

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

**B.L.D.R. appeal No. 106/2013**

**Kalicharan Ram & Ors.**

**Vrs.**

**Jeetan Ram & Ors.**

**ORDER**

11.05.2015 - This instant appeal application is directed against the impugned order passed by DCLR Hathua in BLDR वेदखली Case No. 19/12-13 on 26.02.2013.

The brief facts of the case are that the present respondent (petitioner before DCLR) filed a petition with a prayer that a piece of land measuring 05 Katha 10 dhur, appertaining to Khata No. 115 Plot No. 362 was a Gair mazurwa land which was settled in the name of his father by Hathua Estate but now the present appellants (O.Ps. before DCLR) had forcibly encroached the same by growing Maize and potato crops as such the illegal possession be removed and his possession be delivered. Thereafter, the learned DCLR after issuing notice to the present appellants and after hearing the parties, disposed the said case vide order dated 26.02.2013 wherein he held that the possession of the present appellants over the disputed land seems to be illegal. He allowed the case and further directed the C.O. Phulwaria to get free the land from the illegal possession and deliver the possession to the present respondents. Feeling aggrieved by the said order the present appellants have preferred this appeal case.

Heard the parties.

The learned counsel appearing on behalf of the appellants submitted in the very beginning of his argument that the impugned order is without jurisdiction because the learned DCLR is not competent to decide the case in which complicated question of law and facts are involved. He further argued that the disputed land is the joint property of the family of the parties because the father of the petitioner and father of O.P. No. 1 and grandfather of other O.Ps. Mahabir Ram were own brothers. He further submitted that the land in question was taken in settlement in 1935 by Mahabir Ram who had two sons Nathuni and Kalicharan. Nathuni had three sons and they have also got ¼ share in the disputed land but the petitioner has not made the sons of Nathuni Ram as party in the case before DCLR, so the suit is hit by the defect of parties. He also argued that the learned lower court without considering the real facts and law involved in the case passed the order which is not legal and proper. His further argument was that Mahabir Ram has taken the settlement of the disputed land from his own income for the joint family in the name of his younger brother Dahari Ram and it was in the possession of joint family and the disputed lands half part is in the possession of the petitioner and sons of Nathuni Ram and half is in the possession of the O.Ps. The learned counsel lastly submitted that the issue of share and title can

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not be decided by the DCLR, his said order is without jurisdiction and invalid and in this connection he also referred to the reported judgment of division bench of Hon'ble High Court (PLJR-2014(3) page- 281) and prayed for setting aside the impugned order.

The learned counsel appearing on behalf of the respondents submitted that the disputed piece of land measuring 05 Katha 10 dhur, situated in village Dularpur under Khata No. 115 Plot No. 362 has been recorded in R.S. Khatiyan as Gair mazurwa Malik Land of Hathua Estate which was settled orally to the father of the respondents namely Dahari Ram on 07.10.1935 and at that time respondents father was living separately since 1931. He further argued that the land in question is the self acquired and exclusive property of Dahari Ram and after his death his sons who are respondents have succeeded the property in which the appellants have no right, title and interest. He further submitted that the ex-landlord had filed return to the state of Bihar only, in the name of Dahari Ram and jamabandi No. 115 was created accordingly and since then the rent are being paid by the respondents after the death of their father. He also submitted that as the present appellants forcefully disposal the respondents from their land by showing potato and Maize crops, the respondent had approached the DCLR for recovery of possession so the order passed by learned DCLR is correct and valid and in fact in the instant case there is no question of determination of complex title as such the impugned order be upheld.

Considering the facts and circumstances of the case, material on records, respective submissions made by the learned counsel for the contesting parties and on perusal of impugned order, it is quite obvious that the present respondents had approached the competent authority, the DCLR, for recovery of possession over the land which was allegedly occupied by the appellants by showing potato and Maize crops. The claim of the appellants is that since the disputed piece of land was settled to Dahari Ram when the family was joint and from the joint income, they too have share in the said land. But the respondents resist the said claim on the ground that his father was separated in 1931 and land in question was got settled in the year.1935 as such the appellants do not have any right in the said property which is the acquired property of Dahari Ram. It is also seen that the learned DCLR on finding the claim of the present respondent to be true and legal allowed the case and he also observed that the present appellants failed to prove their claim with substantial evidence. Thus, it appears that in the case before DCLR, although the claim of the present respondents were for recovery of possession which has been forcibly occupied by the appellants by showing potato and maize crops without having any valid right to do so. Even the present appellants failed to prove his case in the context of relief sought by the respondents before DCLR. As such I do not find any illegality in the said order of DCLR hence the same is upheld.

In the result, this appeal being devoid of any merit is dismissed accordingly.

Dictated and Corrected by me.

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Commissioner,  
Saran Division, Chapra

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Saran Division, Chapra