

**In The Court of Commissioner, Saran Division, Chapra
B.L.D.R. Appeal No. 228/2014**

**Ahilya Devi Srivastva
Vrs.
Shambhu Sharan Srivastva & ors.**

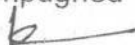
ORDER

26.10.2015 - The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in BLDR case No. 153/263/2012-13 on 04.07.2014.

The brief facts of the case are that the present respondent No. 1 Shambhu Sharan Srivastva S/o Late Gopal Lal R/o Vill-Sonahula, Tola-Puraina, P.S.-Guthani, Dist-Siwan filed a case before DCLR, Siwan Sadar by making present appellants as opposite parties. In the said case his prayer was that the land measuring 16 dhur purchased by him through registered sale deed on 29.04.2011 of plot No. 1493 be demarcated after measurement from any survey knowing person and thereafter stone pillar be erected on four corners. The learned DCLR after issuing notices to the parties heard the case and by a detailed order dt. 04.07.2014 directed the concerned C.O. to get measure the disputed land and also held that the case of the present appellant (respondent before DCLR) relates to possession over the said land on the basis of sale deed and the said dispute can only be resolved by a competent Civil Court. Feeling aggrieved by the said order the present appellant has preferred this appeal case before this Court.

Heard the parties.

The learned counsel appearing on behalf of the appellant submitted in details about the whole course of events leading to the present dispute between the parties. He also submitted that the impugned order passed by learned lower Court is illegal and without jurisdiction. He further submitted that the learned DCLR has erred in allowing the petition of the present respondent and declaring his title and possession and also for demarcation of that land without considering the real facts and circumstances of the case. He also argued that the appellant has purchased 1 katha 1 dhur land on 04.05.07 in khata No. 655, plot No. 1493 from the real owner of that land in which boundary has been given in plot No. 1493 and later on some construction has also been made by the appellant and for that a correction deed was also made by the vendor of the land. He further argued that the learned lower Court has wrongly mentioned in its order that the consideration of sale and Titima is a matter to be decided by Civil Court whereas the sale deed of the respondent was relied upon which was procured much after. He further assailed the impugned order that the learned lower Court erred in believing the sale deed of the present respondent and disbelieving the sale deed of the appellant without considering the whole facts and circumstances of the case. The learned counsel also stated that the learned Court below ought to have held that the present appellant (respondent before DCLR) is a bonafide purchaser and she has purchased the land of plot No. 1493 previously from a rightful owner and she has got title and possession over that and the sale deed of the present respondent (petitioner before DCLR) is doubtful and having no title and possession. The learned counsel lastly submitted that the impugned order is not sustainable as the learned



DCLR has decided the complex question of title and in support of this contention he also placed reliance upon the reported judgment passed by Hon'ble High Court in the case of Maheshwar Mandal and ors Vrs The State of Bihar and ors. He firmly pleaded that the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondents while strongly opposing the arguments made by the learned counsel for the appellant, submitted that how the total area measuring 3 katha 10 dhur of plot No. 1493 was partitioned amongst the descendants of Khatiyani raiyat. He further submitted that the respondent purchased the land measuring 16 dhur from Shiv Shankar Lal on 29.04.2011 and got mutated the said land in his favour and the said part of plot No. 1493 is just east of plot No. 1494 in which the appellant's residential house is situated. He further submitted that the appellant's claims plot No. 1393 which is a separate plot and at distance from plot No. 1493. He further submitted that the appellant has to decide her title and wrong entry of sale deed through title suit only from a Civil Court and the lower Court order is legal and valid hence the impugned order be upheld.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties, respective written statements filed by them and on perusal of the impugned order, it is seen that in the instant case the dispute between the parties relates to their respective claim over the disputed piece of land on the basis of alleged sale deed stated to have been executed by the descendants of the khatiyani raiyat. Obviously, the dispute between the parties relates to determination of title over the said land. However, the present respondents had approached the DCLR for the demarcation of the land which has been purchased by him through a sale deed but the said claims of the respondent is resisted by the appellant on the ground that the person who executed the sale deed had no share in the said land. Thus, it is quite obvious that in the present case involves adjudication of complex question of title. Even the present respondent also prayed before DCLR for the declaration of his right over the said land. The learned counsel for the appellant is of the view that the DCLR has got no jurisdiction to decide the dispute relating to adjudication of right and title under the BLDR Act and in this connection he also placed heavy reliance on the recent observation of the Hon'ble High Court made in the case of Maheshwar Mandal & ors Vrs The State of Bihar and ors. I find this contention have some substance vis-a-vis the findings arrived at by the learned DCLR in view of the fact that at one hand he declared the right over the dispute land of one party and on the other hand he advised the other party to approach the Civil Court for the adjudication of the same. This kind of findings itself makes the impugned order arbitrary and without jurisdiction and the same can not be upheld.

For the aforementioned reasons, the impugned order is set aside and accordingly this appeal is disposed of.

Dictated and Corrected by me.

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22-10-15
Commissioner,
Saran Division, Chapra

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20.10.15
Commissioner,
Saran Division, Chapra