

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 201/2013

Surendra Singh & ors.

Vrs.

Bikrama Singh & ors.

ORDER

20-08-2015- The instant appeal petition is directed against the impugned order passed by DCLR, Siwan Sadar in B.L.D.R. case No. 35/72/2011-12 on 10.10.2012.

The brief facts of the case are that the present respondent Bikrama Singh, S/o Late Gyani Singh and his two sons-Pintu Singh and Rakesh Singh, all R/o vill-Baletha Nawka tola, P.S. Siwan mufassil, Dist-Siwan filed a case before DCLR, Siwan Sadar by making Surendra Singh, S/o Nagendra Singh and ors as O.Ps No. 1-9. In the said case the prayer of the present respondents was that the disputed piece of land measuring 8 katha 16 ½ dhur of khata No. 76, plot no.1468 was purchased through sale deed on 07.01.1997 over which their possession exists and the same land be demarcated through measurement and the O.Ps (present appellants) be restrained from dispossessing them. Thereafter, the learned DCLR heard the case and finally by order dt. 10.10.2012 disposed of the case holding that the subject matter of dispute between the parties relates to measurement and demarcation of the disputed land and accordingly directed concerned C.O. to get measure the land mentioned in the petition dt. 18.08.2012 and resolve the dispute between the parties.

On being aggrieved by and dissatisfied by the said order, the present appellants have preferred this appeal case before this Court.

Heard the parties.

The learned counsel appearing on behalf of the appellant submitted in very beginning of his argument that the impugned order is illegal and without Jurisdiction. He further argued that the present appellant as O.Ps before the lower Court had challenged the maintainability of the case under the BLDR Act as there is no provision for demarcation under B.L.D.R. Act. nor any demarcation can be done declaring the title and possession. He further drew the attention towards section 4 of the BLDR Act to substantiate his contention that the DCLR is competent to decide only such dispute which are covered under those six Acts mentioned in schedule-1 and partition, declaration of right of a person or boundary dispute can only be resolved under those six Acts if the parties are settlee and allottees or decreed holder. He also submitted that the present O.Ps had demanded delivery of possession in the garb of the demarcation of the land and prayed to restrain the appellants from interfering in their possession. He further described as to how the said land of the said big plot came to different appellant from the khatiyani raiyat Jamuna Sah in course of time through transfer and at present two Pucca houses and Sahan exist over the said land. He also submitted that the appellants too deposited fee for demarcation but C.O. did not act

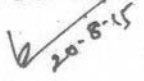
under Bengal survey Act for which he is the competent authority and the local Amin Collusively wants to demarcate the purchased land of the appellants in favour of respondent. He lastly submitted that the impugned order being beyond jurisdiction is fit to be set aside

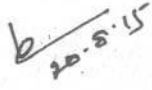
The learned counsel appearing on behalf of the O.Ps submitted that the appeal is not maintainable because it is time barred and the appellants do not have sufficient ground to defend such delay in filing this appeal. He further submitted that the respondent has purchased the land measuring total 8 katha 16 ½ dhur from plot no. 1468 khata No.76 through four sale deeds on different dates and having peaceful possession. He further argued that the said land has been mutated in his favour and they are also paying the rent year after year. He also argued that the appellant has no right and title to dispossess the respondents of their peaceful possession and the appellant have encroached 1 katha 13 dhur from the said land in the year 2011. He further submitted that the learned DCLR has passed the order after enquiry and on finding encroachment, ordered for measurement of the said land. He lastly submitted that it was after the order of DCLR for measurement, the appellants have filed this appeal.

Considering the facts and circumstance of the case, material on records, on going through the written statements filled by the parties and on perusal of the impugned order, it is quite obvious that the dispute between the parties relates to demarcation of the land in question. Although, appellant's learned counsel advanced his submission on the line that the dispute relates to right and title and so the learned DCLR was not competent to decide such disputes and in support of that contention he relied upon the provisions mentioned in section 4 of the BLDR Act. This plea of appellants is certainly not tenable in view of the fact that the present respondents were actually approached the leaned DCLR for measurement of his land what stated to have been purchased by him on different occasion and part of which has been encroached by the appellants.

It is also settled in law that such a demarcation is very much permissible under the BLDR Act. hence there is no infirmity in the order of demarcation by the DCLR which is hereby upheld and the appeal is accordingly rejected.

Dictated and Corrected by me.

  
Commissioner,  
Saran Division, Chapra

  
Commissioner,  
Saran Division, Chapra