

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. appeal No. 355/2012

Sudhir Kumar & ors.

Vrs.

Yogendra Rai & ors.

ORDER

22-09-2015- The instant appeal petition is directed against the impugned order passed by DCLR Sadar, Chapra in BLDR case No. 01/2011-12 on 28.11.2012.

The brief facts of the case are that the present appellant Sudhir Kumar S/o Damodar Prasad and others R/o Vill-Kazipur, Rasulpura, P.S.-Dariyapur, Dist-Saran filed a case before DCLR, Chapra Sadar by making present respondents as o.ps. In the said case their prayer was that Jamabandi created in favour of the present respondent be cancelled and order be passed for creation of Jamabandi in favour of the appellant in respect of disputed land of khata No. 223, plot No. 1071 and 908 having total area of two bighas. Thereafter, the learned DCLR, after issuing notice to the present respondents heard the matter and finally vide order dt. 28.11.2012 closed the proceeding with a direction to the appellant to approach the competent Court for the adjudication of title. Feeling aggrieved by the said order, the appellants have preferred this appeal case before this Court.

Heard the parties.

The learned counsel for the appellant while assailing the impugned order submitted that the disputed land was purchased by the father of the appellant Kapildeo Prasad from the Ex-raiyat Smt. Anandi Devi, W/o Ram Narain Rai through registered sale deed in the year 1978 and got possession but due to lack of knowledge they could not get the land mutated in his name. He further argued that it was during the course of Dakhil-Kharij process he came to know that the o.ps have fraudulently got the Dakhil-Kharij done and also got created Jamabandi No. 402 for the said land. He further submitted that the learned DCLR without considering the material facts of the case and without perusing the documents filed before him, passed the illegal and erroneous order and hence the same is fit to be set aside and this appeal be allowed.

The learned counsel for the respondents, on the other hand strongly opposed the averments forwarded by the appellants counsel and argued that this appeal is not maintainable rather the same is fit to be rejected because the instant appeal has been filed by suppressing the material facts of the case. He further said that Jamabandi has been created much before and the respondents are paying rent but the same has not been challenged through appeal in the past. He also submitted that several cases were filed in the past in competent Civil Court and even title suit No. 56/1979 has already been decided by order dt. 17.07.82. He lastly prayed that this appeal is fit to be rejected.



Considering the facts and circumstances of the case, material available on records and on perusal of the impugned order, it is seen that in the instant case involves complex question of right and title between the contesting parties. The learned DCLR has rightly closed the said proceeding in view of the nature of dispute involved in the case which was brought for adjudication before him. I do not find any apparent illegality in the said order as the relevant provision of the BLDR Act, 2009 also prohibits the revenue authority to deal with the cases involving determination of right and title. The Hon'ble High Court in the case of Maheshwar Mandal & ors Vrs The State of Bihar and ors. has observed that issues relating to adjudication of right and title can not be decided by the revenue authority.

Thus, for the aforesaid reasons, the impugned order of DCLR is upheld and this appeal petition is dismissed, accordingly.

Dictated and Corrected by me.

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22.9.15
Commissioner,
Saran Division, Chapra

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Commissioner,
Saran Division, Chapra