

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 175/2013

Ramun Ram & ors..

Vrs.

Ram Chij Ram

ORDER

29.03.2016- The instant appeal petition is directed against the impugned order passed by DCLR, Hathua In BLDR case No. 01/2013-14 on 30.05.2013.

The brief facts of the case are that the present respondent (petitioner before DCLR) Ram Chij Ram S/o Late Sukhai Ram R/o Vill-Khurhuria, P.S.-Kateyan Dist-Gopalganj filed a case vide BLDR case No. 01/2013-14 before DCLR, Hathua mentioning that the land measuring 3.5 decimal of plot No. 88 khata No. 85 recorded in khatyan as Gair Muzurwah Malik and confirmed under Bhoodan Yogna Committee was settled to him by the Bhoodan Committee on 18.01.1977 and also 35 decimal of land from the plot No. 471/24 over which he had his peaceful possession and he has also constructed his house and sahan. But the present appellants (o.ps before DCLR) have obstructed his entry in two rooms of his said house towards east and two rooms towards south and also dispossessed him as such his possession be delivered. Thereafter, the learned DCLR after hearing the parties finally vide his order dt. 30.05.2013 ordered for the removal of illegal possession and delivery of possession and accordingly he allowed the said case in favour of the present respondent. Feeling aggrieved by the said order, the present appellants have preferred the instant appeal case 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 assailed the impugned order of learned DCLR and submitted that the impugned order is illegal, erroneous and fit to be set aside as the said order has been passed without considering the relevant facts of the case in its true persepective. He further submitted that both appellants and respondent are the members of the joint Hindu family and the said land was settled to the respondent as karta of the family from the Bhoodan Committee and after that all three brothers jointly constructed their residential house over the said 3.5 decimal land and mutation of the said land was also done in favour of three brothers and jamabandis were also created. He further submitted that when the dispute arose amongst the brother about the family properties along with disputed land, the same was settled through panchayati and memorandum of partition was prepared which was signed by all the brothers and as per agreement the two rooms towards east and two rooms towards south fell in the share of the appellant and in support of his contention, the learned counsel also filed the copy of the said memorandum of partition. He further submitted that the respondent has brought a false and concocted case against the appellant to grab the share of the appellants. He further submitted that the learned DCLR ought to have held that the jamabandi for the said disputed land was created after a thorough enquiry in the name of three brothers and also having their joint possession then how can the respondent lays alone claim over the said land. He also argued that the learned DCLR did not consider the arguments as well documentary evidence adduced before him while passing the order rather he wrongly held that the respondent's house is situated in his share and allowed the case and the said finding is completely arbitrary without any basis. He lastly submitted that as the impugned order is incorrect, illegal the same is fit to be set aside.

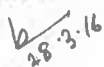
The learned counsel appearing on behalf of the respondent strongly countered the arguments advanced and documentary evidence relied upon in support of his contention and submitted that the impugned order is legal and valid order. He further submitted that the Bhoodan Committee settled the

disputed land, alongwith some other land to the respondent and accordingly a certificate was also issued in his name and the respondent has been coming in peaceful possession over the same by way of residential house and sahan. He further submitted that the appellants being rich and powerful person, with wrong intention stopped the ingress and egress of the respondent from going into his two rooms towards east and two rooms towards south and finally dispossessed him without having any right or title over the same as the said land was settled in the name of the respondent by the Bhoodan Yagna Committee. He also submitted that the respondent does not live in jointness rather he separated from the appellants in the year 1960. The learned counsel further argued that although, the respondent was also settled with 35 decimal land of plot No. 471/2 of the same khata No. 85 but no dispute relating to that land has ever been made. He also submitted that section 14 of the Bihar Bhoodan Yagna Act itself prohibits the person with whom the land is settled, to transfer the land or any portion thereof by sale, gift or otherwise without permission of the Committee in writing so if any paper was created by the appellant with respect to the settled land, the same is not binding on the respondent. He also argued that although, appellants placed maximum emphasis on the point of mutation in their name of the above land but the same is not a conclusive evidence in support of their case as the jamabandi itself does not create any right or title nor it extinguishes the same. He lastly submitted that as the impugned order has been passed after considering all the material facts of the case, the same is fit to be upheld and this appeal being devoid of any merit is fit to be dismissed.

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 quite obvious that the dispute between the parties relates to their respective claim over the land measuring 3.5 decimal of khata No. 85, plot No. 88 and also on the rooms of the house built over the said land. The claim of the appellants are that the said disputed land was settled in the joint name of all the three brothers by the Bhoodan Committee and the said land was also mutated in the name of three brothers and a house was built over that and after partition amongst them through panchayat, the said disputed rooms fell in the share of the appellant. But the claim of the respondent is that the said land was settled exclusively in his name and the four rooms fell in his share but the appellants have wrongly and illegally dispossessed him. It is also seen that both parties have contested their case before the learned DCLR on the same pleas what they have raised here again. The learned DCLR through his detailed analysis of the rival claims of the parties passed a reasoned and appropriate order in view of the fact that Bhoodan certificate submitted by the present respondent (petitioner before DCLR) seems to be issued in the name of respondent only and although jamabandi exists in the joint name but the house of the respondent exists in his own share as such he held the dispossession of the respondent as illegal. Apparently, I do not find any error in the said finding of the DCLR which is based on the proper appreciation of the relevant facts of the case. On the other had the learned counsel for the appellant failed to make out a valid claim beyond all reasonable doubts so as to warrant any interference in the said impugned order of DCLR, Hathua

For the aforesaid reasons, the impugned order is upheld and accordingly this appeal is dismissed

Dictated in correct by me.


Commissioner,
Saran Division, Chapra


Commissioner,
Saran Division, Chapra