

**In The Court of Commissioner, Saran Division, Chapra  
B.L.D.R. Appeal No. 192/2011**

**Hassan Tara Khatoon  
Vrs.  
Ali Hussain & ors.**

**ORDER**

28.12.2015 — The instant appeal is directed against the impugned order passed by DCLR Hathua in B.L.D.R. case No. 55/2011-12 on 24.10.2011.

The brief facts of the case are that the present respondent Ali Hussain S/o Late Hanif Mia R/o Mouza Hathua south, P.S. & Circle-Hathua, Dist-Gopalganj filed a case before DCLR, Hathua by making the present appellants as opposite party with a prayer for the measurement and demarcation of the disputed land measuring 4 dhur 4 dhurki of plot No. 887, khata No. 224 whose total area is 1 katha 17 dhur. His further prayer was that the C.O. Hathua may be directed to restrain in present appellant (o.p. before DCLR) from making any interference in his peaceful possession. Thereafter, the learned DCLR after issuing notice to the parties, heard the case and finally vide order dt. 24.10.2011 allowed the said case with a direction to the C.O. Hathua to get measure the disputed land in his own presence from a govt. Amin and if he found that the petitioner has been found to be dispossessed from any part of the said land his possession may be delivered.

On being aggrieved by and dissatisfied with the aforesaid order, the present appellant has preferred this appeal before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant submitted at the very outset of his argument, that the impugned order is not sustainable both on facts and in law. He further submitted that the learned lower Court has not appreciated the law of inheritance of Mohamandan law and also miscalculated the share of respondent No. 1 Ali Hussain. He also submitted that the learned DCLR should have held that respondent No. 1 has no title and possession over any inch of disputed land as he has already sold his share to Murad Hussain by registered sale deed on 04.03.2010. He lastly submitted that the impugned order of DCLR is not fit to be upheld anyway and hence the same is fit to be set aside.

The learned counsel appearing on behalf of the respondents submitted that the impugned order is legal and proper as the said order has been passed after careful consideration of the entire facts and documents filed by the parties. He further submitted that the appellant has no right, title and interest in the suit land. He further argued that the appeal petition filed by the appellant is not proper and there is no sufficient ground mentioned in the appeal petition for challenging the above order passed by DCLR. He also argued that the ground set forth by the appellant is baseless as such this appeal petition is fit to be dismissed.

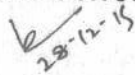
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Considering facts and circumstances of the case, material available on records, respective arguments made by the learned counsel for the parties and on perusal of the impugned order, it is seen that the present respondent had initially approached the Court of DCLR for the measurement and demarcation of the land in question which is stated to have come in his share. Besides that he also made a prayer for the delivery of possession of the said land. The learned DCLR in his detailed order after considering the entire facts and documents finally allowed the said petition and ordered for measurement demarcation of the said disputed land. However, the learned counsel for the respondent is of the view that the appellant does not have any share remained in the said plot as he has already sold to someone else through registered sale deed. Thus, it appears that in this case involves some disputed facts and obviously such kind of dispute can not be resolved by the DCLR. But the learned DCLR went on resolving the dispute and also ordered for the delivery of possession. This part of the order seems to be extrajudicial order as the DCLR is not empowered to resolve/adjudicate the complex nature of dispute where adjudication of share, title and possession are involved.

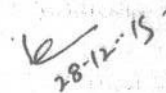
For the aforementioned reasons the impugned order is not sustainable and hence the same is set aside and the case is remitted back to DCLR, Hathua for passing afresh order in accordance with law keeping in view the power conferred on him under the BLDR Act-2009 and also in the light of observations made by the Hon'ble High Court in the case of Maheshwar Mandal & ors. Vrs The State of Bihar & ors.

Accordingly, this appeal is disposed of.

Dictated and Corrected by me.

  
28-12-15

Commissioner,  
Saran Division, Chapra

  
28-12-15

Commissioner,  
Saran Division, Chapra