

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 272/2012

Sudama Kuar & Ors

Vrs.

Ajay Kumar Singh

ORDER

17.10.2015 — The instant appeal petition is directed against the impugned order passed by DCLR, Sonapur in BLDR case No. 47/2011-12 on 21.08.12.

The brief facts of the case are that the present respondent Ajay Kumar Singh S/o Raj Narain Singh R/o Vill-Hariharpur, P.S.-Derni, Dist-Saran filed a case before DCLR with a prayer that the disputed piece of land purchased by him through registered sale deed on 05.11.2004 be demarcated by measurement because the present appellants (respondents before DCLR) were trying to capture the same. The learned DCLR after hearing the parties allowed the said prayer and also appointed a survey knowing Commissioner. Feeling aggrieved by the said order the present appellants have preferred this appeal before this Court.

Heard the parties.

The learned counsel for the appellant while assailing the impugned order, submitted that the learned Court below exceeded its jurisdiction by deciding the complex question of title whereas the provision of section 4(5) of the BLDR Act provides that where complex question of title is involved the Court would close the proceeding and leave it to be decided by the competent Civil Court. He further argued that the learned lower Court below committed serious error in law to assume the role of Civil Court. He also submitted that the learned DCLR should have held that the respondents never came in possession over the disputed land by virtue of the false sale deed obtained by them from the grand sons of late Haricharan Singh. He lastly submitted that the impugned order is fit to be set aside.

The learned counsel for the respondents submitted that this appeal is not maintainable because the facts stated by the appellants are far from the truth and facts on record. He further argued that the respondent purchased the land measuring 1 katha 5 dhur from the sons of Baij Nath Singh and having his possession. He further submitted that the order of DCLR with respect to appointment of the survey knowing Commissioner after analyzing all the facts of the case is correct but when the measurement was to be started the appellants created disturbance as a result no measurement could be done. He lastly argued that the impugned order be upheld and this appeal be dismissed.

Considering the facts and circumstances of the case, material available on records respective pleadings advanced by the parties and on perusal of the impugned order, it is seen that the present respondent had approached the learned DCLR under the provision of the BLDR Act to get measure his land what is stated to have been

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acquired through sale deed from the owner of the land. The learned DCLR has lightly considered the said prayer and accordingly allowed the relief sought for by appointing the survey knowing Commissioner. So to that extent the impugned order of the DCLR can not be termed as an extra-jurisdictional order. However, the appellant assails the impugned order on the ground that in the instant case determination of complex question of title is involved and the DCLR is not competent to decide such issue under the BLDR Act. This argument of the appellants is not prima-facie acceptable in view of the fact that neither the respondent had filed the case before DCLR for declaration of right and title nor the DCLR has decided any title of the parties. He simply confined his order to the extent of appointment of survey knowing Commissioner for the measurement and demarcation of the disputed land which is under dispute and the same is very much permissible under the BLDR Act.

For the aforesaid reasons, the impugned order is upheld and this appeal being devoid of any merit is dismissed accordingly.

Dictated and Corrected by me.

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17.10.15
Commissioner,
Saran Division, Chapra

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Saran Division, Chapra