

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 187/2013

**Subash Rai & ors.
Vrs.
Surendra Rai
ORDER**

12.07.2016 - The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in बेदखली वाद सं०- 02/2013 on 19.06.2013.

The brief facts of the case are that the present respondent Surendra Rai S/o Ramayan Rai R/o Vill-Semariya, P.S.-Kateya, Dist-Gopalganj filed a case bearing title बेदखली वाद सं०-02/2013-14 under the provision of BLDR Act, before DCLR, Hathua by impleading the present appellants as o.p. In the said case the prayer of the present respondent (petitioner before DCLR) was that the land in question measuring 12 katha, appertaining to khata No. 324, plot No. 3462 was purchased by him through two registered sale deeds dt. 30.12.80 and 05.01.1981 and subsequently got possession over the same and jamabandi was created in his favour and he used to pay the rent. But the o.ps (the present appellants) having no concern with the said land have forcibly dispossessed him from the said land as such his possession be delivered. Thereafter, the learned DCLR, heard the case and finally vide his order dt. 19.06.2013 allowed the case holding that the possession of the o.ps was illegal.

Feeling aggrieved by the said order, the present appellants have preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants assailed the impugned order by saying that the same has been passed without appreciating the relevant documents available on records and the said order is based on surmises and conjectures. He further submitted that in the instant case involves complex question of law and fact which should not have been decided by the learned lower Court and in fact recovery of possession can only be ordered by competent Civil Court. The learned counsel further argued that the learned DCLR was not competent to decide the complex question relating to dispute over the raiyati land as this kind of dispute is not covered under any of the six enactments mentioned in schedule-1 of the BLDR Act as observed by the Hon'ble High Court in a case reported in 2014 PLJR-vol.3 page-281. He lastly submitted that as the impugned order is unjust and illegal the same is fit to be set aside.

The learned counsel appearing on behalf of the respondent strongly opposed the argument advanced by the learned counsel for the appellant and submitted that the impugned order is legal and valid as such the same is fit to be upheld and this appeal petition lacking any merit is fit to be dismissed. He further submitted that it is wrong to say that in the instant case involves complex question of right and title. He further submitted that the said disputed land was purchased by the respondent through sale deeds long back and jamabandi is also existing in his favour as such no one has any right to create any hindrance or dispossess the respondent from his land. He also

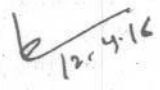


submitted that if the appellants have any grievances regarding the claim of the respondents, they should have approached the Civil Court but after a gap of more than 30 years, the dispute is being unnecessarily raised.

Considering the facts and circumstances of the case, material available on records, pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it is seen that in the instant case dispute between the parties, relates to raiyati land. It is also seen that the learned DCLR has decided the case on the ground that as the jamabandi with respect to 12 katha of the disputed land is running in the name of the present respondent (Petitioner before DCLR) and he pays rent then certainly the respondent's claim of possession is correct. On the other hand the learned counsel for the appellant failed to make out a case to establish his claim that in the instant case involves adjudication of complex question of right and title so the impugned order of learned DCLR can be rejected outrightly. The claim of the appellants solely based on the ground that the so called sale deed dt. 05.01.1981 existing in favour of the respondent with respect to the disputed land and determination of its validity is the complex issue which can not be decided by the DCLR. This claim of the appellants seems to be irrelevant as it is also seen from the record that neither the DCLR has decided any right and title of the parties over the disputed land nor the present respondent, as petitioner before DCLR, had sought any relief to that effect. Therefore, it appears that the impugned order of the learned DCLR is not wholly incorrect.

With the aforementioned observation, this appeal petition is disposed of.

Dictated and Corrected by me.


12.4.16
Commissioner,
Saran Division, Chapra


12-4-16
Commissioner,
Saran Division, Chapra