

In The Court of Commissioner, Saran Division, Chapra

**B.L.D.R. Appeal No. 230/2014**

**Sanjit Prasad**

**Vrs.**

**Ram Naresh Mahto & ors.**

**ORDER**

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in BLDR case No. 10/2014-15 on 25.07.2014.

The brief facts of the case are that the present appellant Sanjit Prasad S/o Brahama Nand Prasad, R/o Vill-Salempur, P.S.-Bhagwanpur Hat, Dist-Siwan filed a case before DCLR, Maharajganj by impleading the present respondents as o.ps and in the said case he sought relief to the extent that the disputed piece of land measuring 1 katha 8 dhur of khata No. 104 R.S. plot No. 740 be demarcated and possession of that be delivered to him. Thereafter, the learned DCLR, issued notices to the o.ps, heard the case and finally vide order dt. 25.07.14 rejected the claim of the petitioner and held that the land in question being a Gair Mazurwa Malik land and the claim over the said land by the appellant on the basis of sale deed is not clear. 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 at the very outset of his argument submitted that the impugned order is erroneous and liable to be set aside. He further submitted in detail as to how the mother of the appellant, purchased the said disputed land on 11.07.2009 from the heir of Sheodeni Tiwary, who was a settlee of the Zamindar since year 1930. He further submitted that the Court below ought to have held that Sheo Pujan Tiwary has no right to execute any simple Mortgage deed to Krit Thakur and this alleged sale deed does not create any title and possession of the respondent. The learned counsel lastly submitted that the Court below without considering the various documents, wrongly rejected the case of the appellant as such the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondent while opposing the arguments forwarded by the learned counsel for the appellant submitted that the instant appeal is not maintainable either in fact or in law and also barred by limitation. He further submitted that jamabandi No. 287 opened in the name of the appellant without on the basis of any valid document, as such appellant can not claim his right, title and possession on the basis of said jamabandi. He further said that jamabandi No. 329 is existing in the name of respondent and he used to pay rent to the state and the said land has been purchased on 12.04.2010 from the legal heirs of Sheo Pujan Tiwary. The learned counsel lastly said that the appellant's claim is false and concocted and the learned DCLR after considering the same, rejected the claim.



Considering the facts and circumstances of the case, material available on records, pleadings made by the learned counsel for the parties and on perusal of the impugned order, it is seen that both parties claim their right and title over the disputed piece of land on the basis of sale deeds stated to have been executed by the legal heirs of the raiyat. It is seen that the learned DCLR while disposing of the case came to the conclusion that the said disputed land is of Gair Mazurwa Malik land and the appellant failed to prove his claim over the same. The learned DCLR, has discussed in detail about the whole facts of the case. However, it appears that the case of the appellant itself was not maintainable before the learned DCLR under the BLDR Act-2009 inasmuch as the appellant sought relief interalia, delivery of possession and obviously such issue can not be decided under the BLDR Act as held by the Hon'ble High Court 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.

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,  
Saran Division, Chapra

  
Commissioner  
Saran Division, Chapra