

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 336/2013

Karim Ansari & Ors.

Vrs.

Jumma Rahim Ansari

ORDER

18.01.2016 -- The instant appeal petition is directed against the impugned order passed by DCLR, Mahrajanj in BLDR Case No. 200/2012-13 on 27.09.2013.

The brief facts of the case are that the present respondent Jumma Rahim Ansari S/o Hasim Mia, R/o Village- Sarsakya P.S.- Bhagwanpur Hat, Dist- Siwan had filed a case before DCLR, Mahrajanj impleading the present appellant as opposite party. In the said case the present respondent had made prayer to demarcate the land appertaining to Khata No. 74, Plots. No. 7046 and 3649, each having area of 16 dhur. Thereafter, the learned DCLR after issuing notices to the parties heard the case and finally vide order dated 27.09.2013 disposed of the case wherein he held that the earlier measurement done by the Govt. Amin can not be disputed now and also held that the present appellant (respondent before DCLR) had encroached over 2 dhur 10 dhurki of plot No. 7046 and entire plot No. 3649 of Khata No. 74. As such he ordered for immediate removal of the said encroachment and further restrained them from making any interference in future over the land in question. Feeling aggrieved by the said order, the present appellants have preferred this appeal before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants while assailing the impugned order submitted that the said order is against the law, facts and circumstances of the case and also based on mere conjecture and surmises. He further submitted that the learned DCLR has erred by not understanding the most important aspect of the case like, question of limitation, adverse possession, ouster and waiver. He also argued that the learned court below ought to have considered the objection petition of appellants against the measurement report of Aanchal Amin and on the cost of appellants he ought to have allowed scientific measurement by any survey knowing pleader commissioner. It was further stated by the learned counsel that the learned court below erred by not considering that disputed Plot No. 3649 and 3649/7531 are the part of the same plot as boundary of both the plots have been given same in the R.S. Khatyan. He further claimed that R.S. map which shows the R.S. plot No. 3649 and 3649/7531 have been carved out in the R.S. map in three parts and R.S. plot No. 3649 is di-hasgit and R.S. Plot No. 3649/7531 is Baharshi land of the appellant. He further argued that the learned DCLR ought to have held that the appellants have perfected their title by ousted and adverse possession and the case of the respondents may be decided by civil court as complicated question of title is involved in the matter which can not be decided under the BLDR Act.

The learned counsel appearing on behalf of the respondent, vehemently opposed the arguments forwarded by the learned counsel for the appellants and submitted that this appeal petition is itself not maintainable as the

grounds framed are illegal and baseless so this is a fit case to be dismissed. He further argued that the claim of the appellants is totally wrong that the plot No. 3649 and 7047 are recorded in R.S. Khatiyani in the name of Sitam Mia, Jitun Mia, Diljit Mia and Kitab Mia who were the ancestors of the appellants and over which the possession of the appellants has been coming since then and their house, safety tank, hand pump are situated in the said land. He further submitted that the measurement done by the Anchal Amin is according to survey rules and encroachment has been found and the said measurement report is available on record. He also pleaded that the order regarding the removal of encroachment passed by the lower court is based on the facts and evidence available, as such no one has any right to challenge the same. The learned counsel lastly submitted that the impugned order is legally valid and proper and the appellants only with a view to harass the respondents has filed this appeal which is fit to be dismissed.

Considering the fact and circumstances of the case, material available on records, respective submissions made by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that the present respondent had approached the DCLR for demarcation of the disputed land on the basis of the measurement earlier done by the Anchal Amin. The learned DCLR held the said measurement of the Amin as correct and final because no objection was filed by the appellant at that time. Obviously, it is seen that there appears no infirmity in the said order of DCLR so far as the operative portion of the order is concerned vis-à-vis the relief sought for by the present respondent as petitioner before the DCLR. Further, the learned counsel for the appellant laid emphasis on the point that the instant case involves adjudication of complex question of title between the parties. The operative portion of the impugned order reads thus:-

“ उपर्युक्त तथ्यों से स्पष्ट होता है कि विपक्षीगण ने आवेदक की भूमि ख़ाता नं०-74, सर्वे नं०-7046 के 2 धुर 10 धुरकी एवं सर्वे नं०-3649 के पूर्ण रकबा पर अतिक्रमण किया हुआ है।

अतः आवेदकगण का आवेदन स्वीकृत किया जाता है और विपक्षीगण को आवेश दिया जाता है कि वे तत्काल प्रशनगत भूमि पर किया गया अतिक्रमण हटा ले एवं भविष्य में किसी तरह का हस्तक्षेत्र प्रशनगत भूमि पर ना करें।”

From the above findings of learned DCLR it appears that he has decided the dispute relating to encroachment over the private land of the parties and also ordered for removal of the same which is not permissible under the BLDR Act.

For the aforementioned reasons; the impugned order of DCLR is not sustainable and hence the same is set aside and consequently this appeal petition is disposed of.

Dictated and Corrected by me.

18.1.16
Commissioner,
Saran Division, Chapra

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