

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 144/2013

Ashgar Mian & ors.

Vrs.

Narbada Pandey.

ORDER

06.08.2016-- The instant appeal petition is directed against the impugned order passed by DCLR, Gopalganj in BLDR case No. 38/2012-13 on 24.04.2013.

The brief facts of the case are that the present respondent Narbada Pandey S/o Late Bigu Pandey R/o Vill-Baliwan Raimal, P.S.-Bishwarbharpur, Dist-Gopalganj filed a case before DCLR, Hathua by impleading the present appellants as o.ps. In the said case, the prayer of the present respondent (petitioner before DCLR) was that the disputed piece of land measuring 10 decimal out of total area 97 decimal, plot No. 498 of khata No. 320 was settled to him by the Bhoodan Yagna Committee and thereafter jamabandi No. 1419 was created in his favour but as he lived in Jamshedpur, the (present appellants o.ps before DCLR) destroyed the trees planted over the said land and by putting Nad, Kuntha and Palani dispossessed him from the said land as such his possession be recovered. Thereafter, the learned DCLR after issuing notices to the other side, heard the case and finally vide order dt. 24.04.2013 held the right of the present respondent over the said land and also ordered the present appellants to remove their respective illegal possession from the said disputed land.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants submitted in details in his written statement as to how the appellant No. 1 came to acquire 4 decimal of land from the Ex-landlord in the year 1936 and thereafter the remaining 93 decimal of land of khata No. 320, plot No. 498, recorded in khatian as Gair Mazurwa Malik land, was donated to the Bihar Bhoodan Yagna Committee by the Ex-landlord land. He further submitted that out of which 15 decimal of land was settled in favour of Chhabila Pandey, father of present appellants No. 2-6 by the Bhoodan Yagna Committee and he got possession and started paying rent to the state and raised structure like Samadhi of his parents. The learned counsel further argued that the present respondent fraudulently got a Parcha alleged to have been issued by Bhoodan Yagna Committee with respect to 10 decimal of land from the said plot and also got rent fixed by Anchal office but he had no actual possession over the said land alleged to have been settled to him by the Bhoodan Committee. He also submitted that the respondent has also executed a exchange deed with respect to the said donated land from one Shashikant Shukla without obtaining any formal permission from the Bhoodan Committee. He further submitted that the alleged settlement of the respondent is wrong and illegal. The learned counsel further assailed the impugned order by saying that the same has been passed without considering the real facts of the case. He further submitted that the learned Court below ought to have held that when the Bhoodan Committee had already settled entire plot No. 498 to 13 different persons covering 93 decimal of land then it had no right to settle or issue Form-10 and certificate with respect to 10 dhur of land in favour of respondent and in that situation the said 10 decimal land itself is in excess than the actual area of the plot concerned then the order for delivery of possession to the respondent is wrong and illegal. He also submitted that the learned DCLR has no jurisdiction to declare title of the respondent over the disputed land. He also said that the learned DCLR ought to have inquired about the genuineness of the Form-10 and certificate of the Bhoodan Committee from the Bhoodan Yagna Committee before arriving at the final conclusion in the matter. He lastly submitted that as the impugned order has been passed without considering each and every aspects of case and without verifying properly the genuineness of the Bhoodan certificate and even possession over the disputed land as such the impugned order is fit to be set aside.

The learned counsel appearing on behalf of the respondent while strongly opposing the arguments forwarded by the learned counsel for the appellants submitted that the impugned order is legal and valid having no illegality as the respondent had filed the case before learned DCLR with a prayer for recovery of possession after removing the encroachment of the appellant from 10 decimal of land, settled to the respondent by the Bhoodan Committee in the Year 1977 for which jamabandi was created and rent fixed. He further submitted that even in the inquiry report of C.O. Kuchaikot in has been mentioned that jamabandi is existing in the name of respondent who is a settlee of the disputed land but he had no possession. He also said that there is no complicated question of title involved in the case and the impugned order has been passed by the learned lower Court after considering all the relevant facts of the case and has rightly declared the right of the respondent and ordered for removal of encroachment and allowed the case of the respondent. He lastly said that as the appellants have raised a totally baseless and bad claims, the instant appeal petition is fit to be dismissed.

Considering the facts and circumstances of the case, material available on records, claim and counter-claims made by the learned counsel for the parties and on perusal of the impugned order, it is seen that the dispute amongst the parties basically relates to their claim of respective possession over the different area in the disputed land on the basis that they are the Bhoodan settlee. The appellants claim is that from the said plot whose total area is 97 decimal out of which 4 decimal was settled by the Ex-landlord in favour of appellant No.1 over which his residential house exists and after donating the remaining land to Bhoodan Yagna Committee, who in turn settled 15 decimal in favour of the father of appellants No. 2-6 and also granted Praman Patra and remaining land to others having no land remained left on spot to be settled in favour of the respondent. Further claim of the appellants are that the respondent claims recovery of possession on the basis of forged Bhoodan certificate from the said plot in which no area remains vacant and he never had any possession over that. On the other hand the claim of the respondent is that on the settled land, he planted some trees but the appellants destroyed the same and illegally encroached the said land and he being a Bhoodan settlee, his possession be delivered. Thus it appears that in the instant case involves dispute relating to the possession over the respective areas in the plot No. 498 whose total area said to be 97 decimal and out of which at present only 93 decimal remains on the spot after the settlement 4 decimal in favour of the appellant No.1 by the Ex-landlord which can not be disputed now. It is also claimed that the entire area have been settled to different persons in past and having no area remains vacant to be settled with the respondent. It is also seen that the inquiry report of C.O. Kuchaikot available on record as well as detail in the impugned order show that the respondent has not been in possession over the settled land for quite some time. It appears that the DCLR has not considered each and every aspects of the case appropriately before passing the impugned order so far as the possession of the respondent over the disputed area is concerned. In fact, the actual area of the plot No. 498 is itself under dispute for the reasons that the appellants claim that the entire remaining 93 decimal has been settled to the different persons by the Bhoodan Committee in the past and all settlees are in possession of their respective area. In that situation if no extra land remains in that plot to-be settled with the respondent then how can respondent be settled with 10 decimal of land in the said plot? I certainly find some merit in the claim of the appellants. The learned DCLR ought to have gone into the very fact of possession of all the settlees over the said plot before recording any finding relating to possession of the respondent and the claim of settlement of all the settlees should have been also verified from Bhoodan Yagna Commttee, office and from the records and also on the basis of respective possession of the parties.

For the aforementioned reasons, the impugned order is not sustainable and hence the same is set aside and the matter is remitted back to DCLR Gopalganj for fresh consideration in the light of observations and directions made above.

Accordingly, this appeal application is disposed of.

Dictated and Corrected by me.

[Signature]
6.6.16

Commissioner,
Saran Division, Chapra

[Signature]
6.6.16

Commissioner,
Saran Division, Chapra