

IN THE COURT OF COMMISSIONER, SARAN DIVISION, CHAPRA

B.L.D.R. Appeal No. 143/2013

Ashok Prasad Yadav

Vrs.

Rajendra Prasad Singh & Ors.

ORDER

18-09-2015- The instant appeal petition is directed against the impugned order passed by DCLR, Sonpur in BLDR Case No. 142/2011-12 on 04.02.2013.

The brief facts of the case are that the present respondent Rajendra Prasad Singh and Surendra Prasad Singh, both sons of Late Hari Narayan Singh R/o Village- Chitupaker, P.S.- Nayagaon, Dist- Saran filed a case before DCLR, Sonpur with a prayer to demarcate his land appertaining to Khata No. 6 R.S. Plot No. – 63 having area 12 Katha 18 dhur and in the said case Ramdas Mahto and Ors. were made as O.Ps. Thereafter, the learned DCLR after hearing the case and vide order dated 04.02.2013 appointed a survey knowing advocate to get measure the disputed land and also to put pillars on the four corners of the said land. Feeling aggrieved by the said order, the present appellants hence preferred this appeal.

Heard the learned counsel for the parties.

The learned counsel for the appellant at the very outset of his argument submitted that the impugned order of DCLR is illegal and without jurisdiction. He has no power to decide the complicated question of title under the provision of BLDR Act. He further argued that according to section – 3 of the Act, the learned DCLR has no jurisdiction to adjudicate any fresh right of any raiyat but learned lower court has decided the merit of sale-deeds and fresh right of respondents. He also argued that the respondent first set filed his petition for demarcating the land of Khata No. 6, Plot No.- 63, area 12 Katha 18 dhur and description of that land has been given in the petition but from the perusal of Khatian the entire area of Plot No. 63 is only 3 Katha 3 ½ dhur and without considering this fact, order was passed for demarcating 12 Katha 18 dhur which is highly astonishing. He also submitted that the learned lower court ought to have disbelieved the sale deed of respondent No. 5 regarding 3 Katha 3 ½ dhur of Plot No. 63. He lastly said that the impugned order is illegal and erroneous, hence the same be set aside.

The learned counsel for the respondent submitted that this appeal petition is not maintainable. He further argued about how the respondents came to acquire the said land through sale deeds and the entire area of that plot has been mutated in their favour and even the land possession certificate with respect to the land in question has been issued in their favour. He lastly submitted that the impugned order of DCLR, is legal and valid as such the same be upheld.

Considering the facts and circumstances of the case, material on records and on perusal the impugned order as well as on going through the claims and counter claims made by the learned counsel for the parties, it appears that in the instant case involves complex question of right and title dispute. Although, the respondents had approached

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the learned DCLR for demarcation of his land which is stated to have been acquired on the basis of sale deed. The DCLR also passed the order only to the effect that he ordered for the appointment of a survey knowing advocate to get measure the land and put pillar on favour concerns only after deciding the right of the respondents. However the appellant is of view that the entire area of the disputed plot is only 3 Katha 3 ½ dhur where as the DCLR has ordered for measurement of 12 Katha 18 dhur claimed by the respondents. In the instant case the dispute involves many issues like determination of title on the basis of sale deed, genealogy, respective share of the parties actual area of the disputed plot and certainly it makes the issue is of complex nature which can not be determined in a summary proceeding. But from the perusal of the impugned order, it is crystal clear that the said order is an interim order in view of the fact that the same is related to the appointment of a survey knowing advocate, only and not about any final decision with respect to dispute arising on the basis of the report submitted by him. In fact therein is no provision of any appeal against the interim order in the BLDR Act. From the lower court records, it is also seen that the said record has not yet been closed after the order dated 04.02.2013 and the proceeding continues thereafter also.

Thus, for the aforesaid reasons, this case is not maintainable for the fact that an interim order can not be challenged in appeal.

Accordingly, this appeal is dropped.

Dictated and Corrected by me.

Commissioner,
Saran Division, Chapra

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18.8.15
Commissioner,
Saran Division, Chapra