

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 163/2012

Mansoor Alam

Vrs.

Akhtar Ali

ORDER

11.02.2016 The instant appeal petition is directed against the impugned order passed by DCLR, Marhaurah in Misc. Case No. 21/2011-12, under the Bihar Land Dispute Resolution Act- 2009, on 26.04.2012.

The brief facts of the case are that the present appellant Mansoor Alam S/o Late Shekh Dargahi, R/o Village- Senduari, P.S. - Marhaurah, Dist- Saran had filed a Case bearing No. Misc. Case No. 21/2011-2012 before DCLR Marhaurah by impleading the present respondent as O.P. In the said case the main prayer of the present appellant (petitioner before DCLR) was that western vacant part of the land, besides his house, in plot No. 1049 and 1050 of Khata No. 168, over which the present respondents (o.p. before DCLR) had made encroachment on some part as such the said encroachment be removed. Thereafter, the learned DCLR, issued notice to the o.p. and after hearing the case, finally by a detailed order dated 26.04.2012 rejected the case and held that the petitioner had no right or claim over the plot No. 1050. Feeling aggrieved by the said order, the present appellant has preferred this appeal petition before this court.

It is seen from the record that the respondent never appeared in this case and even the notice sent to him in registered cover returned with remark that the addressee refused to take the notice. However, the learned counsel for the appellant at the time of hearing instead of forwarding any arguments insisted for disposing of the case on merit in the light of material facts available on record.

Considering the facts and circumstances of the case, material available on records and on perusal of the impugned order, it is quite apparent that the claim of the appellants relates to plot No. 1049 and 1050 which is stated to have been came in his share after partition amongst his brother and, thereafter he constructed a house on plot No. 1049 and on some part of plot No. 1050 on the consent of all. It is also seen that obviously, the dispute between the parties involves determination of complex question of right and title over the land in question and a partition suit No. 63/1961, Mokhtar Alam and ors Vrs. Abdul Sakoor & Ors. before 2nd Addl.-sub-judge, chapra was filed with respect to entire landed property belonging to different branches of the parties and accordingly four schedules had been prepared. This clearly shows that the present dispute between the parties relates to their respective claim of title and possession over the raiyati land. Infact the learned DCLR should not have decided and gone into the merit of the claim of the parties of such a complex nature wherein complex question of adjudication of right and title was involved. What is more such a complex question of right and title can not be decided through a summary proceeding under the BLDR Act.

It is well established that the subject matter of adjudication under the BLDR

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Act does not include such matters. The Hon'ble High Court also in the case of **Maheshwar Mandal & Ors. Vrs. The State of Bihar & Ors.** has observed that revenue authorities are not vested with the power under the BLDR Act to entertain matters not arising out of the six enactments mentioned in schedule- 1 of the BLDR Act- 2009. Clearly enough the instant matter does not fall under any of the six enactments and as such it was not maintainable before the lower court.

For the aforementioned 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 not sustainable and hence the same is set aside and the appeal is accordingly, disposed of.

Dictated and Corrected by me.

b/12-16
Commissioner,
Saran Division, Chapra

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Commissioner,
Saran Division, Chapra