

**IN THE COURT OF COMMISSIONER, SARAN DIVISION, CHHAPRA**

B.L.D.R. Appeal No.12/2012

Jiwan Sah & others ..... Petitioners

Vrs.

Chandrika Prasad & Others ..... Respondents

**ORDER**

26.03.2013

The instant appeal is directed against the impugned order, passed by DCLR, Siwan Sadar on 28.12.11 in case No. 70/2011-12 under the provision of Bihar Land Dispute Resolution Act.

2. The brief fact of the case is that the disputed pieces of land measuring 3 katha 19 dhur appertaining to Khata No.33 R.S. plot Nos. 323 & 324, are situated in Vill-Pakri Bangali P.S. & Dist-Siwan. The said land belonged to one Ganpat Turha as per entry in Record of Right. After his death his son Raj Nandan Sah/ Ragonandan Turha/ Raghunandan Sah alias Bhakol Sah, who was issueless executed a gift deed on 16.7.1990 in favour of his nephews Vidya Sah and Vishwanath Sah/ Krsihna Nath Sah/ Krishnath Sah/ Kishnath Sah, who were sons of his father's sister. Thereafter Vidya Sah and Kishnath Sah transferred the said land by registered sale deed in the year 1992 to Md. Qayum, Abdul Basher, Ehsanul Haque and Anisul Nisha.

3. The same transferor Raghunandan Sah alias Bhakol Sah also transferred through gift the same disputed land alongwith some other lands belonging to other khatas and khesera on 26.7.1990 to Rajendra Sah, Jawahar Sah, Subash Sah and Jai Prakash Sah and the same was registered at Maharajganj Sub-Registry office. The second set of purchasers transferred the land in the year 1994 to Sahid Ali and the present respondents- Chandrika Prasad etc claim to have purchased the said disputed pieces of land from Sahid Ali in the year 1996 and got Jamabandi No.728 created in their name on the basis of an order passed by the CO Pachrukhi in Mutation Case No. 1179/90-91 on 22.2.1991.



4. Later, on a complaint of the first set of donees Vidya Sah and Kishnath Sah, the DCLR Siwan, vide order dated 7.3.1994 in Mutation Appeal No. 48/92-93, ordered to delete the names second set of donees viz of Rajendra Sah, Jawahar Sah, Subash Sah and Jaiprakash Sah from the mutation record and to enter names of Kishnath Sah and Rajendra Sah in the record. Then aggrieved by the said order to change the mutation record, the present set of respondents preferred a case before DCLR, Siwan under the provision of BLDR Act 2009 and the learned DCLR allowed the case in their favour. On being aggrieved by and dissatisfied with the aforesaid order, the appellants preferred this appeal case before this Court.

3. Heard the parties. The learned counsel appearing on behalf of the petitioners submitted that respondents/ second set of donees had acquired forged deed of gift on 26.07.90 ten days after the first gift deed was executed on 16.7.1990 and the above deed was registered in the registration office, Maharajganj but disputed land is situated outside its jurisdiction in Vill-Pakri Bengali and another six dhur land of khata No. 177 R.S. Plot 2255 situated in Vill-Parsauni. The above land of khata No.177 was recorded in R.S. Khatiyani in the name of Dev Narayan Rai and he never executed any deed in favour of Raghunandan Sah. He further submitted that the gift deed dated 26.07.90 is forged and fabricated and respondents do not have any right, title and interest on that basis so the appeal is legally liable to be allowed according to law and facts. In support he also cited rulings reported in 1998 PLJR Vol-3, page No. 375 and 2005 PLJR, page No. 721 wherein it has been held that " the title will be passed on the date of execution"

4. The learned counsel appearing on behalf of the respondents submitted that the provisions contained in the BLDR Act have got no application in the present case. He further submitted that Raghunandan Sah alias Bhakol Sah had executed a deed of gift dt. 26.07.90 in favour of present respondents and also delivered possession to the donors and they got their names mutated in govt. record and are paying rents. He also argued that the same donor had executed two gift deeds to two sets of persons on two dates 16.07.90 and 26.07.90 with respect to the same properties. He also submitted that the order



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of DCLR is detailed and having no infirmity and the claim of the petitioners are completely baseless and incorrect so the appeal is fit to be rejected.

5. Although some aspects of the case have not been brought to light by the parties and names of persons involved and other particulars have been changed and interpolated several times, after perusal of records, I have come to have a fair ideas of the case. The first important issue which struck me was that the learned DCLR admitted and adjudicated the case which was virtually an appeal under BLDR Act against his own order in Mutation Appeal case No. 48/92-93 under another law. This is not permissible under this law.

6. It was pointed out before him in the court that the petitioners (respondents here) could have filed a second appeal petition before higher authority under the law of mutation instead of filing a fresh case under another law against order in appeal already passed by him. Unfortunately the learned DCLR did not apply his mind on this vital issue and passed a wrong order against his own previous order, albeit by another incumbent. This is not only illegal, but also unethical.

7. In this regard, section 4(2) of the Bihar Land Disputes Resolution Act, 2009 is very clear and reads "The Competent Authority shall not have jurisdiction to review or reopen any finally concluded and adjudicated proceeding under any of the Acts contained in Schedule 1. The Competent Authority shall exercise his authority for resolving the dispute brought before him on the basis of any final order passed by any of the authorities empowered to do so in the Acts contained in Schedule 1 of this Act." Whereas in this case, the learned DCLR reversed the order of his predecessor passed under the law of mutation which has a provision for second appeal/ revision before higher authority. This is illegal.

8. Accordingly I set aside the impugned order.



( C. Lalsawta )

Commissioner, Saran Division, Chapra