

**In The Court of Commissioner, Saran Division, Chapra**

**Bihar Land Dispute Resolution appeal No. 318/2013**

**Shyam Prakash Prasad**

**Vrs.**

**Thakur Rai & Ors.**

**ORDER**

The instant appeal is directed against the impugned order passed by DCLR Marhaurah in BLDR case No. 62/12-13 on 17.10.2013. The brief facts of the case are that the present appellant filed a case before DCLR, Marhaurah wherein it was stated that the land measuring 2 katha 16 ½ dhur of Mauza Gopalpur khata No. 68 plot No. 65 registered in the name of his mother Chanti Devi by Rajendra Singh from his share on 10.02.2012. But on some portion of that purchased land Nad, Khuta and Palani have been put up by the respondents illegally. Thereafter, the DCLR, after issuing notice to the respondent heard the case and finally dropped the proceeding holding that the petition filed by the present appellant did not seem to be acceptable. Feeling aggrieved by the said order, the present appellant has preferred this appeal.

Heard the learned counsel for the parties and also perused the written statements filed by them.

The learned counsel appearing on behalf of the appellant submitted that land bearing Khata No. 68, plot No. 656 having area 5 katha 13 dhur originally belonged to Tokhan Singh and his two sons namely Jagdish Singh and Rajendra Singh. After partition between the said two brother each brother got 2 katha 16 ½ dhur share out of which Rajendra Singh executed the sale deed to the mother of the appellant on 10.02.2012 and thereafter with dishonest intention Jagdish Singh (the other brother) violating the partition executed the sale deed to Thakur Rai and Sipahi Rai present respondent on 26.04.2012 toward southern portion. But the real fact is that Jagdish Singh had got his share towards western portion of the plot. The plot was not partitioned north and south rather it was partitioned east and west. He further submitted that the learned DCLR dropped the proceeding and he did not appreciate the document available on the record and the report of Sarpanch who had supported the mode and manner of partition. He also pleaded that even the affidavit filed by the vendor Rajendra Singh has not been considered. He lastly prayed that this appeal is liable to be allowed in view of the fact that the Court below has not considered the matter properly.

The learned Counsel for the respondents submitted that the land measuring 5 Katha 13 dhur was partitioned between the brothers orally and as per valuation of land Jagdish Singh has got south side and Rajendra Singh north side. The appellant purchased the land from Rajendra Singh and the remaining share was purchased by this respondent. The learned Court below considered all the facts and then dismissed the petition of the appellant. The learned counsel further said that this type of litigation is beyond the scope of BLDR Act-2009 as it involves title and

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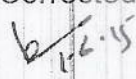
possession and in this connection he further referred the Judgement of Hon<sup>ble</sup> High Court in the case of Maheshwar Mandal Vrs the State of Bihar (BLJR-page No. 281 volm-(1)-2015) and on that basis he has pleaded that this appeal is fit to be dismissed.


Considering the facts and circumstance of the case, respective arguments advanced by the learned counsel for the parties and on perusing the impugned order, it is quite apparent that dispute between the parties relates to determination of share and location of the land acquired by landlord of appellant and respondents. Both parties talk of oral partition between the brothers but the respective share is not identifiable on spot. The dispute arose only after one brother executed a sale deed in favour of the appellant and other brother to the respondent. The learned DCLR rightly held that the claim of appellant is not acceptable in view of the fact that one party claims that the land was partitioned east-west whereas other party claims that the partition took place northern side and southern side wise. This clearly shows that the nature of dispute between the parties is of complicated nature which can not be decided by a revenue authority. The learned counsel for the respondent is also of the view that this type of dispute is outside the purview of the BLDR Act-2009 and in order to substantiate his view he also relied on the reported Judgement of Hon<sup>ble</sup> High Court passed in the case of Maheshwar Mandal vrs. The State of Bihar. I also find that the present case can not be adjudicated under the provisions of the BLDR Act. 2009 as the BLDR Acts does not have any relevant provision to adjudicate a complex question of title and share of the parties who are staking their claim on the lands in question.

Thus, for the aforesaid reason, the impugned order of DCLR, Marhaurah is upheld.

Accordingly, this appeal is disposed of.

Dictated and Corrected by me.

  
Commissioner,  
Saran Division, chapra

  
Commissioner,  
Saran Division, Chapra