

In The Court of Commissioner, Saran Division, Chapra

B:L.D.R. appeal No. 157/2013

Subind Kumar Singh & Ors.

Vrs.

Dr. Lal Bahadur Choudhary & Ors.

ORDER

12.08.2015- The instant appeal application is directed against the impugned order passed by DCLR, Siwan Sadar in BLDR Case No. 138/246/2012-13 on 15.05.2013.

The brief facts of the case are that the appellant Subind Kumar Singh S/o Late Gorakh Nath Singh R/o Village- Dak Bunglow Raod, Siwan had filed a case before DCLR, Siwan Sadar against the present respondent. In the said case, the appellants prayer was that the piece of land measuring 8 x 8 feet, is a common passage situated between the land purchased by the present appellant and respondent's home in which when he tried to construct the septic tank, as per the terms and conditions mentioned in his sale deed document, the present respondents started creating hindrance in the said construction work. Besides this, he also prayed that the said disputed land be measured and present respondents be restrained from making any hindrance from constructing the septic tank in the common passage. Thereafter, the learned DCLR after hearing the respective claims of the parties finally holding that any kind of construction work in respect of septic tank can be carried out only on the consent of the parties as per the conditions laid down in the sale-deed and dropped the proceeding vide order dated 15.05.2013.

On being aggrieved by and dissatisfied with the aforesaid order, the present appellant has preferred this appeal case before this court.

Heard the learned counsel for the parties.

The learned counsel for the appellant at the very outset of his arguments, throwing light on the facts of the case, stated that admittedly the appellants and respondents are purchaser from a common vendor Tapas Mukherjee through different sale-deeds on different dates. He further said that in between the houses of both the parties there is a common passage of 8x8 feet area which is in common use of appellants and vendor and at the time of sale there was an agreement between appellants (purchaser) on one side and Tapas Mukherjee (vendor) on other side that both parties have right to construct septic tank in the common passage with the joint contribution but later on Tapas Mukherjee sold the land and house to the respondents. He further argued that as per the agreement, the appellants are entitled to construct septic tank in the common passage but when he started the construction work, the present respondents opposed the same which led to filing of a case before DCLR. He further argued the learned DCLR without considering the merit of the case as well as without considering the previous agreement relating to construction of septic tank in the common passage, the proceeding was dropped which is illegal and arbitrary. He also pleaded that the learned DCLR should have directed the respondents for not to make any obstruction in the said construction work in the common passage but he wrongly

6

dropped the case. The learned counsel lastly said that the learned lower court has also failed to understand the meaning of summary trial and has decided the case in haste without giving any opportunity of adducing evidence to the appellants.

The learned counsels appearing on behalf of the respondents submitted that the instant appeal is not maintainable as there is no factual or legal lacuna in the order of the learned lower court and nor there is a complicated question of law and fact involved in this case, so the order passed by the learned court is within jurisdiction. He further argued that it is not in dispute that the disputed land is the common land and in the joint possession of the parties and used by them as a common passage and neither party has right to obstruct this passage nor make any type of construction over this land. He also argued that although the appellant is in use of a big septic tank in southern portion of their residential house and in spite of that in order to put the respondent in trouble and to disturb the respondents, violated the terms and agreement. The appellant wants to construct septic tank in the common land which is used for passage. He also submitted that the learned lower court has rightly held that the main dispute between the parties is for construction of septic tank in the disputed common land and neither party can be allowed to construct septic tank in the said common passage without the consent of other party and has rightly dropped the case, hence this appeal be dismissed.

Having regards to the facts and circumstances of the case and pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it appears that the dispute between the parties basically relates to construction of a septic tank in the common passage by the appellant. The appellants claim that he has a right to construct the same as per the agreement reached between him and his vendor. On the other hand, the claim of the respondents is that since the disputed land is being used as a common passage, the appellants do not have any exclusive right for construction of any septic tank over the said land ignoring the terms and conditions of the sale-deed only with a view to put the respondent in trouble. He also said that any construction work can be done only when both parties give consent. The petitioner counsel is of the view that the impugned order has been passed without understanding the facts whereas the respondents counsel is of the view that the said order is legal and valid. I find that the learned DCLR has passed a legal and valid order after carefully considering the terms and conditions of the sale-deed in respect of the said disputed land stated to be used commonly by both parties and if any construction is made thereon, the said cost of construction is to be borne jointly by the parties and any kind of construction on the said land can be done with consent of both the parties. Thus, it is quite apparent that the findings arrived at by the learned DCLR with respect to the disputed land in view of the crux of the dispute between the parties and its petty nature, is seems to be correct and furthermore, his decision to drop the said proceeding in view of his said findings also seems to be just and proper.

Thus, I do not find any good ground to make any interference with the order of learned DCLR, Siwan and hence the same is upheld.

In the result, this appeal being devoid of any merit, is dismissed accordingly.

Dictated and Corrected by me.

12-8-15
Commissioner,
Saran Division, Chapra

12-8-15
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Saran Division, Chapra