

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 262/2013

Latif Miya & Ors.

Vrs.

Kashim Khan & Ors.

ORDER

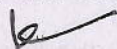
01-09-2015- The instant appeal is directed against the impugned order passed by DCLR, Mahrajganj in BLDR Case No. 248/2012-13 on 08.08.2013.

The brief facts of the case are that the present respondent kashim Miya filed a case before DCLR, Mahrajganj by making the present appellants as O.Ps. In the said case his prayer was that the land in question measuring 04 Katha 17 dhur of plot No. 2388, Khata No. 448 situated in village Mustafabad Akil tola is recorded in Khatiyani in the name of Sahebjada Khan who is his ancestor. Out of the said land 02 Katha land towards south have been illegally occupied by the present appellants as such the said land be demarcated and illegal possession of the present appellants be removed. Thereafter, the learned DCLR after hearing the parties finally vide order dated 08.08.2013 allowed the said case and held the claim of the present respondents as Khatiyani raiyat of the disputed land is confirmed and also ordered for the removal of alleged illegal possession. Feeling aggrieved by the said order, the present appellants (respondent before DCLR) has preferred this appeal.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants submitted that admittedly R.S. khatiyani is recorded in favour of Sahebjada Khan and Sahebjada Khan executed sale deed in favour of Uja Miya and when problem was created by Hamid Khan brother of Sahebjada Khan, Hamid Khan executed a LADABI (relinquish deed) in favour of Uja Miya and stated therein that Md. Hamid and his heirs have no concern with the disputed plot but these facts were not considered by the court below and wrongly allowed the case of respondent No. 02. He further argued that respondent No. 02 has no right to bring BLDR Case but ignoring the facts the case has been brought and learned court below has wrongly passed an order for demarcation and recovery of possession although, there involves complex question of law and title and this case was beyond the jurisdiction of the court below. He lastly submitted that this case is liable to be set aside and moreover, a civil suit No. 716/2013 is pending before sub-judge Siwan.

The learned counsel for the respondents, on the other hand while appreciating the impugned order submitted that the order of lower court is justified. The reasoned order passed by the lower Court is not liable to be interfered inasmuch as the lower court has discussed all the points touching right, possession, dispossession and demarcation. He further argued that the learned lower court has rightly held the right of respondent No. 02 over the disputed land and ordered for demarcation and removal of



encroachment. He further argued that the claim of the appellant on the basis of LADABI which itself is forged and fabricated. He lastly prayed that this appeal is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, respective arguments advanced by the parties, their written arguments and on perusal of the impugned order, it is seen that both parties admit that in the instant case involves determination of right over the disputed piece of land. The Claim of the appellant is based on so called relinquish deed whereas the claim of the respondent is based on the sale deed. However, the present respondent has approached the DCLR for demarcation of his land and removal of illegal possession and recovery of possession but the learned DCLR went on declaring the right of the respondent. This is certainly not permissible under the BLDR Act. In fact complex question of right, title and possession is outside the purview of the BLDR Act. The learned counsel further placed reliance on some of the reported judgements of Hon'ble High Court wherein it has been held that dispute relating to right, title and possession can not be adjudicated under the relevant provision of the BLDR Act.

Thus for the aforementioned reason, the impugned order is not sustainable, hence the same is set aside and this appeal is accordingly disposed of.

Dictated and Corrected by me.

b-1-9-15
Commissioner,
Saran Division, chapra

b-1-9-15
Commissioner,
Saran Division, Chapra