

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 168/2013

Hari Rai & ors.

Vrs.

Lotan Sah & Ors.

ORDER

12.04.2016- The instant appeal petition is directed against the impugned order passed by DCLR, Mahrajganj in Case No. 09/2012-13 on 12.03.2013.

The brief facts of the case are that the present respondent Lotan Sah S/o Late Bishwanath Sah R/o Village- Bsantpur, P.S.- Basantpur, Dist- Siwan filed a case before DCLR, Mahrajganj by impleading the present appellants as respondents. The case of the present respondents (as petitioners before DCLR) was that the land measuring 1 bigha 2 katha 12 dhur of Khata No. 57, plot No. 95 situated in Mouza Karhikhurd is the purchased land of his grandfather, Sheogobind Sah which was purchased at a consideration of Rs. 200 from the Khatiyani raiyat Ramdhani Raut through sale deed on 27.07.1925 and the said land was coming in possession of the descendants after the death of Sheogobind Sah and the Jamabandi No. 62 exists in the name of Ram Ekbal Sah. His further case was that the present appellants (Ops. before DCLR) claiming themselves to be the descendents of khatiyani raiyat and on the basis of entry in khatiyani tried to dispossess him from the said land as such they be restrained from making any such claim and further they also be restrained from making any hindrance in the possession of the present respondent. Thereafter, the learned DCLR initiated the preceeding under the provision of BLDR Act and after issuing notices to the parties, heard the case and finally vide order dated 12.03.2013 disposed of the case by holding that the claim of the present respondent over the disputed land was found to be justified and also ordered the present appellant from venturing over the said land. Feeling aggrieved by the said order, the present appellants have preferred the instant appeal before this court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants submitted, at the very outset of his argument, that the impugned order is bad in law and fact as the said order has been passed without considering the relevant facts of the case. He further argued that the learned lower court wrongly relied on the forged and fabricated sale deed produced by the respondents and also did not make any enquiry regarding the possession of the parties over the disputed land. He further submitted that the disputed land is recorded in the name of Ramdhani Raut S/o Hukum Ahir, who was the ancestor of the appellants and after death of said Ramdhani Raut his two sons Pati Raut and Khelawan Raut came in possession over the disputed land and later on the said land came in the Share of present appellants through private partition. He further submitted that the entire land in question is in peaceful possession of the appellants and in some part of the said land there is Bathan cum residential house of the appellants. He further submitted that Ramdhani Raut had never executed any sale deed to Sheogobind Sah as is claimed by the respondent on the basis of forged, fabricated and illegal sale deed dated 27.05.1925. The learned counsel lastly submitted that the claim of the respondent is not maintainable at all because the said sale deed is not

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genuine and actually the appellants are in possession over the disputed plot since long time back and the said land is khatiyani land of them. He also said that as complicated question of title is involved in this case, the DCLR is not competent to decided the same.

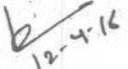
The learned counsel appearing on behalf of the respondents while strongly opposing the arguments forwarded by the learned counsel for the appellant, submitted that the appeal petition is not legally and factually maintainable as the same has been preferred entirely on false and concocted grounds. He further submitted that the disputed land was sold by the recorded tenant Ramdhani Raut to Sheogobind Sah by registered sale deed dated 27.07.1925 and thereafter the entire land remained in the cultivating possession of the purchasers and after his death to the legal heirs. He further submitted that Sheogobind Sah died before vesting of Jamabandi so after his death the name of his son Ram Ekbal Sah was mutated and he used to pay the rent to ex-landlord and after vesting of Jamindari, even the return was filed by the Ex-landlord in favour of Ram Ekbal Sah and on that basis Jamabandi No. 62 was created. He further submitted that even the Land holder certificate for the said disputed land has been issued in favour of all family members with respect to the disputed land. The learned counsel also filed the copies of various documents in support of his claim. He lastly submitted that as the learned DCLR has passed a valid and reasoned order the same must be upheld and the appellants claim that in the instant case involves complicated question of right, title and possession be rejected.

Considering the facts and circumstances of the case, material available on records, claim and counter claims made by the parties and on perusal of the impugned order, it is seen that the dispute between the parties basically relates to their claim of right, title and possession over the disputed land on one and another basis. The claim of the appellants rests mainly on the ground that the said land is recorded in khatiyani in the name of their ancestor and the said land has remained in their possession. On the other hand the claim of the respondent is based on the ground that the said land was sold by the khatiyani raiyat to one Sheogobind Sah, the ancestor of the respondent. The nature of dispute itself reflects that in the instant case involves adjudication of complex question of right, title and possession over the raiyati land. The dispute essentially involves willful dispossession over private land but the same is not maintainable under the BLDR Act.

It is well established that the subject matter of adjudication under the BLDR Act does not include such matters. The Hon'ble High Court in its judgment in *CWJC No. 1091/2013 (Maheshwar Mandal and others Vrs. The State of Bihar and others)* on 24.06.2014 has observed that the revenue authorities are not empowered to entertain matter not arising out of the six enactments mentioned in schedule- 1 of the BLDR Act - 2009. Obviously the instant matter does not fall under any of the said six enactments and as such it was not maintainable before the lower court.

Thus, for the aforesaid reasons and keeping in view the observations made by the division bench of the Hon'ble High Court as quoted above, the impugned order of DCLR is set aside and the appeal is accordingly disposed of.

Dictated and Corrected by me.

  
Commissioner,  
Saran Division, Chapra

  
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