

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No.01/2012

Manoj Rajbhar & ors.

Vrs.

Harihar Khatik & ors.

ORDER

30-03-2016 - The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in BLDR case No. 88/2011-12 on 03.12.2011.

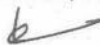
The brief facts of the case are that one Abhiraj Khatik S/o Late BhaJan Khatik R/O vill-Sumhuti Tole Khap, P.S.-Vijaypur, Dist-Gopalganj filed a case before DCLR, Hathua by making the present appellants as o.ps, In the said case he sought relief to the extent that the present appellants be restrained from making illegal interference and from making illegal claim over the land appertaining khata No. 147 plot No. 105, area 24 decimal situated in Mouza Sunuhuti. His further prayer was that if he is dispossessed from the said land during the pendency of the case his possession be delivered. Thereafter, the learned DCLR issued notices to the parties but due to no-appearance of the o.ps in the proceeding, the said case was finally disposed of by an ex-parte order dt.03.12.2011 whereby the said case was allowed and the interference by o.ps in the rightful possession of the petitioner was declared illegal and accordingly a direction was also given to the C.O. Vijaypur to restrain the o.ps from cultivating the said land. Feeling aggrieved by the said order the present appellants (o.ps before DCLR) have preferred the instant appeal petition before this Court.

Meanwhile, during the pendency of this appeal case before this Court, the original respondent Abhiraj Khatik died and thereafter his legal representatives have been substituted in his place as o.ps in the instant case.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants at the very outset of his argument, submitted that the impugned order has been an ex-parte order as such the said order is against law and the same can not be upheld. He further submitted that when the ops before DCLR did not appear to satisfy himself about the service of notice and before final hearing of the case, the learned lower Court should have asked the petitioner (before DCLR) to get the notice published in news paper. He also submitted that the o.ps respondent is very clever and litigant and by taking the peon in confidence and by playing fraud upon the Court got the matter heard and the Court had wrongly mentioned in its order that the o.ps have appeared but have not filed any written statements. The learned counsel further arguing on the merit submitted that from R.S. Khatian it will appear that the appellants are sikmidar of the disputed land and they have occupancy right in the disputed land. He also submitted that plot No. 105 and 106 of Khata No. 07 were Sikmi land of the ancestors of appellants and it is recorded in khatian in the name of ancestor of appellants Neur Bhar and just in the boundary of disputed land there is house of the o.ps in plot No. 106. He also argued that the learned court erred in holding that as the o.ps are not appearing in the case so they have no right, title and interest in the suit land but the fact is that the appellants had no knowledge of the case, so they did not appear and contest the suit. He lastly submitted that the learned lower Court ought to have held that the respondent has no title and interest in suit land and should have dismissed the case.

The learned counsel appearing on behalf of the respondents while strongly opposing the arguments forwarded by the learned counsel for the appellants, submitted that the impugned order is valid and infact the instant appeal is not maintainable and is fit to be dismissed. He further submitted that the said disputed land of R.S. plot No. 105 measuring 24 decimal was acquired by the state Govt. alongwith other excess land from Mahanth Ramgati Das under the Ceiling Act and the same was settled with Abhiraj Khatik as he was land less person and accordingly he came in possession and thereafter parcha was granted by SDO, Gopalganj in 1976 and rent was fixed in favour of respondent and he has been paying rent to the Govt. He further submitted that the fact is that the said land has been coming in the peaceful possession of the respondent but the appellants have threatened to dispossess him from the said land as such he prayed before DCLR for protection and the Court below being satisfied

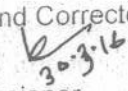


with the documents and other relevant papers, passed the impugned order. He further submitted that the appellants are wrongly claiming themselves as heirs of Neur Bhar and even after due service of notice and the appellants having full knowledge of the proceeding before lower Court did not appear in the case. He also argued that the claim of the appellants that they have acquired occupancy right over the land is a false claim as the said land has been coming in peaceful possession of the respondent after settlement and they being poor and helpless persons are now being threatened by the appellants to dispossess him. He lastly submitted that as the impugned order is a legal and valid order, the same is fit to be upheld.

Considering the facts and circumstances of the case, material available on records, claims and counter-claims made by the learned counsel for the contesting parties and on perusal of the impugned order, it is seen that the dispute between the parties relates to their respective claim over the 24 decimal land of plot No. 105 situated in Mouza Sumuhuti. The appellants claim is solely based on the ground that they being the descendants of Neur Bhar who was a Sikmidar of the said land, they have acquired the occupancy right over the said land. But on the other hand, the claim of the respondents that the said land was settled to their father late Abhiraj Khatik by the state Govt. after the acquisition of the said Surplus land under the Land Ceiling Act. from one Ramgati Das, the khatiyani raiyat. It appears that the learned DCLR has dealt with the entire matter after considering all the material facts and relevant documents while arriving at his final findings of facts relating to disputed question of facts. The learned counsel for the appellants is of the view that the impugned order has been passed without hearing him as such the ex-parte order can not be upheld. On the other hand, the learned counsel for the respondent disputes this claim on the ground that despite valid issue of summons the appellant preferred to keep himself absent from the proceeding before the lower Court. It is also seen from the lower Court record that notice to the appellants (o.ps before DCLR) was issued but the same was returned unserved with a comment that the said notice was neither received even not signed after perusing the same. This act of the appellant obviously shows that despite having knowledge of the said case they ignored to participate in the proceeding for some extraneous consideration. The other contention of the appellants that they are the descendants of the alleged Sikmidar Neur Bhar has not been proved in the lower Court by the present appellants. But the copy of so called parcha and rent receipts available on record shows that the said land was settled in favour of the respondent by the state. Thus, I find that the learned DCLR has passed a valid and legal order in favour of the present respondent (petitioner before DCLR) by correct analysis of the entire facts of the case on careful consideration of the available documentary evidence. At the same time, the appellants has failed to bring on record any reliable evidence in support of their claim so as to enable this Court to make any interference in impugned order of DCLR.

For the aforementioned reasons, the impugned order is upheld and accordingly this appeal petition is disposed of.

Dictated and Corrected by me.


30.3.16
Commissioner,

Saran Division, Chapra


30.3.16
Commissioner,

Saran Division, Chapra