

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 158/2015

Chinta Devi & Ors.

Vrs.

Ramjee Prasad & Ors.

ORDER

15.01.2016 — The instant appeal petition is directed against the impugned order passed by DCLR, Mahraurah in Case No. 156/2014-15 on 30.05.2015

The brief facts of the case are that the present appellant Chinta Devi W/o Late Madan Mohan Prasad Yadav & Ors, all residents of village- Silhauri, P.S.- Mashraikh, Dist-Saran had filed a case before DCLR, Mahraurah vide case No. 156/2014-15 against the present respondents. In the said case, the prayer of the appellants was that the boundary of the land be demarcated whose descriptions have been mentioned in schedule, 1,2,3 & 4 of the petition filed before DCLR. Thereafter, the learned DCLR after issuing notices to the opposite parties heard the case and finally vide order dated 30.05.2015 disallowed the said case. Feeling aggrieved by the said order, the present appellants have preferred this appeal before this court.

Heard the learned counsel for the appellant only as he insisted for disposing of this appeal on merit because the respondent had again prayed for long time despite being given last chance on 21.12.2015. I find some substance in the said ascertain vis-à-vis the order dated 21.12.2015 of this court.

The learned counsel appearing on behalf of the appellants submitted that the impugned is bad in law and against the weight of evidence on record. He further argued that by virtue of Award decree in T.S. No. 84/24 of 1981/1992 in the Court of sub-judge- v, Chapra, the appellants have got full title and possession which was allowed in favour of their ancestor and against the said order appeal filed by some of the respondents was dismissed in default and hence the decree passed by the court became confirmed. He also submitted that when the boundary of the land was disturbed by some of the respondents, he had every right to file a case for demarcation of the same under the BLDR Act but the learned DCLR, instead of considering his case properly dismissed the same. He further argued that the learned DCLR wrongly held that in the said case dispute relating to title was involved and he has not been empowered to decide such issue. The learned counsel lastly prayed that the relief sought by the appellant before DCLR, relates to demarcation of boundary by measurement of the disputed plot, the learned DCLR be directed to pass order or appoint a Govt. Amin to measure and demarcate the disputed land.

Considering the facts of the case, material available on records and on perusal of the impugned order, it is seen that, although, the appellants had approached, the DCLR, Mahraurah for the demarcation of various plots mentioned in

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different schedules of his petition from a survey knowing Commissioner, but the said prayer was disallowed on the ground that the dispute between the parties relates to claim of title. Obviously such finding of the learned DCLR seems to be erroneous and improper in view of the fact that the appellants had not sought any relief regarding declaration of any right and title over the said land. In fact, the learned DCLR, seems to have been influenced by the pleadings advanced before him by the respondents that there involves dispute relating to determination of right and title of the parties over the disputed land which is certainly not justified anyway. It is also seen that mere assertion by the respondents before the DCLR that the dispute between the parties relates to adjudication of right and title could not have been given any credence as the dispute of title between the parties had already been settled by decreetal order of sub-judge -5 and appeal against that order has been dismissed. As such, I find that in order to resolve the dispute, it was necessary for the DCLR that he should have ordered for the demarcation of the disputed plots by appointing a survey knowing commissioner.

For the aforementioned reasons, the impugned order of DCLR is not sustainable and hence the same is set aside. However, in view of the prayer made by the appellant, the case is remitted back to DCLR, Marhaurah to pass afresh order for the demarcation of the disputed plots mentioned in schedules 1-4 by appointing either a survey knowing commissioner or through a Govt. Amin and after that on hearing the parties dispose of the case in accordance with law.

Dictated and Corrected by me.

15-1-16
Commissioner,
Saran Division, Chapra

15-1-16
Commissioner,
Saran Division, Chapra