

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 147/2013

Sheo Narayan Sah

Vrs.

Chinta Devi & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Gopalganj in Land Dispute Resolution case No. 24/2011-12 on 22.04.2013.

The brief facts of the case are that the present respondent Chinta Devi, W/o Late Ramayan Sah, R/o Vill-Sirsa Bazar Dhigawa Dubauli, P.S.-Baikunthpur, Dist-Gopalganj filed a case under the provision of BLDR Act-2009 before DCLR, Gopalganj in which the present appellant was made as o.p. In the said case the relief sought by the present respondent (petitioner before DCLR) was that the encroachment made by the o.p on 7/ ¼ dhur land of 1 katha 8 ½ dhur, which came into the share of his husband after registered partition, be freed and her possession be recovered. The leaned DCLR after hearing the case, finally vide order dt. 22.04.2013 declared the right of the present respondent over the disputed piece of land and also ordered for recovery of possession. 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 parties.

Heard the learned counsel for the appellant only as the learned counsel for the respondent remained absent by filing time petition despite being given last chance on 31.08.17 vide order dt. 10.08.17 by this Court.

The learned counsel appearing on behalf of the appellant at the very outset of his argument submitted that the impugned order is illegal and without jurisdiction as the learned DCLR was not competent to decide the complicated question of title of the parties or order for recovery of possession under the BLDR act. He further said that the concluding part of the impugned order itself shows that the learned DCLR has declared the right of the respondent over the disputed land without jurisdiction. He lastly submitted that the appellant has got his share after registered partition pursuant to the judgement of the Civil Court in Title suit. The learned counsel ultimately said that as the impugned order is illegal and without jurisdiction, the same is fit to be set aside.

Considering the facts and circumstances of the case, material available on records, pleadings made by the learned counsel for the appellant and on perusal of the impugned order, it is quite obvious that in the instant case the dispute between the parties relates to declaration of right and recovery of possession with respect to private land. In fact, the present respondent had also approached the competent authority seeking relief for removal of encroachment and recovery of possession. It is seen that the learned DCLR went on to decide the said complicated issue in a summary proceeding under the BLDR Act. Certainly, the said case before DCLR was not maintainable at all as per the provision of BLDR Act. Thus the impugned order passed by DCLR is not sustainable and the same can not be upheld.

It is well established that the subject matter of adjudication under the BLDR Act. does not include such matters. The Hon'ble High Court in its judgment in CWJC No. 1091/2013 (Maheshwar Mandal & ors The State of Bihar & ors) on 24.06.2014 has observed that the revenue authorities are not empowered to entertain matter not arising out of the six enactments mentioned in schedule-1 of the BLDR act-2009. 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 and the appeal is accordingly disposed of.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


16/09/2014
Commissioner
Saran Division, Chapra.