

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 88/2013

Mukhdeo Singh & ors.

Vrs.

Hari Kishore Pandey & ors.

ORDER

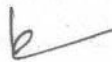
15.12.2015 The instant appeal petition is directed against the impugned order passed by the DCLR, Siwan Sadar in BLDR case No. 83/119/2011-12 on 14.09.2012.

The brief facts of the case are that the present respondent Hari Kishor Pandey S/o Jagarnath Pandey R/o Vill-Hakma, P.S.-Andar, Dist-Siwan and his other two brothers filed a case before DCLR, Siwan Sadar by making present appellants as o.ps. In the said case their prayer was that the land measuring 12 katha 8 dhur of plot Nos. 586 and 689 of the katha No. 16 recorded in the khatiyani in the name of Gujara Kunwar and Jamabandi is also running in her name but the present appellants (o.p before DCLR) have forcibly disposed them from the said land as such the possession of the said land be delivered to them. The learned DCLR issued notice to the o.ps but as the o.ps failed to file their presence, he finally decided the case by ex-parte order holding the possession of the present appellants (o.p. before DCLR) over the disputed as unauthorised possession and ordered for removal of the same. Feeling aggrieved by the said order, the present appellants have preferred this appeal case before this Court.

Heard the learned counsel for the parties

The learned counsel appearing on behalf of the appellants while assailing the impugned order, submitted that the said order is illegal, antedated collusive and the same has been passed without affording any opportunity of hearing to the appellants. He further submitted that the impugned order itself shows that the order is an ex-parte order and it would be proper to remand this case back to the DCLR, to dispose of the same afresh after hearing the appellant.

The learned counsel for the respondents on the other hand supported the impugned order and said that the instant appeal is not maintainable either in facts or in law. The learned counsel further submitted that the grounds taken by the appellants in his memo of appeal petition is false and fabricated. He further argued that it is wrong to say that the learned DCLR Siwan passed collusive order whereas the real fact is that despite proper notice, the appellants did not appear in the case as such the case was heard ex-parte and after that proper and justified order has been passed on perusal of the material available on records. The learned counsel lastly prayed that the impugned order is fit to be upheld and this appeal being devoid of any merit is liable to be dismissed.



Considering the facts and circumstances of the case material on records, rival submissions made by the learned counsel for the parties and on perusal of the impugned order, it is an admitted fact by the parties that the impugned order is an ex-parte order. The learned counsel for the appellant prays for remanding the case back to the DCLR, Siwan with a direction to dispose of the same afresh after hearing. I do not find any wrong in the said prayer of the appellant and the same is accepted.

Accordingly, the impugned order of DCLR, is set aside and the case is remitted back to pass afresh order after hearing the appellants.

This appeal petition is disposed of.

Dictated and Corrected by me.

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15-12-15
Commissioner,
Saran Division, Chapra

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Commissioner,
Saran Division, Chapra