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In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 326/2013

Chandrama Rai & Ors.

Vrs.

Umashankar Tiwary

ORDER

25.04.2016 - The instant appeal petition is directed against the impugned order passed by DCLR, Mahrajganj in BLDR Case No. 250/2012-13 on 21.10.2013

The brief facts of the case are that the present respondent Umashankar Tiwary S/o Srikishun Tiwary R/o Village- Kapripur, P.S.& Anchal- Basantpur, Dist-Siwan filed a case before DCLR under the BLDR Act- 2009, as petitioner and in the said case present appellants were made as O.Ps. In the said case the prayer of the present respondent, as petitioner, was that different areas of land, having different khatas and plot Nos. situated in mouza Kapripur were his Land purchased by his father and also the Jamabandis for the said land are exiting in his favour. His further case was that the present appellants (O.Ps. before DCLR) are trying to grab some part of the said land forcibly as such they be restrained from going over the said land and his possession also be declared over the land in question. Thereafter, the learned DCLR after issuing notices to the parties, heard the case and finally vide order dated 21.10.2013 allowed the said petition of the petitioner and also restrained the O.Ps. (present appellants) from making and interference and obstruction over the said land and further directed the C.O., Basantpur to initiate steps for cancelling the Jamabandis No. 73 and 74. Feeling aggrieved by the said order, the present appellants have preferred the instant appeal before this court.

Heard the learned counsel for the appellants only as the learned counsel for the respondent was absent on the day of hearing despite being given last chance on previous date.

The learned counsel appearing on behalf of the appellants submitted that initially the case was filed by the respondent before DCLR seeking relief for declaration of right, title and possession over the disputed land under the provisions of BLDR Act. He further submitted that the present appellants appeared in the case before DCLR and had challenged the so called sale deed dated 16.07.1949 as alleged by the present respondent that the same was executed by Rama Nand Tiwary in favour of Srikishun Tiwary and also alleged that the said sale deed document was a forged and fabricated document and unregistered one. He also submitted that the present appellants have purchased the said disputed land having different areas from different plots of different khatas through sale deed from one Basistha Thakur on different occasions and they have also got mutated their names in revenue record and are paying rent to the state. He further submitted that the disputed land have been coming in possession of the appellants since the date of their respective purchase and before that the said land was in peaceful possession of Bashistha Thakur, the vendor. The learned counsel further submitted that the appellants filed sufficient documents to prove their possession before the DCLR but the respondents could not file any document relating to possession other than the forged and fabricated sale deed document of the year 1949. It is also submitted by the appellant's counsel that

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the learned lower court has erred in placing reliance on the alleged sale deed document of the year 1949. He lastly submitted that in the instant case involves complex question of title and once the learned lower court came to know the fact it should have been held that such a complex issue can only be decided by the competent civil court and the impugned order should not have been passed. The learned counsel further referred to the judgement of the division bench of Hon'ble High Court reported in 2014(3) PLJR where in it has been held that dispute relating to determination of complex question of title is outside the purview of the BLDR Act. He lastly submitted that the learned DCLR, instead of passing any order in the case brought before him should have directed the parties to approach the competent civil court for seeking relief with regard to declaration of title over the disputed land and not doing so he exceeded his jurisdiction as such the said order is to be dismissed.

Considering the facts and circumstance of the case, material available on records, arguments advanced by the learned counsel for the appellants and on close examination of the impugned order, it appears that in the instant case the dispute involves between the parties relates to their respecting claim of title over the disputed land on one or another basis. The appellants claim is based on the ground that they have purchased the land from one Bashistha Thakur, through sale deed whereas the claim of the present respondent is that the said land was purchased by his father through sale deed in the year 1949. It is also seen that the present respondent had approached the learned DCLR seeking relief for declaration of his title over the said disputed land. Thus, it appears that in the instant case involves determination of title between the parties.

It is well established that the subject matter of adjudication under the BLDR Act does not include such matters. The Hon'ble High Court in its judgment in *CWJCC No. 1091/2013 (Maheshwar Mandal and others Vrs. The State of Bihar and others)* on 24.06.2014 has observed that the revenue authorities are not empowered to entertain matter not arising out of the six enactments mentioned in schedule- 1 of the BLDR Act- 2009. Obviously the instant matter does not fall under any of the said six enactments and as such it was not maintainable before the lower court.

Thus, for the aforesaid reasons and keeping in view the observations made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and the appeal is accordingly disposed of.

Dictated and Corrected by me.

25-7-16
Commissioner,
Saran Division, Chapra

25-7-16
Commissioner,
Saran Division, Chapra