

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 99/2012

Janardan Bhagat & ors.

Vrs.

Ram Prasad Bhagat & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, hathua in Land Dispute case 127/2011-12 on 23.02.2012.

The brief facts of the case are that the present respondents (petitioners before DCLR) filed a case before DCLR Hathua in which the present appellants were made as respondents. In the said case relief was sought for removing encroachment over the land measuring 2 katha 3 ½ dhur of plot No. 206 and khata No. 94 situated in village selar khurd of Gopalganj district and further prayer was that delivery of possession be made with respect to the said land. The learned DCLR, after hearing the parties finally vide order dt. 23.02.2012 disposed of the case wherein he ordered for removal of the fire woods kept over the encroached land within 30 days failing which the competent authority would deliver the possession. 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 that in the instant case involved adjudication of complicated question of law and fact so the learned DCLR had no jurisdiction to try this case. He further submitted that a case bearing P.S. No. 288/10 is also pending in the Court of Sub-judge-1, Gopalganj in which the disputed land of this case is also under dispute and appellants and respondents are parties. He further argued that as the case relating to disputed land was pending in the competent civil Court, the learned DCLR should have directed the parties to get their fate decided in the pending partition suit. He also assailed the impugned order that in the said order the genuineness of the sale deeds have been decided for which DCLR has got no jurisdiction. He lastly said that as the learned DCLR has passed order beyond jurisdiction, the same is fit to be set aside.

The learned counsel appearing on behalf of the respondent, while strongly opposing the arguments forwarded by the learned counsel for the appellant, submitted that actually the disputed land is recorded in khatiyan in the name of Rudal Koeri and ors. and their shares have been defined. He further submitted that the said disputed piece of land was purchased by him on 03.02.97 and thereafter came in possession and subsequently got constructed his residential house and remaining portion being used as sahan. He also submitted that it is the left out part of land in front of his house which has been illegally captured by the respondents by keeping fire woods and it was for the removal of the same the respondents have approached the learned DCLR. He also said that it is wrong to say that there is any dispute with respect to sale deeds. The learned counsel lastly said the impugned order is just, proper and valid and hence the same is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, respective 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 basically relates to private land. The respondent had actually sought relief before DCLR for removal of alleged encroachment and also for delivery of possession and the learned DCLR went out to decide the matter which is normally not permissible under the BLDR Act-2009. In fact the learned DCLR should not have dealt with the matter in which dispute between the parties relates to delivery of possession. The learned counsel for the appellant is of the firm view that this case was not maintainable before DCLR in view of the nature of dispute and relief sought for. I find some substance in the said plea.

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 Vrs 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 observation made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and this appeal petition is accordingly disposed of.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


Commissioner
Saran Division, Chapra.