

In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 06/2014
Krishna Rai & ors.
Vrs.
Parshuram Singh & ors.

ORDER

22-12-2015-

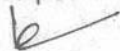
The instant appeal is directed against the impugned order passed by DCLR, Hathua in Land Dispute case No. 44/2013-14.

The brief facts of the case are that the present respondents filed a case before DCLR, Hathua under the BLDR Act by making present appellants as opposite party. In the said case, the prayer of the present respondents (petitioners before DCLR) was that the land measuring 19 katha 7 dhur of khata No. 65, plot No. 927 is recorded in the R.S. khatiyan in the name of Bhajan Rai and Ramyad Rai as equal share and after partition their respective possession of the land was mentioned in the possession column. But the descendents of Ramyad Rai transferred their share by sale deeds and gift deeds and now they are making hindrance over the peaceful possession of the present respondent as such they be restrained from making any hindrance. The learned DCLR after issuing notices to the parties heard the case and finally vide order dt. 11.12.2013 held that if the opposite party has any less share in the disputed land they should have approached the competent Civil Court and their interference in the peaceful possession of the present respondents is illegal and accordingly directed the C.O. Hathua and O.C. Mirganj for taking necessary action.

On being aggrieved by and dissatisfied with the aforesaid order, the present appellants have preferred this appeal.

Heard the learned counsel for the parties.

The learned senior counsel appearing on behalf of the appellant submitted that the impugned order is without jurisdiction and the competent authority should have dropped the proceeding as per the provision contained in section 4(5) of the BLDR Act. He further submitted that the finding recorded by the competent authority is also wrong as he should have accepted the case of the appellant. He further submitted that the appellants are the descendents of Ramyad Rai and the respondents are the descendents of Bhajan Rai and Bhajan Rai and Ramyad Rai separated before R.S. operation but there was no partition by metes and bounds and they were in separate possession according to convenience and their possession was recorded in R.S. khatiyan accordingly. He also argued that from the fact of the case it becomes clear that the competent authority has decided a matter of complicated question of title and possession which is beyond the jurisdiction of the competent authority. He further submitted that as the respondents made a prayer for the declaration of title on the basis of sale deed and gift deed, the competent authority should have dismissed the petition and advised the parties to go to Civil Court as per the observations of the Hon'ble High Court in the case of Maheshwar Mandal & ors. Vrs The State of Bihar & ors. He further submitted that the appellant has also filed a Title suit No. 148/14 before Civil Court, Gopalganj against this respondent which is pending before sub-judge-1st Gopalganj.



The learned counsel appearing on behalf of the respondents submitted that the claim of the appellants are wrong and misleading because the share of appellants who happens to be the descendents of Ramyad Rai must have come to them but they have already sold the maximum part of that and now they are wrongly claiming their share in the share left of Bhajan Rai. He further submitted that all the pleas forwarded by the learned counsel for the appellants are not correct whereas the order passed by the learned DCLR is just and valid as such the same is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, claims and counter-claims advanced by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that both parties are claiming their share over the same land what stated to have been recorded in khatiyani in the name of their ancestors. Obviously, the dispute between the parties relates to declaration of their share. The learned counsel for the appellant states that this kind of dispute can not be resolved under the provision of the BLDR Act as per the observation made by the Hon'ble High Court in the case of Maheshwar Mandal & ors. Vrs The State of Bihar & ors. This plea of the appellants seems to be acceptable in view of the fact that the learned DCLR has also noted in his order that if the present appellants feel that they have got less share in the said land they should have approached the competent civil Court for adjudication of such dispute. However, the learned DCLR instead of dropping the proceeding went on deciding the case which is certainly not correct in view of the observation made by the Hon'ble High Court as referred above. The learned counsel for the appellants also talks about a pending Title suit between the parties before sub-judge-1 Gopalganj to which the learned counsel for the respondent does not dispute. Thus, it appears that the dispute between the parties relates to determination of their respective share and obviously this kind of dispute can not be adjudicated under the BLDR Act-2009 as observed by the Hon'ble High Court in some recent judgments.

For the aforementioned reasons, the impugned order of DCLR is not sustainable and hence the same is set aside.

This appeal is disposed of accordingly.

Dictated and Corrected by me.

Commissioner,
Saran Division, Chapra

22.12.15
Commissioner,
Saran Division, Chapra