

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 56/2013

Fulena Singh & ors.

Vrs.

Sawaliya Singh & ors.

ORDER

25.04.2016 - The instant appeal petition is directed against the impugned order passed by DCLR, Chapra Sadar in Demarcation case No. 53/2011-12 on 29.11.12.

The brief facts of the case are that the present appellants Fulena Singh and Lal Babu Singh, both sons of Late yaduni Singh R/o VIII-Nawada, P.S. Jalalpur, Dist-Saran filed a case before DCLR Chapra Sadar under the relevant provisions of BLDR Act vide Demarcation case No. 53/2011-12 and in the said case the present respondents were made as o.ps. In the said case, the present appellants (petitioners before DCLR) made prayer for demarcation of plot No. 2612, 2613, 2614 under khata No. 191 of Mouza Nawada, P.S. Jalalpur in district Saran against the present respondents (o.ps before DCLR) who were boundary man of the above plots. Thereafter, the learned DCLR issuing notices to the o.ps appointed, the survey knowing Commissioner and who after visiting the spot demarcated the above plots, fixed pillars prepared filed book and submitted his report. Then the learned DCLR again directed the o.ps to file their objections, if any, by appearing in his Court on two successive dates and when the o.ps failed to file their presence and make any objection on the said report of the survey knowing Commissioner, the learned DCLR simply closed the proceeding vide order dt. 29.11.2012. Feeling aggrieved by the said order, the present appellant have preferred this instant appeal petition on the ground that atleast, the said report of survey knowing Commissioner should have been confirmed.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellants while throwing light on the entire course of events leading to coming up of this case in appeal, submitted that the learned DCLR has committed error in passing his order whereby the said case was dropped without confirming the report submitted by the survey knowing Commissioner. He further submitted that the learned DCLR ought to have confirmed the report as the said report was prepared by a legally appointed survey knowing Commissioner. He strongly submitted that impugned order of the learned DCLR is fit to be set aside as the same is legally not a valid order.

The learned counsel appearing on behalf of the respondents submitted that this appeal petition has been brought on wrong and baseless grounds. He further submitted that the appellants never came in possession of land rather the house portion of respondents are in plot No. 2612, 2613, 2614 under khata No. 191 in village Nawada and the same is in possession of the respondents. He further submitted that the said survey knowing Commissioner was objected at the spot and even in the Court of DCLR wherein he filed a false and collusive report. He further submitted that from perusal of the record it appears that no notice was served upon the respondents and the claim of the appellants that they were informed through sarpanch is illegal as per law. He lastly submitted that the impugned order is legally valid and the same is fit to be upheld and this appeal petition, under the circumstances mentioned above, fit to be dismissed.



Considering the facts and circumstances of the case, material available on records respective contentions forwarded by the learned counsel for the parties and on perusal of the impugned order, it is seen that the learned DCLR has simply closed the proceeding of the case after receiving the report of survey knowing Commissioner on the ground that the o.ps did not turn up before him to raise any objection over the said report. Obviously, I do not find any justification and legitimacy in such finding of the DCLR. In fact, under all circumstances, once the report came before him, he has no other option left rather than to either confirm the same or to reject the same until and unless, in extraordinary situation when the parties contesting the case himself pays for dropping the case. Thus, it appears that the learned DCLR has committed error by dropping the case abruptly. For the sake of justice, this Court feels that, the case be remitted back to the Court of DCLR Chapra Sadar, for passing a fresh order in the matter after hearing the parties again.

With the aforementioned observations and directions this appeal petition is disposed of.

Dictated and Corrected by me.

25-4-16
Commissioner,
Saran Division, Chapra

25-4-16
Commissioner,
Saran Division, Chapra