

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22136 of 2014

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Shyam Babu Sah

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue & Land Reforms, Government of Bihar, Patna
2. The Commissioner, Tirhut Division, Muzaffarpur
3. The Collector, Sheohar
4. The Deputy Collector Land Reforms, Sheohar.
5. The Circle Officer, Sheohar.
6. Smt. Lal Muni Devi, Wife of Ram Babu Sah.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Mohan

For the Respondent/s : Mr. Sc23- Kumar Priyaranjan

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

2 21-08-2018

Heard the learned counsel for the petitioner and the

State. No body appears on behalf of the respondent no. 6.

The petitioner has filed this writ petition to quash the order dated 02.09.2014 passed by the Commissioner, Tirhut Division, Muzaffarpur in BLDR Appeal Case No. 148 of 2011 by which the Commissioner allowed the appeal and set aside the order dated 06.07.2011 passed by DCLR, Sheohar. The petitioner further seeks direction to the respondent authority not to disturb the petitioner from the possession of his ancestral land without resorting to any legal proceeding in accordance with law.

The factual matrix of this case is that respondent no. 6, wife of Ram Babu Sah, brother of the petitioner, filed petition



on 24.02.2011 for partition of the ancestral property, measurement of the land and for giving possession to her. The application was forwarded to DCLR, Sheohar for disposal. The DCLR instituted case No. 02 of 2011-12 under the Bihar Land Disputes Resolution Act, 2009 and decided that there was already partition between the family members and accordingly found that the disputed land fell in the share of the petitioner and consequently directed the Officer-in-Charge, Sheohar and Circle Officer, Sheohar, to unlock the shop and handover the possession to the petitioner but respondent no. 6, Lal Muni Devi, filed Appeal No. 148 of 2011 before the Commissioner, Tirhut Division, Muzaffarpur who by the impugned order dated 02.09.2014 held that the dispute relates to the partition of the property and the same can not be decided in view of the judgment rendered by this court in the case of ***Bindeshwar Mandal Vs. The State of Bihar and others*** reported in ***2014(3) PLJR 287***.

The learned counsel for the petitioner submits that the partition took place between the two brothers, namely, Ram Babu Sah and Shyam Babu Sah and on the basis of such family partition both the brothers have been leaving separately. The wife of Ram babu Sah disputed the partition and that is why she filed case for redressal of the dispute. The DCLR on perusal of the



records found that the petitioner is in possession over the disputed land by virtue of partition but the Commissioner has committed error holding that the dispute involves complicated question of title and set aside the order of the DCLR.

Having considered the submission of the learned counsel for the petitioner and on perusal of the records, it is evident that the lands of plot no. 5179 and 5180 were recorded in the name of the father of Ram Babu Sah and Shyam Babu Sah. Both the brothers claimed partition but wife of Ram Babu Sah, respondent no. 6, filed petition that Shyam Babu Sah wanted to grab the land fell in the share of Ram Babu Sah. On such petition, seeking demarcation of land the DCLR held that the land measuring 6 ½ decimal from eastern side fell in the share of Shyam Babu Sah, the petitioner, and the remaining part of the land measuring 6 ½ decimals fell in the share of Ram Babu Sah, husband of respondent no. 6. The DCLR directed the Circle Officer and Officer-in-Charge, Sheohar to unlock the rooms and handover the possession of the disputed land and house to the petitioner.

It appears that it is not a case of simple demarcation. Both the brothers claimed partition of the land and also claimed that the eastern part of the house fell in their share. There is no



document to show that there was partition of the aforesaid plot by metes and bounds. The petitioner also claimed that the house situated in eastern part of the plot fell in his share whereas respondent no. 6 claimed that the eastern part of the house and land situated along with house fell in her share and hence, I find that the Commissioner has rightly held that there involves a question of partition between the two brothers and, therefore, the question of partition can not be decided under Bihar Land Disputes Resolution Act, 2009.

Thus, I do not find merit in this writ petition. Accordingly, the same is dismissed with liberty to the petitioner to file petition before the competent Civil Court to get the property partitioned between two brothers, in accordance with law.

(Prabhat Kumar Jha, J)

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