

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. appeal No. 89/2012

Akramul Haque

Vrs.

Bishwanath Choudhary

ORDER

12-08-2015- The instant appeal application is directed against the impugned order passed by DCLR, Hathua in BLDR Case No. 113/2011-12 on 23.01.2012.

The brief facts of the case are that the present respondent Bishwanath Choudhary, S/o Jadu Choudhary R/o Village- Uchakagaon Bargachhiya , P.S.- Uchakagaon, Dist- Gopalganj filed a case before DCLR Hathua against the present appellant Akramul Haque. In the said case the relief sought by the present respondent was that a piece of land measuring 2 Katha 09 dhur appertaining to Khata No. 243 Plot No. 2849 was purchased by him through registered sale deed dated 08.10.1997 from Matab Mia, Kitab Mia and Ishhaq Mia over which his title be declared as the present appellants are threatening to dispossess him from the said land. The learned DCLR after issuing notice to the parties heard the case and finally passed the order that the right and possession over the disputed land is proved in favour of the present respondents and accordingly allowed the case in favour of the present respondents. 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 on behalf of the appellant submitted at the very outset of his argument that the impugned order passed by DCLR is not maintainable in view of the facts that the dispute between the parties involve title dispute. He further argued that a partition suit No. 186/2005 is pending before sub-judge- 1 Gopalganj in respect of disputed land including some other land. He also argued that according to BLDR Act, the DCLR has very limited jurisdiction which has been mentioned in schedule- 1 of the Act but the learned DCLR has passed order overriding on the jurisdiction of the civil court. The learned counsel lastly submitted that the impugned order is fit to be set aside.

The learned counsel appearing behalf of the respondents submitted that the respondent purchased the said disputed land from Matab Mia, Kitab Mia and Ishaq Mia through registered sale deed dated 08.10.1997 and possession delivered to him and on that basis he got mutated his name and Jamabandi was also opened in his name. He further submitted that the appellant has got no title over the disputed land. He further submitted that in the past appellant had also filed a case u/s 144cr. P.c. for 9 dhur land of the disputed plot which was decided in favour of the respondent but now the appellants is threatening the respondent to disposes him from the said land. The learned counsel also elaborated in detail about the genealogy of the vendor and about

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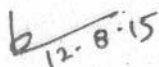
gift deed executed by Faudi Mia of his ½ part share of disputed Plot No. 2849 in favour of his two sons on 12.08.1950, in support of his contention. He lastly submitted that the impugned order of the DCLR is just and proper having no illegality so the same be upheld.

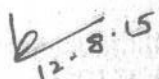
Considering the facts and circumstances of the case, material on records, pleadings advanced by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that the present respondent had approached the competent authority for declaration of his right on the land stated to have been purchased by him through registered sale deed from the rightful owner and also for restraining the appellants not to threaten him to disposes him from the said land. This clearly shows that the dispute involves question of right and title to be adjudicated between the parties with respect to the disputed land. The learned counsel for the appellant rightly says that the learned DCLR has got no jurisdiction to decide such kind of dispute under the provision of BLDR Act. This plea of appellant is certainly acceptable in view of the fact that the learned DCLR wrongly decided the right and title of the respondents vide his order dated 23.01.2012 which is under challenge in appeal before this court. In fact the subject matter of adjudication under the BLDR Act does not include deciding issues relating to the title of the parties, who are staking their claims on the disputed land on one and another basis. In other words, right and title issues have been kept completely outside the purview of the BLDR Act as observed by Hon'ble High Court in CWJC No. 1091/2013, Maheshwar Mandal & Ors. Vrs. The State of Bihar & Ors.

Thus, for the aforementioned reasons and keeping in view the observations made by the division bench of the Hon'ble High Court as mentioned above, the impugned order of DCLR, Hathua dated 02.03.2012 is not sustainable and hence the same is set aside.

Accordingly, this appeal application is disposed of.

Dictated and Corrected by me.


12.8.15
Commissioner,
Saran Division, Chapra


12.8.15
Commissioner,
Saran Division, Chapra