

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. appeal No. 189/2011
Umesh Yadav

Vrs.

Mochan Mishra & others

ORDER


The instant appeal is directed against the impugned order passed by DCLR, Hathua on 29.10.2011 in Bihar Land Dispute Resolution case No. 57/2011-12.

The brief facts of the case are that one Mochan Mishra S/o Bachan Mishra R/o Vill-Dumraona, P.S.-Kateya, Dist-Gopalganj filed a case u/s 4 of BLDR Act with a prayer that a Bhoodan certificate issued in respect of a plot measuring 64 decimel, having plot No.-145, khata No.75 of village Naharpur P.S.-kateya, Dist-Gopalgaj in favour of Umesh Yadav be cancelled and rent may be fixed in his name for the aforesaid disputed land. Thereafter the learned DCLR, initiated a BLDR case No. 57/2011-12 and accordingly notices were issued to the present appellant Umesh Yadav, S/o Ram Chandra Yadav of the same village. In course of hearing, the father of the present appellant appeared through his advocate and also filed certain documents. The learned DCLR after hearing the matter finally passed his order on 29.10.2011 wherein he declared that the Bhoodan certificate No. 790226 dt. 25.10.11 issued in the name of present appellant as void and also directed the C.O. Kateya to send a proposal for rent fixation of the aforesaid land.

Feeling aggrieved by the said order of DCLR, the present appellant has preferred this appeal before this Court.

Heard the parties

The learned counsel appearing on behalf of the appellant submitted that the lower Court had no jurisdiction to decide this case because complicated question of law and fact was involved and even the DCLR did not examine the report of the secretary of Bhoodan yagna Committee. He further argued that the appellant is a military-Man and is still in service and his father had constructed a pucca house over the disputed land about 50 years ago. The learned counsel further submitted that the total area of the disputed plot is 64 decimal out of this 20 decimal was settled with the appellant and 5 decimal was settled with Babu Lal Sharma of the same village and about 38 decimal has been left for Rasta and Khalihan of the villagers. The learned counsel further arguing his case submitted that Bhoodan yagna Committee submitted his report to C.O. and sent the copy of the same to DCLR, Hathua by letter No. 605 dt. 22.10.11 and even this impotent piece of evidence was completely ignored by the DCLR and not even whispered about the same in his final order. He also submitted that the appellant is in military Service so his father as guardian and karta of the family appeared in lower Court and filed reply on behalf of the appellant but the lower Court drew an adverse inference that no objection has been filed. He also submitted that the lower Court should have enquired about the actual possession and structure standing over the disputed land that. The learned counsel also submitted that there are also some infirmities as such the impugned order be set aside and this appeal be allowed.

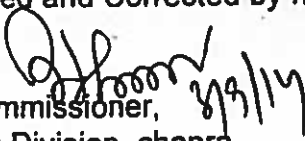

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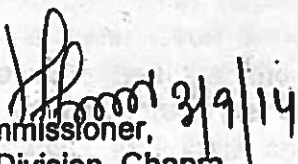
The learned counsel appearing on behalf of the Ops while assailing the impugned order submitted in details as to how and why the O.P. No. 1 came into the possession of the disputed land and it was on that basis he filed a case before DCLR, Hathua that Bhoodan certificate issued in favour of the present appellant be cancelled and rent fixation of disputed land may be done in his name. He further submitted that the Bhoodan certificate obtained by the appellant is forged and fabricated document where as the present OP. No. 1 submitted all papers like khatiyani of disputed land, patta in the name of Bani Mishra granted by Hathua Raj, the ex-land, Rent receipt of Hathua Raj in Jamabandi No. 34 in the name of Bani Mishra since 1938 to 1952, letter of C.O. Kateya dt. 17.10.2011 etc. to prove his claim. He further submitted that the appellant has not filed Form-10 along with Form 5, the Bhoodan certificate and against Form 10 was not issued and rent was not fixed in the name of appellant, then the claim is false and baseless. He also submitted that there is no evidence on record before lower Court to prove that disputed land vested in Bhoodan Committee and it was confirmed by the competent authority. Thus, as per law and rules without confirmation Bhoodan certificate is not valid genuine and operative while on the other hand the OP No. 1 has got possession over the disputed plot and the Ex-land lord has granted patta in respect of the above land in the year 1933 and on that basis Jamabandi No. 34 was created in the name of the ancestor of the OP. No.1. The learned counsel lastly prayed that as the claim of the appellant is totally false, concocted and baseless, this appeal is fit to be dismissed.

Considering the facts and circumstances of the case material on records and on going through the respective claims and counter claims made by the learned counsel for the parties, it appears that both parties are claiming their right and possession over the disputed piece of land on the basis of certain documents. The appellant claims his right over the disputed land on the basis of alleged Bhoodan certificate, purported to have been issued by the Bhoodan Yagna Committee whereas the OP No.1 claims to have acquired the raiyati right over the disputed land on the basis of Patta issued by the erst while Hathua Raj to his ancestors, way back in the year 1933. It is also seen that it was O.P. here who has approached the DCLR for fixation of rent in respect of the disputed land and the present appellant was made party in that case. Although, the learned DCLR, Hathua has passed a detailed order dealing with every aspect of the issues involved in case, but he did not consider the important issue relating to genuineness of the alleged Bhoodan certificate. What he should have considered independently to arrive at a correct findings of facts before passing the final order. More over, DCLR should have inquired the matter with regard to filing of returns at the time of vesting of estates meticulously.

Thus for the aforesaid reasons the impugned order of DCLR, Hathua dt. 29.10.2011 is not sustainable hence the same is set aside and the matter is remitted back for fresh consideration in light of above observation. DCLR is directed to hear both parties and pass appropriate order in accordance with law expeditiously.

Dictated and Corrected by me.


Commissioner,
Saran Division, Chapra


Commissioner,
Saran Division, Chapra