

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 176/2013

Rajdhari Singh & ors.

Vrs.

Ram Bacha Singh

ORDER

14-12-2015- The instant appeal petition is directed against the impugned order passed by DCLR Siwan Sadar in B.L.D.R. case No. 129/238/2012-13.

The brief facts of the case are that the present o.p. Ram Bacha Singh S/o Late Mathura Singh R/o vill-Shadikpur, P.S.-Pachrukhi, Dist-Siwan filed a case before DCLR Siwan Sadar under the BLDR Act-2009 by making 14 persons of his family as parties for the partition and demarcation of lands appertaining to land of khata No. 188, having different survey plot Nos. Thereafter, the learned DCLR after hearing the matter finally vide order dt. 14.05.2013 directed the concerned C.O. to make enquiry with respect to the possession and after verification of the same get the disputed land measured and demarcate the same. Feeling aggrieved by the said order, the present appellants (o.ps before DCLR) has preferred this appeal petition before this Court.

Heard the learned counsel for the parties

The learned counsel appearing on behalf of the appellant submitted in details in the very beginning of this argument that partition had taken place amongst the parties prior to the revisional survey and according to partition amongst the parties revisional survey was prepared and entry in khatian was also made out. He further submitted that the learned lower Court has wrongly held and passed the order of partition and wrongly ordered the share of respondent No. 1. He further argued that according to law share can not be decided in summary trial but avoiding the principle of law learned lower Court has decided the share of respondent No.1. He also submitted that learned lower Court has not believed the evidence of the appellants and wrongly passed an order and allowed the case of present respondent No. 2 while other respondents are in collusion with respondent No. 1 and this case was brought by the respondent for grabbing the Court fee, which required for partition but learned Court below has not considered this fact. He also argued that in this case female co-sharers and vendees were not made parties and in-absence of them share can not be decided but the learned lower Court has completely ignored this important fact and decided the case under the provision of BLDR Act. He lastly submitted that the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondent, on the other hand, submitted that the impugned order of DCLR is in accordance with law. He further submitted that the respondent No. 1 has filed a case of partition under section 4(5) of BLDR Act for 1/8 share in schedule-1 properly. He also argued that the appellant has wrongly stated in the memo of appeal that DCLR has no power to entertain this suit and also wrongly mentioned that possession column of R.S. khatian shows that partition took place before R.S. operation. He further submitted that grounds taken by the appellant are false, concocted and baseless and the order passed by the DCLR is in accordance with law and liable to be confirmed. He lastly prayed that the impugned order is fit to be upheld.

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Considering the facts and circumstances of the case, material available on records, written statements filed by the parties respective arguments advanced by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious and admitted fact that the present respondents had filed the case before DCLR with a prayer to decide and demarcate his 1/8 share in the disputed land recorded under khata No. 188 of Mauza Shadikpur. In fact the learned DCLR is not competent to decide this kind of dispute between the parties under the BLDR Act-2009 as per the observations made by the Hon'ble High Court in the case of Maheshwar Mandal and ors. vrs The State of Bihar & ors. As per the provision enshrined in the BLDR Act-2009, such dispute of complicated nature in which adjudication of title, share partition are involved, the DCLR, the competent authority, should have closed the proceeding and directed the parties to approach the competent Civil Court. But in the instant case, the learned DCLR, instead of doing so went on deciding the share of the parties. This itself makes the impugned order extra-jurisdictional.

Thus for the aforementioned reasons, the impugned order of DCLR Siwan Sadar dt. 14.05.2013 is not sustainable, hence the same is set aside.

Accordingly, this appeal petition disposed of.

Dictated and Corrected by me.

14-12-15
Commissioner,
Saran Division, Chapra

14-12-15
Commissioner,
Saran Division, Chapra