

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 174/2014

Suresh Manjhi

Vrs.

Aashutosh Kumar & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by learned DCLR, Hathua in Land Dispute case No. 84/2013-14 on 15.04.2014.

The brief facts of the case are that the present respondent Aashutosh Kumar filed a case before DCLR, Hathua vide Land Dispute case No. 84/2013-14 wherein the present appellant was not made as party. In the said case the relief sought by the present respondent was that the land in question measuring 6 decimal of plot No. 643, having total area 31 decimal, situated in Mouza Dhanauti, Circle-Kateya, Dist-Gopalganj has been settled to him by Bhoodan Yagna Committee from which Sheo Shankar Bhagat and Sheo Janam Bhagat, both sons of Jagarnath Bhagat of the same village had dispossessed him from the said land as such his possession may be delivered. Thereafter, the learned DCLR after issuing notices to the ops, heard the case and finally vide order dt. 15.04.2014 held that the claim of the petitioner found to be true regarding his possession over 6 decimal of land as per the report of Halka Karmachari, Anchal Amin and circle Inspector. He further directed the C.O. Kateya to ensure the delivery of possession to the Bhoodan raiyat after demarcation the land.

Against the said order of learned DCLR, dt. 15.04.14 the original respondent did not bother to prefer any appeal rather one Suresh Manjhi S/o Late Sheo Nandan Manjhi, R/o Vill-Dhanauti, P.S.-Kateya, Dist-Gopalganj preferred the instant appeal petition and this Court after hearing the appellants counsel admitted the appeal vide order dt. 22.09.2014.

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 bad in law. He further submitted that the learned DCLR had no jurisdiction to decide the complicated question of title under the BLDR Act. The learned counsel further submitted that as both parties claim their possession right and title over the disputed land on the basis of Bhoodan certificate and rent fixed by the competent authority in such a situation the learned DCLR should not have decided the issue. He further argued that the disputed plot No. 643 alongwith plot No. 614 is recorded in R.S. khatian as Gair Mazurua Malik Parti Kadim and it was donated to Bhoodan Yagna Committee and thereafter, Bhoodan Yagna Committee issued certificate with respect to the said land in favour of Sri Bhagwan Manjhi S/o Sheo Nandan Manjhi who died issueless and after that the said land came in possession of the present appellant. He also submitted that rent was also fixed vide Rent Fixation case No. 19/97-98 of the said land. He

lastly submitted that the respondents with collusion with other person and concealing the facts of the case filed a case before DCLR and got order in his favour as such the impugned order is fit to be set aside.

The learned counsel for the respondent while opposing the arguments forwarded by the learned counsel for the appellant submitted that this appeal is legally not tenable and liable to be rejected. He further submitted that the appellant has no legal right to file appeal against the impugned order because the appellant was not made party before the learned lower Court, hence he has no locus standi to file this appeal. He further submitted that the appellant has misled the Court and got the appeal admitted. The learned counsel also submitted that the Bhoodan Yagna Committee after properly verifying the possession of the respondent issued Bhoodan certificate in favour of respondent No. 1 as such the respondent became absolute owner of the disputed land and jamabandi No. 1059 was created also in his favour. He further argued that the act of dispossession by the respondent No. 2 & 3 were illegal and thereafter, respondent No.1 was entitled to recover possession through process of law. He further said that the total area of the disputed plot is 31 decimal and out of which only 6 decimal has been settled/allotted to the respondent No.1 from Bhoodan Committee and sati Maiya Sthan is outside the disputed area. He also said the appellant is not the aggrieved person nor he has any right to prefer appeal because he is no where nor he is in possession and as the instant appeal suffers from illegality hence the appeal is liable to be dismissed.

Considering the facts and circumstances of the case, material available on records, rival submissions forwarded by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case, both parties lay their claim over the land in question on the basis of Bhoodan certificate issued by the Bhoodan Yagna Committee and subsequent fixation of rent in their favour. However, it is interesting to see that in the initial case, before DCLR, preferred by the present respondent No.1 he did not implead the present appellant as respondent rather some other persons were made as respondents. It appears that the learned DCLR has not considered the entire aspects of the case in its correct perspective before arriving at the final findings of the fact. This itself makes the order defective.

Thus, for the aforesaid reasons, the impugned order is set aside and the case is remitted back to DCLR, Hathua for fresh consideration in accordance with law after affording opportunity of hearing to all concerned.

With the aforesaid observations and direction, this appeal petition is disposed of.

Dictated and Corrected by me,

Commissioner
Saran Division, Chapra.

Commissioner
Saran Division, Chapra.