# In The Court of Commissioner, Saran Division, Chapra

## B.L.D.R. Appeal No. 262/2012

## Sher Mohammad & ors.

## Vrs.

## Ali Gafur

## ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in BLDR case No. 11/114/2012-13 on 31.08.2012.

The brief facts of the case are that the present respondent Abdul Gaffur S/o late Sarda Mia R/o Mohalla Sri Nager, Siwan filed a case before DCLR, Siwan Sadar in which present appellant was made as o.p. In the said case the present respondent, as petitioner before DCLR, has sought relief to the extent that the land measuring a total of 2 bigha 3 katha and 7 dhur of plot No. 1442 and 1444 of khata No. 1806 situated in mohalla Sri Nager is the khatiyani land of his ancestor out of which certain areas have been encroached by the o.p as such the said area be measured and the encroached land be made free from encroachment. Thereafter, the learned DCLR heard the case and finally vide order dt. 31.08.2012 allowed the said case. Feeling aggrieved by the said order, the present appellant (o.p. before DCLR) has preferred the instant appeal before this Court.

Heard the learned counsel for the appellant only as the learned counsel for the o.p. remained absent despite have been given last chance on 07.09.2017.

The learned counsel appearing on behalf of the appellant at the very outset of his argument submitted that the impugned order has been passed against the law and pacts. The learned counsel further elaborating the facts of the case is detail submitted that in the instant case dispute basically relates to determination of title of the party over raiyati land and DCLR was not competent to adjudicate the title of the parties. He further submitted as to how the descendents of khatiyani raiyat executed sale deed of different areas of the said disputed plot to other person and how they came in possession over the disputed lands. He also submitted that a civil suit is also pending in the civil Court for the same. The learned counsel further said that the learned DCLR has not applied his mind at the time of passing the order as such the order is illegal, improper and collusive. He lastly submitted that the impugned order is fit to be set aside.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the appellant and on perusal of the impugned order, it is seen that initially the present respondent had approached the learned DCLR for measurement of the land falling in his share and also for removal of the encroachment over the said land. The learned DCLR has passed a detailed order and finally came to the conclusion that the disputed plot needs to be measured in order to identify the land of the parties. The operation part of the said order reads this :-

*"उभय पक्षों की सुनवाई एवं अभिलेखबद्ध कागजातों का अवलोकन किया। विवादित खाता खतियान में म0 हुसैन के नाम इन्द्राज है जिसमें से विवादित खेसरे के खतियानी रैयत के एक पुत्र संडा मियां ने 3 कट्ठा जमीन वर्ष 1940 तथा एक अन्य पुत्र मैडा मियां के वंशज आवेदक है, ने 2 कट्ठा जमीन वर्ष 1970 में यानि कुल 5 कट्टा भूमि विपक्षीगण के पूर्वज के नाम विक्रय किया है। आवेदक का मानना है कि उक्त 5 कट्ठा जमीन के अलावे 1 कट्ठा जमीन विपक्षीगण द्वारा अतिक्रमण कर लिया गया है। इसलिए मामले के निपटारा हेतु विवादित*

*खेसरे की मापी कर विपक्षीगण की विक्रीत भूमि आवेदक की शेष भूमि को चिन्हित करना आवश्यक है। वाद स्वीकृत करते हुए अंचलाधिकारी को निदेश दिया जाता है कि वे नियमानुसार विवादित खेसरे की मापी करवा कर उभय पक्षों की भूमि चिन्हित कर यदि कोई अतिक्रमण हो तो मुक्त कराये।"*

Thus, it appears that the learned DCLR has not decided the title of the parties under dispute. The appellant's claim that in the instant case involves complex issue of determination of title can not be considered as a valid plea in the facts of the case as such the same can not be accepted.

For the reasons stated above, the impugned order is upheld and this appeal petition being devoid of any merit is dismissed.

Dictated and Corrected by me.

01/06/2018

Commissioner
Saran Division, Chapra.

01/06/2018

Commissioner
Saran Division, Chapra.