

In The Court of Commissioner, Saran Division, Chapra

B.L.D.R. Appeal No. 68/2013

Suresh Singh & ors.

Vrs.

Mohd. Imamuddin

ORDER

19.03.2013 - The instant appeal petition is directed against the impugned order passed by DCLR, Maharajganj in case No. 140/2012-13 on 28.01.2013.

The brief facts of the case are that a case bearing No. 140/2012-13 was initiated by DCLR Maharajganj pursuant to a petition filed by Md. Imamuddin S/o Abdul Gafoor R/o Basauli, Nabiganj, P.S. Basantpur, of Siwan district in the Janta Darbar of D.M. Siwan. The petitioner's case was that the land measuring 2 katha was purchased by his brother through registered sale deed on 13.04.2011 from one Laxami Singh of the same village. Later on he got constructed two rooms in front side and in the back side the plinth was constructed. His further case was that in the night of 22.07.2012, his neighbour, Suresh Singh S/o Jagarnath Singh opened the lock of his house and forcibly captured the same and put Nad, Kuntha, Cattle in the said land as such he prayed for his peaceful possession over the said land be ensured. Thereafter, the learned DCLR issued notices to the parties and heard the case at length and finally vide his order dt. 28.01.2013 allowed the case and restrained the o.ps from going over the said 2 katha land of khata No. 221, plot No. 1234 and also directed C.O. Lakdi Nabiganj and O.C. Basantpur for delivery of possession to the petitioner (present respondent). Feeling aggrieved by the said order, the present appellants (o.ps before DCLR) have preferred the instant appeal before this Court.

Heard the learned counsel for the parties.

The leaned counsel appearing on behalf of the appellants at the very beginning of his argument, submitted in detail as to how the total area of 9 katha 8 dhur of plot No. 1234 was partitioned amongst the descendants of khatiyani raiyat Indradeo Singh and in course of time how and when the different persons, having their shares, sold the same to other persons of the khatiyani raiyat. He further submitted that Salamuddin brother of the present respondent stated to have purchased the said disputed land on the basis of false sale deed but he has not been made party in this case. He also submitted that the disputed land alongwith the structure existing thereupon was in the possession of the appellants and now by creating a false sale deed, the respondent claims his title. He further argued that the present appellants as o.ps before DCLR, filed their show cause before the lower Court, stating therein about the whole facts and also filed relevant documents in support of his title and possession but the learned lower Court without properly considering the said documents and continuous possession of the appellants allowed the prayer of the respondent (petitioner before DCLR). He lastly submitted that in fact the learned lower court ought to have held that the appellant have been coming in possession over the disputed land without any interruption which is in full knowledge of the respondent and have also acquired full right and

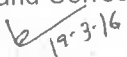
respondent does not have any right, title and possession over the said land and on this ground alone, the instant appeal petition is fit to be allowed.

The learned counsel appearing on behalf of the respondent, on the other hand, strongly supported the impugned order by saying that the said order is a legally valid order as such no interference in the said order is required from this Court. He further argued that the instant appeal has been filed on wrong grounds and baseless facts so far as the ground taken by the appellants in their appeal petition is concerned. He also argued that the brother of the respondent had purchased the said land from one Laxami Singh through sale deed and since then he remained in possession but it was the appellants who dispossessed them and captured the said land alongwith structure thereon forcibly by broken the lock as such their claim that they were in possession over the said land from long before is totally false. He lastly submitted that as the appeal petition is devoid of any merit the same is fit to be dismissed.

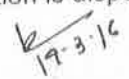
Considering the facts and circumstances of the case, material available on records, claims and counter-claims made by the learned counsel for the parties and on perusal of the impugned order, it appears that in the instant case the dispute between the parties relates to their respective claim over the 2 katha land, alongwith some structure thereupon of plot No. 1234 of khata No. 221. The appellants claim is solely based on their alleged ground that the said land was in their continuous possession for last so many years whereas the respondent's claim is based on the ground that the said land was purchased by his brother Salamuddin through registered sale deed from the heirs of khatiyani raiyat. However, it is clear from the material available on record that the present respondent had sought relief on behalf of his brother only to the extent that as the present appellants have forcibly entered in his premises and captured the same by breaking the lock and also took away some furniture and for which a proceeding u/s 107 was also initiated his possession over the said land be delivered him. It is seen that the learned DCLR has not declared any right and title of the parties as asserted by the learned counsel for the appellant rather he simply held that the respondent, possession be delivered over the disputed land. The said order of DCLR is not wholly in correct anyway as he did not decided the right and title of the parties. Thus, the impugned order seems to be correct to the extent as mentioned above.

With the aforesaid observation, this appeal petition is disposed of.

Dictated and Corrected by me


19-3-16
Commissioner,

Saran Division, Chapra


19-3-16
Commissioner,

Saran Division, Chapra