

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 270/2013

Dasai Yadav & ors.

Vrs.

Sheojee Thakur

ORDER

13.04.2016 - The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in BLDR case No. 30/2013-14 on 21.08.2013.

The brief facts of the case are that the present respondent Sheojee Thakur S/o Late Motilal Thakur R/o vill-Hahwa, P.S.-Maharajganj, Dist-Siwan filed a case before DCLR, Maharajganj, as petitioner by making the present appellants as o.ps. In the said case, the prayer of the petitioner was that the disputed plots No. 556 and 557 of khata No. 182 the total area of which is 8 katha 12 dhur out of which 2 katha 3 dhur towards east came in the share of the petitioner and when he tried to fill up the said land with soil, the present appellants created obstruction as such his said land be measured and boundary wall be constructed around the same. Thereafter, the learned DCLR after hearing the parties finally vide his order dt. 21.08.13 allowed the said case and also restrained the o.ps from making any obstruction/hindrance over the area 2 katha 3 dhur towards east-north of plot No. 556 and 557 of khata No. 182. Feeling aggrieved by the said order, the present appellants (o.ps before DCLR) have preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants at the very outset of his argument submitted that the impugned order is illegal, unjust and not maintainable in law or on facts. He further submitted that the learned DCLR has failed to appreciate the question that whether a particular property is self acquired property or joint family property and clearly such complicated question of law can not be decided by the learned DCLR. He further argued that admittedly the land in question is in possession of the appellants over which they have got sahan, Bathan, Nad, Khuta etc. and the appellants could not have been restrained from going over his own land. He further submitted that the document of partition filed before the DCLR by the respondent should not have been relied upon as the same is a sada document. The learned counsel while assailing the impugned order, also submitted that the learned DCLR has erred in not considering the provision of the BLDR Act which clearly lays that whenever, it appear to the original authority that the case brought before him for adjudication involves determination of complex question of title, he should close the proceeding and direct the parties to approach the competent Civil Court for resolving the dispute. He further said that in the instant case dispute between the parties, relates to their claim over the disputed piece of land which is a raiyati land as such this kind of dispute can not be resolved under the BLDR Act and in support of his contention he also filed the copy of reported judgment of Maheshwar Mandal case.

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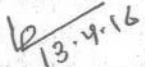
The learned counsel appearing on behalf of the respondent, strongly opposed the arguments raised with regard to the validity of the impugned order and submitted that the impugned order is quite legal, just and maintainable in law. He further submitted that the appellants have got no right title or possession over the disputed land and as such they are not entitled to file such appeal. He further submitted in detail as to how the respondent came to acquire the said disputed land and subsequently got right, title and possession over the same. He further submitted that one Ram Lagan Thakur executed a sale deed to appellant Dasai Yadav and Ram Janam Yadav on 20.11.2010 of his share but due to wrong mentioning of boundary, the present land dispute has been arisen. He also argued that both the plots are jointly divided between the two brother and this respondent has remained in peaceful possession over the disputed land but it was due to enmity of Ram Lagan Thakur executed a sale deed in favour of appellant without giving the name of the respondent in any side of boundary. He lastly submitted that as the impugned order has been passed after considering the relevant facts of the case the said order is fit to be upheld and this appeal be dismissed accordingly.

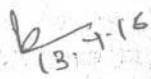
Considering the facts and circumstances of the case, material available on records, pleadings forwarded by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that in the instant case dispute between the parties relates to their respective claim of possession over their respective area in the disputed land. The appellants claim is based on the ground that he purchased some part of land from the said plot though registered sale deed from one Ram Lagan Thakur, whereas the claim of the respondent is that his ancestral share in the said plot which is in his possession and came to him after partition upon which the appellants are creating hindrance in his possession. Thus, it appears that the dispute essentially involves determination of complex question of right, title and possession over the raiyati land. The dispute essentially involves wilful dispossession over private land but the same is not maintainable under the BLDR Act.

It is well established that the subject matter of adjudication under the BLDR Act does not include such matters. The Hon'ble High Court in its judgment in CWJC No. 1091/2013 (Maheshwar Mandal and other Vrs The State of Bihar and others) on 24.06.2014 has observed that the revenue authorities are not empowered to entertain matter not arising out of the six enactments mentioned in schedule-1 of the BLDR Act-2009. Obviously the instant matter does not fall under any of the said six enactments and as such it was not maintainable before the lower Court.

Thus, for the aforesaid reasons and keeping in view the observation made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and the appeal is accordingly disposed of.

Dictated and Corrected by me.


13.4.16
Commissioner,
Saran Division, Chapra


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Commissioner,
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