

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 81/2013

**Tuntun Tiwary**  
**Vrs.**  
**Suresh Tiwary**  
**ORDER**

23-01-2014 — The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in case No. 112/2012-13 on 07.02.2013.

The brief facts of the case are that the present respondent Suresh Tiwary, S/o Late Bishnunath Tiwary, R/o Vill-Takepur, P.S. Maharajganj, Dist-Siwan had filed a case before DCLR, Maharajganj. In the said case the prayer of the petitioner was that several plot No. of different khata No. and having different areas were partitioned between his father and ancestor of the present appellants and they came in their respective possession and schedules were also prepared but now the present appellant is trying to capture the land mentioned in schedule-2, so he be restrained from doing so and the illegal construction, in the form of foundation, raised by him be removed and possession be delivered also. Thereafter, the learned DCLR issued notice to the present appellant (o.p. before DCLR) and heard the case and finally vide order dt. 07.02.2013 allowed the case in favour of the present respondent and also restrained the o.p. from entering on certain part of the plots which were in dispute and also directed the C.O. Maharajganj and officer in charge Maharajganj to remove the foundation and to deliver the possession. Feeling aggrieved by the said order, the present appellant has preferred this appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing for the appellant, at the very outset of his argument, submitted in detail as to how the father of the appellant and respondents partitioned the land in question on mutual consent and accordingly schedules were prepared and later on some amendment was also made by them. He further argued that the respondent filed a case before DCLR for the declaration of the documents of appellant as void and illegal whereas the Court of DCLR has no authority as per the provision of BLDR Act to examine the validity of any documents. He further argued that the lower Court committed mistake in not appreciating the documents filed on behalf of the appellant that plot No. 1681, area 1 katha 12 dhur, was allotted in the share of the appellant according to the amended partition of the parties reached on 01.06.1961. He also submitted that the learned lower Court has committed error in ignoring the T.S. No. 857/12 filed before Sub-Judge-1, Siwan regarding the disputed plots and the lower Court has no authority to pronounce verdict on the title matters during the pendency of a proceeding relating to claim of title before Civil Court. He also argued that the learned lower Court ought to have considered the documents filed by the appellants such as mutation order, rent receipt, written partition documents with amendment, the proceeding u/s 144 & 145 Cr. P.C. and T.S. No. 857/2012 and the said documents disclosed the title and possession and right of the appellant. He lastly submitted that the impugned order is fit to be set aside.

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The learned counsel appearing on behalf of the respondent, while supporting the impugned order submitted that the said order has been passed after proper appreciation of facts and law. He further argued the appellant and the respondent has been separated since long and their ancestors have been recorded in R.S. Khatiyon over separate property. He further argued that after partition Beni Madhaw Tiwary, father of the present appellant has got 3 bigha 18 katha ½ dhur and father of the respondent got 4 bigha 2 katha 17 ½ dhur and the claim of appellant that there was re-partition between them is totally wrong as the same is not legally permissible and the alleged deed of partition dt. 01.06.1961 is a forged document which was not signed by the respondent's father rather the signature on the said document is forged. He further submitted that in fact the respondent has been in possession over 1 katha 12 dhur of plot No. 1681 and 3 dhur of plot No. 1682 and the appellant wants to dispossess him from his land.

Considering the facts 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 in the instant case involves the dispute over the land in question regarding the respective share acquired by them by alleged partition or re-partition between the fathers of the contesting parties. Obviously the dispute relates to raiyati land and the same has been admitted by the parties also during arguments. It is also an admitted fact by the parties that a T.S. No. 857/2012 has been filed by the appellant before Sub-Jugde-V Siwan. The dispute essentially involves the question of willful dispossession over private land but the same is not maintainable under the BLDR Act.

It is well established that the subject matter of adjudication under the BLDR Act does not include such matters. The Hon'ble High Court also in the case of Maheshwar Mandal & ors. Vrs The State of Bihar & ors. has observed that revenue authorities are not vested with the power under the BLDR Act to entertain matters not arising out of the six enactments mentioned in schedule-1 of the BLDR Act-2009. Clearly enough the instant matter does not fall under any of the six enactments and as such it was not maintainable before the lower Court.

For the aforementioned 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 not sustainable and hence the same is set aside and the appeal is accordingly, disposed of.

Dictated and Corrected by me.

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*23-1-16*  
Commissioner,  
Saran Division, Chapra

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Commissioner,  
Saran Division, Chapra