

IN THE COURT OF COMMISSIONER, SARAN DIVISION, CHHAPRA

B.L.D.R. Appeal No..... 200/2012

Yogendra Pandey Petitioner

Vrs

Bachcha Pandey & Others Respondents

ORDER

28.02.2013

The instant appeal is directed against the impugned order of DCLR, Chapra, Sadar passed on 30.06.2012 in Land Dispute Misc. Case No. 44/2012.

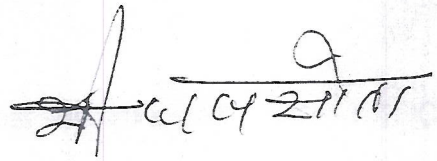
2. The relevant facts of the case in brief are that the appellant had filed a case before the learned DCLR, Chapra Sadar wherein his prayer was that the purchaser (s) [some respondents] of the land appertaining certain khata and khesera, claimed to be undivided property be not allowed to go on the land sold by the vendor(s) [some respondents]. The further case of the appellant is that there is no division of property amongst the four sons of Ram Parey Pandey. Ram Payey Pandey had filed a partition suit before Addl. Sub-Judge-4 Chapra which was disposed on 12.05.1980 against which the present respondent filed an appeal numbering 748/1980 before Hon'ble High Court which is still pending. But the learned DCLR Sadar, Charpa while disposing the said case observed that since a partition case bearing No. 742/1980 is pending before Hon'ble High Court it was not legally justified to pass any order under the present circumstances so for as grievance of the petitioner is concerned.

3. On being aggrieved by and dissatisfied with the aforesaid order of DCLR, Chapra, Sadar the appellant preferred this appeal petition before this Court.

4. Heard the parties.

5. The learned counsel appearing on behalf of the appellant submitted that the order of learned DCLR is not a reasoned order and it is also wrong to say that a case is pending in the Hon'ble High Court. He further submitted that the learned lower Court has failed to see the Judgement of Civil Court passed by 4th Addl. Sub-Judge, Chapra which is on record. The learned counsel further pointed out that the disputed Khata No. 137 and R.S. plot No. 1854, 1856 and R.S. plot No. 1696 under Khata No. 129 is not in partition suit No. 97 of 1970 and also they are not in appeal before the Hon'ble High court. The learned counsel also argued that disputed land is recorded in the name of Ram Jiwan Pandey common ancestor of parties in the instant case and Respondent No. 4,5,6,7 are purchasers of disputed land and they have no right to capture the land forcibly. The learned counsel also filed a copy of Judgement in support of his contention. The learned counsel lastly prayed that the respondent be restrained from going on the disputed land till partition of the disputed land reached between the parties according to share either by mutual consent peacefully or by the Court.
6. The learned counsel appearing on behalf of the respondents submitted that the instant case is not maintainable under the provision of the BLDR Act-2009 and so far the prayer of appellant to restrain purchasers from going to the disputed land as claimed by the appellant in the lower Court is concerned, he should have filed a case under the provision of specific act for relief Act in the Civil Court. Even the appellant did not disclose about his quantum of share in the different khesras and also the pending of the case before Hon'ble High Court.
7. It appears that the learned lawyers of the parties prefer to be ambivalent in their approach and seem to prefer avoiding the hard facts. One can surmise that the petitioner/ appellant is a relative of some of the respondents who sold the disputed land to another set of respondents. He however failed to substantiate how his claim or share emanated from the disputed land and to what extent. The disputed claims are civil in nature and no wonder a civil suite had already been filed in the civil court and corollary case is still pending in the Hon'ble High Court, although the appellant disputes

the particular of land involved in this case. It would therefore be difficult for the DCLR to acceded to the prayer of the petitioner/appellant to restrain the purchasers of the land from going over the land or taking over physical possession under any provision of the Bihar Land Disputes Resolution Act, 2009. It could have been a different matter if a proceeding was initiated u/s 144/145 CrPC by the SDM or a case was taken up under the provision of Transfer of Property Act, 1882. etc by the appropriate court. The BLDR Act itself enjoins upon the DCLR to refrain from deciding complicated disputes involving claims of civil nature. Hence the order of the learned DCLR is justified and the appeal is dismissed..



(C. Lalsawta)

Commissioner, Saran Division, Chhapra