

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

**B.L.D.R. Appeal No. 194/2012**

**Quamuddin Aansari**

**Vrs.**

**Jubaida Khatoon**

**ORDER**

The instant appeal petition is directed against the impugned order passed by DCLR, Chapra Sadar in Misc. Case No. 147/2011 on 25.05.2012.

The brief facts of the case are that the present respondent Jubaida Khatoon W/o Aagar Ali, R/o Tajpur, Tole-Prithivi Nagar, P.S.-Lahladpur, Dist-Saran initially filed a complaint petition pursuant to which a case bearing No. Misc. Case No. 147/2011 was initiated by DCLR, Chapra Sadar under the BLDR Act-2009. In the said case the claim of the present respondent (petitioner before DCLR) was that plot No.1388, 1398, 1404, 1405, 1446 of khata No. 762; plot No.1387, khata No. 763; plot No. 1450, 1453 and 1452 of khata No. 764 and plot No. 1381 and 1384 of Dih-basgit khata No. 1316 was transferred to her and her sister by her mother Khairun Nisha through registered sale deed dt. 23.09.1978. Her further case was that out of the said plots plot No. 1388, 1398, 1404, 1405, 1441, 1453 and 1452 was under dispute as such the present appellant (o.ps before DCLR) be restrained from making any hindrance in the peaceful possession. Thereafter, the learned DCLR, heard the case and finally vide order dt. 25.05.2012 held the claim of the present respondent as valid and accordingly he restrained the present appellant (o.p. before DCLR) from making any disturbance over the said land. Feeling aggrieved by the said order, the present appellant has preferred the instant appeal before this Court.

Heard the learned counsel for the appellant only as the learned counsel for the o.p. was absent despite being given last chance previously and the case is being disposed of by an ex-party order.

The learned counsel appearing on behalf of the appellant submitted in detail as to how the impugned order of DCLR is wrong. He further said that the learned lower Court has failed to follow that the matter is purely of Civil matter related to gift, sale deed which is not within the jurisdiction of learned lower Court. He further argued that the respondent had approached the learned DCLR with a prayer for cancellation of sale deed dt. 24.10.11 which is illegal and such kind of prayer is not maintainable before DCLR. He also said that share of three daughters, Nooraisa Khatoon, Aisah Khatoon can not be decided by the learned DCLR. The learned counsel also argued that the property of Karamat Mia has been partitioned through Panchayati and parties are in peaceful possession. He lastly said that the learned DCLR has not got any right to deal with matter involving determination of title.

Considering the facts and circumstances of the case, material available on records, argument forwarded by the learned counsel for the appellant and on perusal of the impugned order, it is quite obvious that in the instant case dispute between the parties relates to their respective claim over certain areas of land on one or another basis. The learned counsel for the appellant is of the view that since in the instant case dispute involves pertaining to respective share of the daughters of karamat Mia and such kind of dispute can not be resolved



by the learned DCLR, It is seen that the learned DCLR, instead of invoking the provision of section 4(5) of the BLDR Act went on to declare the claim to be justified. The relevant portion of the said order reads thus " उभय पक्षों द्वारा प्रस्तुत तथ्यों, तर्कों एवं दस्तावेजों की विवेचना करने से स्पष्ट है कि प्रश्नगत जमीन परिवारी को अपनी माँ खैरुन निशा से निबंधित बख्शीशनामा के द्वारा प्राप्त है तथा इस आलोक में परिवारी के नाम से जमाबंदी भी चल रहा है, जो कि परिवारी द्वारा प्रस्तुत लगान रसीद के अवलोकन से भी स्पष्ट है। विपक्षी खैरुन निशा द्वारा दिनांक 23.09.78 को किए गए निबंधित बख्शीशनामा के विरुद्ध कोई तथ्य अथवा तर्क प्रस्तुत करने में असफल रहे हैं। विपक्षी द्वारा प्रस्तुत तथ्यों एवं तर्कों में बल नहीं है तथा विपक्षी अपने कथन को साबित करने में असफल रहे हैं। अतः सभी तथ्यों की विवेचना के पश्चात मैं इस निष्कर्ष पर पहुँचता हूँ कि तकरारी जमीन पर आवेदिका का दावा सही है। अतः विपक्षी को तकरारी जमीन पर जाने से प्रतिबंधित किया जाता है। तकरारी जमीन पर आवेदिका के दखल-कब्जा में विपक्षी द्वारा किया गया कोई भी हस्तक्षेप गैरकानूनी होगा"।

It is seen that the learned DCLR has overstepped his jurisdiction under the BLDR Act in view of the clear provision enshrined in section 4(5) of the act which prohibits the competent authority to deal with the title, share and possession of the parties over the land in question. As such the case brought before the learned DCLR should not have been entertained in the BLDR Act inasmuch as in the said case multiple reliefs were sought for and amongst which one relief was for cancellation of sale deed with respect to the disputed land which is not permissible under the BLDR Act.

Thus, for the aforementioned reasons, the impugned order of the DCLR, Chapra Sadar 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.