

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 197/15

Bikarma Sharma & ors.

Vrs.

Parmeshwar Prasad & ors.

ORDER

The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in Land Dispute Resolution case NO. 157/2014-15 on 03.07.2015.

The brief facts of the case are that the present respondents Parmeshwar Prasad and two others, all sons of Late Sudarshan Bhagat, R/o Vill-Molanapur, Cicle-Basantpur, Dist-Siwan filed a case before DCLR, Maharajganj as petitioners in which present appellants were made as o.ps. In the said case the relief sought for by the petitioner was that the disputed land measuring 01 katha 02 dhur, of khata NO. 113, plot No. 1191 recorded in khatiyani in the name of Sanmat Kurmi and over that a house alongwith Sahan exist from which the o.ps be restrained from making any interference. The learned DCLR after hearing the parties finally vide order dt. 03.07.2015 passed order restraining the o.ps from making any interference and furthermore, directed the parties to get confirm their sale deeds from the competent Civil Court. Feeling aggrieved by the said order, the present appellants (o.ps before DCLR) have filed the instant appeal before this Court.

Heard the learned counsel for the appellant only as the learned counsel for the respondent was remained absent despite being given last chance on 24.08.17 vide order dt. 06.07.2017 and consequently this case is being disposed Ex-party.

The learned counsel appearing on behalf of the appellants at the very outset of his argument, submitted that the impugned order is illegal and void as the same has been passed without considering the relevant documents and without application of mind. He further said that the learned Court below wrongly held that the appellants not to interfere in suit properties rather ought to have held that the right, title, interest and possession in the suit properties. He also argued that the learned Court below has no jurisdiction to declare any title and possession and to restrain any person under BLDR Act-2009 as held by the Hon'ble High Court. He lastly said that the whole approach of Court below is confused and irrational as such the same is fit to be set aside.

Considering the facts and circumstances of the case material available on records, arguments advanced by the learned counsel for the appellant and on perusal of the impugned order, it is quite obvious that the dispute between the parties relates to raiyati land what stated to have been acquired by them though sale deeds on different dates from the rightful owner. It is also a fact that the present respondents had approached the competent authority, the learned DCLR with a limited prayer that the o.ps (present appellant) be restrained from making any interference over the disputed land. The learned DCLR has also passed order with regard to restraining the o.ps from making any interference, and also directed the parties to approach the competent Civil Court for the confirmation of their sale deed documents. The relevant portion of the

said order reads thus:

“अतः प्रश्नगत भूखंड खाता नं०-113, सर्वे नं०-1191 रकबा 01 कट्ख 02 धूर मौजा मोलनापुर पर प्रतिवादी प्रश्नगत भूखंड से संबंधित बैनामा की पुष्टि व्यवहार न्यायालय में वाद दायर कर कराये तथा व्यवहार न्यायालय द्वारा उक्त बैनामा की पुष्टि के बाद ही वे प्रश्नगत भूखंड पर कोई दावा करेंगे।”

In fact, the said order of the learned DCLR can not be termed as wholly incorrect or illegal inasmuch as he has not decided the title or right of the parties with respect to the disputed land. However, restraining a party from going over the disputed land without any valid reason, under the BLDR Act. can not be held as correct and legal in view of the fact that the said disputed land is neither a allotted or settled land.

It is well settled that such a complex issue relating to determination of right, title possession can not be done under the provision of BLDR Act. The Hon'ble High Court also in its judgment in CWJC No. 1091/2013 (Maheshwar Mandal and others vrs The State of Bihar and others) on 24.06.2014 has clearly 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 and also held that complex question of title can never be decided in a summary proceedings.

For the aforesaid reasons and discussion made therein, it is clear that the impugned order is not sustainable, hence the same is set aside and this appeal is accordingly disposed of.

Dictated and Corrected by me.


Commissioner
Saran Division, Chapra.


04/09/2017
Commissioner
Saran Division, Chapra.