respective claim over the tiny area of land. The claim of the appellant is that the said land has been settled to him by C.O. Daraundha under the provision of BPPHT Act whereas the claim of the respondent is that the said disputed land was purchased by her ancestor through registered sale deed. It is also seen from the impugned order that previously a T.S. case No. 207/1990 has been contested with respect to the said land before Munsif -2 Siwan which was subsequently compromised by the parties. It is quite obvious that in the instant case, involves adjudication of complex question of title and even the learned counsel for the appellant is also of the view that the learned DCLR, was not competent to decide the case in which determination of title is involved.

Thus, it is quite apparent that there involves determination of complex question of right and title and it is well settled that such a complex issue can not be decided under the BLDR Act. The Hon'ble High Court also in its judgment in CWJC No. 1091/2013 (Maheshwar Mandal and others Vrs The State of Bihar and others) on 24.06.2014 has observed that the revenue authorities are not empowered to entertain matter involving adjudication of complex question of right and title. Furthermore, it has also been held that complex question of title can never be decided in a summary proceedings under the provisions of BLDR Act. Obviously the instant matter does not fall under any of the said six enactments and as such it was not maintainable before the lower Court.

Thus, for the aforesaid reasons and keeping in view the observations made by the division bench of the Hon'ble High Court, as quoted above, the impugned order of DCLR is set aside. However the matter is remitted back to the Court of DCLR, Maharajganj to reconsider the case of the present petitioner under the relevant provisions of the Bihar Privileged Person Homestead Tenancy Act as opined by learned G.P.

With the aforesaid observations, this appeal petition is disposed of.

Dictated and Corrected by me.

  
Commissioner, 19/08/2017  
Saran Division, Chapra

  
Commissioner  
Saran Division, Chapra