

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. appeal No. 160/2014

Narayan Kumar

Vrs.

Ajay Kumar gupta & Ors.

ORDER

24-09-2015 → The instant appeal is directed against the impugned order passed by DCLR, Mahrajganj in BLDR Case No. 168/2013-14 on 02.05.2014.

The brief facts of the case are that a case was initiated by DCLR, Mahrajganj under the BLDR Act- on a petition of Narayan Kumar S/o Hariprakash Gupta R/o Purani Bazar, Mahrajganj, Dist- Siwan which was forwarded by the SDO, Maharajganj. In the said case the prayer of the petitioner (present appellant) was that a total of 5 dhur land obtained by him and her mother through conditional sale deed on 21.10.1991 from the present o.ps. and came in possession. The present o.ps. wrongly occupied the same which was earlier rented to some one as tenant. Thereafter, the learned DCLR after issuing notice to the present o.ps. heard the case and finally vide order dated 02.05.2014 dismissed the case and held that the petitioner has failed to substantiate his claim over the disputed land. Feeling aggrieved by the said order the present appellant has preferred this appeal.

This case was taken up on 11.09.2015 for final hearing but on finding that the o.ps. are absent this court fixed 18.09.2015 for hearing and also granted last chance to o.ps. On 18.09.2015, the o.ps. were again absent as such this court decided to dispose of the case by an ex-parte order.

The learned counsel for the appellant submitted that the appellant and his mother Manju Devi obtained two conditional sale deeds dated 21.10.1991 from the present respondents for the land measuring 5 dhur of khata No. 59 plot No. 2512 and thereafter let out the same to one Umashankar Prasad as tenant. He further argued that when the said plot was vacated by the tenant the appellant started his cloth shop and as the respondents till date did not return the conditional sale money, the appellant got his name mutated and jamabandi No. 3305 and 3306 was opened. He also argued that thereafter, the respondent started interference in the peaceful occupation of the appellant for which it was decided by the local people that so long the matter is not resolved, the shop will remain locked but the o.ps. after breaking the locks made his unlawful and unauthorised occupation of the shop. The appellant approached the local police and when no action was taken, he approached the SDO and this resulted in the initiation of the present case. The learned counsel further assailed the impugned order and argued that the learned DCLR has wrongly interpreted the various section of Money Lenders Act- 1975 and also did not hold the possession of respondents as illegal or unauthorised. He also argued that the T. Suit case No. 05/14 filed by the o.ps. are wrong as the relief sought by them is different than the stand taken by him before the DCLR.

He lastly submitted that the BLDR Act provides to protect the unauthorised

and unlawful occupation as such his possession be recovered and the impugned order be set aside.

Although, the learned counsel for the o.ps. did not participate in the hearing argument during find hearing, it becomes necessary to go through the rejoinder filed on behalf of them on 26.12.2014 in order to examine the stand taken. In the said rejoinder, the o.ps. stated that the impugned order passed by the DCLR is legally correct and valid and this appeal petition is legally not maintainable. He further stated in his rejoinder that as the complex question of title is involved in the instant case, the DCLR is not competent to decide the same and on this ground also this appeal case is not maintainable as such this appeal is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records and on perusal of the impugned order, it appears that the dispute between the parties relates to their respective claim over the private property purported to have been acquired by the conditional sale deed. Obviously the nature of dispute involves in the instant case is certainly outside the purview of the BLDR Act- 2009. The claim of the appellant is that he has been illegally disposed from his shop by the respondents despite the same has come in his possession on the basis of conditional sale deed. The respondents dispute the said claim on the ground that as per the provision of the Bihar Money Lenders Act- 1975, and as a title suit has already been filed by him with respect to the above disputed property, this issue can not be decided by this court. Thus, it appears that in view of the complexity of the dispute, this case should not have been entertained by the learned DCLR. But the learned DCLR instead of closing the proceeding, directing the parties to avail the remedy before competent civil court, decided the right and title of the parties.

For the aforesaid reasons, the impugned order is not sustainable, hence the same is set aside and accordingly, this appeal petition is disposed of.

Dictated and Corrected by me.

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Commissioner,
Saran Division, chapra

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Commissioner,
Saran Division, Chapra