

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 244/2012

Bishwanath Prasad

Vrs.

Tara Devi

ORDER

15.02.2016 - The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in case No. 183/2011-12 on 31.07.2012.

The brief facts of the case are that the present respondent Tara Devi D/o Late Munilal Prasad, W/o Rajkishore Prasad, at present resident of vill-Deorla, P.S. Maharajganj, Dist-Siwan had filed a case before DCLR impleading the present appellant as o.p. In the said case the prayer of the present respondent (petitioner before DCLR) was that the land in question having plot Nos. 1707 of khata No. 469, 1713 of khata No. 482, plot No. 1650, 2658, 2579, 1687, 1579, 1487, 1488, 2585 of khata No. 416 plot No. 1323 of khata No. 518 are the ancestral land of his father and the said land has been forcibly occupied by the o.p. (present appellant) as such the said land be demarcated and possession be delivered to appellant before DCLR. Thereafter the learned DCLR after hearing the parties, finally vide order dt. 31.07.2012 allowed the claim of 1/2 share of the present respondent with respect to the land of different khatas. Feeling aggrieved by the said order the present appellant has preferred this appeal case before this Court.

Heard the learned counsel for the parties.

The learned counsel appearing on behalf of the appellant assailed the impugned order by saying that the said order is bad in law as the learned DCLR does not have any jurisdiction to decide a case in which complicated question of facts and title are involved. He further argued that the learned lower Court ought to have inquired into the matter that whether the present respondent is the daughter of Munilal Prasad or not. He further clarified that the learned DCLR ought to have held that since widow of late Munilal Prasad, that is Musmat Sona Kunwar has admitted in Title suit No. 26/2010 that her husband Munilal Prasad died issueless hence the respondent Tara Devi is not the daughter of Late Munilal Prasad and therefore she can not claim title and possession over the suit. As such the case is not maintainable in the eyes of law. He lastly submitted that this appeal petition is fit to be dismissed.

The learned counsel for the respondent, on the other hand, strongly opposed the arguments forwarded by the learned counsel for the appellant and submitted that the respondent is the daughter of Late Munilal Prasad who died in the year 2009 leaving behind him widow Musmat Sona Kunwar and a daughter Tara Devi as his legal heirs. He further argued that after partition, the disputed land fell in the share of Munilal Prasad. He also submitted that the appellants Nos. 2 to 4 of this case had earlier filed a T.S. No. 206/2010 against Musmat Sona Kunwar in the Court of Sub-Judge-1, Siwan and the said case was disposed of after compromise between the parties. He also argued that the main crux of this case is to decide as to whether the respondent Tara Devi is the daughter of Munilal Prasad or not. The learned counsel further pleaded that genuineness of the claim of Tara Devi that she being the daughter of Munilal Prasad was endorsed by

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the villagers and Panchayat representatives but it is the appellants who denied the same and also successfully managed to get recorded the denial of her mother in the title suit but this fact can only be ascertained after DNA test. He lastly submitted that the impugned order is fit to be upheld and this appeal petition being devoid of any merit be dismissed.

Considering the facts and circumstances of the case, material available on records, claim and counter-claims made by the learned counsel for the parties and on perusal of the impugned order, it is quite obvious that the dispute between the contesting parties, essentially involves determination of their right and title over the land in question. In fact the whole dispute relates on the veracity of the claim of the respondent Tara Devi, the present respondent, whose very claim that she is daughter of late Munilal Prasad. Moreover, the learned counsel for the appellant is of the view that in the instant case involves determination of complex question of title and the same is outside the purview of BLDR Act as per the observation made by Hon'ble High Court in several judgments. I find some substances in the said pleadings in view of the fact that a big question mark hangs on the very claim of the respondent that whether she is the daughter of late Munilal Prasad or not. I find that this type of complex issue can not be decided in a summary proceeding 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 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.


15.2.16
Commissioner,

Saran Division, Chapra


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Commissioner,

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