

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 165/2013

· Dharmendra Passi & ors.

Vrs.

Manoj Sah

ORDER

18.01.2016 - The instant appeal petition is directed against the impugned order passed by DCLR, Hathua in BLDR case No. 148/2013 on 07.05.2013.

The brief facts of the case are that the present respondent Manoj Sah S/o Late Satyadeo Sah, R/o Vill-Tulasiya, P.S.-Uchakagaon, Dist-Gopalganj had filed a case before learned DCLR, Hathua by making the present appellants as opposite party. In the said case, the claim of the present respondent was that the disputed piece of land appertaining to khata No. 65, plot No. 1335 measuring 4 katha 17 dhur was transferred on different dates in favour of his grand father through sale deeds and Jamabandi No. 189 was created but the present appellants (o.ps before DCLR) have illegally disposed him from the said land as such his possession be delivered. Thereafter, the learned DCLR after issuing notices to the parties heard the case and finally vide order dt. 07.05.2013 allowed the said case in favour of the present respondents. Feeling aggrieved by the said order the present appellants have preferred this appeal petition before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants at the very outset of his argument, submitted in details as to how the ancestor of the appellants came in possession of the land having area 1 Bigha 2 katha including the disputed land on the basis of sale deeds dated 10.07.1946, 24.05.1965 and gift deed dated 23.06.98 and they paying rent to the state. He further submitted that the learned Court below has failed to appreciate the entire facts and documents placed before it and wrongly allowed the petition under the BLDR Act for delivery of possession which is illegal. It was further submitted that the sale deed documents filed by the present respondent before the lower Court are fabricated and forged and inoperative because respondents and his ancestor never came in possession of the same. He also submitted that the Court below ought to have considered that area of the land described in sale deed does not exist on the spot and for which no enquiry was held by the lower Court to find out the truth and the fact is that the land in question is part of appellant's land. He lastly submitted that as the impugned order is erroneous and said order is fit to be set aside.

The learned senior counsel appearing on behalf of the respondent while opposing the arguments forwarded by the learned counsel for the appellants, submitted that the instant appeal is legally not maintainable as there is no any factual and legal defects in the impugned order. He further submitted that the total area of the disputed plot is 01 bigha 7 khata 9 dhur and the said land is recorded in R.S. khatyan in the name of several persons and with their well defined share and ancestor of the respondent had purchased altogether 4 khata 17 dhur land through four sale deeds from the different

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persons having their share in the said plot and his paying rent to the state. He further submitted that after purchase by the ancestor of the respondents there remained 1 bigha 2 katha 12 dhur in the disputed plot towards west of the purchased land of the respondent. He also submitted that as there is no demarcation line between purchased land of the respondent and remaining 1 bigha 2 katha 12 dhur of the remaining land in disputed plot, so the respondent is entitled for demarcation of his land and the order of lower Court is also for demarcation of the respondent's land. He lastly submitted that the appeal petition being devoid of any merit is fit to be dismissed.

Considering the facts and circumstances of the case, material on record, respective arguments forwarded by the learned counsel for the parties, and on perusal of the impugned order, it is seen that the dispute between the parties over the disputed piece of land relates to their respective possession what they claimed to have been acquired through sale deeds allegedly executed by the different branches of khatiyani raiyat. The learned DCLR, justified the claim of the present respondents on the ground that the sale deeds of the respondent is of the year 1944 and 1948 whereas that of the present appellant is of the year 1965 and 1987 and as the sale deeds of respondents are prior to the sale deeds of the present appellants, the claim of the respondent over the disputed land has been held as appropriate. The learned counsel for the appellants, assailed the impugned order of the DCLR and said that he has got no jurisdiction to order for delivery of possession but the learned lower Court ignoring this point went on ordering for the delivery of possession. On the other hand the learned counsel for the respondent is of the firm view that as the land measuring 4 katha 17 dhur is part of that big plot and in possession of the respondents, the DCLR's order is not illegal as he has ordered for the demarcation of the said land after measurement by Anchal Amin. It seems to me that apparently the order of learned DCLR can not be termed as wholly arbitrary or inappropriate in view of the facts that operative part of the impugned order itself reads as follows:-

“अतः उपरोक्त सारे तथ्यों एवं परिस्थितियों में वादी के वाद पत्र को स्वीकार किया जाता है तथा अंचल अधिकारी, उच्चकागांव को आदेश दिया जाता है कि प्रशनगत भूमि का पैमाईश अंचल अमीन से कराकर प्रशनगत भूमि को डरार कायम कराने के पश्चात् प्रशनगत भूमि पर वादी का दखल-कब्जा कराना सुनिश्चित करें”।

Obviously it is as seen that the learned DCLR has ordered for the demarcation of the disputed land by Anchal Amin and to that extent the said order can not be held arbitrary but the order regarding giving of delivery of possession is incorrect and beyond jurisdiction.

This appeal petition is accordingly disposed of with the observation made as above.

Dictated and Corrected by me.

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Commissioner,
Saran Division, Chapra

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