

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5140 of 2015

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Vijay Shankar Singh S/o Late Rambrichh Singh, Resident of Village- Sakar,
P.S.- Kudra, District- Kaimur Bhabhua.

... .. Petitioner/s

Versus

1. The State of Bihar through its Collector, Kaimur (Bhabua).
2. The Deputy Collector Land Reforms, Mohania, Kaimur.
3. Sub-divisional Officer, Mohania, Kaimur.
4. Circle Officer, Kudra Mohania, Kaimur.
5. Ajay Bahadur Singh, son of Sri Nageshwar Singh, R/o Village- Sakari, P.S.-
Kudra, District-Kaimur Bhabua.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar
For the Respondent/s : Mr.Sc16- Abbas Haidar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

5 03-03-2020 Learned counsel for the substituted respondents filed vakalatnama on behalf of substituted legal heirs of respondent no.5. Let the same be kept on record.

2. Learned counsel for the State submits that the D.C.L.R. who was directed to be present is now no more. In this view of the fact, the personal appearance of the then D.C.L.R. is exempted.

3. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the substituted legal heirs of respondent no.5.

4. The petitioner has filed this writ petition to set aside



the order dated 30.05.2014 passed in B.L.D.R. Case No.170 of 2013-14 by the D.C.L.R., Mohania, Kaimur whereby and whereunder the D.C.L.R. passed the order impugned directing the petitioner not to interfere into peaceful possession of respondent no.5 over the disputed land. The petitioner and the deceased Ajay Bahadur Singh (respondent no.5) were cousins. Respondent no.5 (now deceased) filed petition before the D.C.L.R., Mohania, Kaimur that the land of Khesra No.1119 measuring 14 ½ decimals out of 22 decimals of Khata no.291, Circle - Kudra is in his possession and he has already constructed house thereon. A petition was filed for preparation of chak Khatian in the name of petitioner and the respondent vide Chak Case No.17 of 2012-13 and the Consolidation Officer by order dated 25.03.2013 prepared chak Khatian according to the share of the petitioner and the respondent. The same order was confirmed in consolidation appeal by the Assistant Director, Consolidation. Respondent no.5 filed Title Suit No.301 of 2001 for partition of property when the petitioner executed gift deed in favour of his daughter-in-law. Title Suit No.301 of 2001 was decreed in favour of respondent no.5 but the defendants in the suit put hindrance in peaceful possession of respondent no.5. The petitioner also filed rejoinder stating that there is a dispute



with regard to title and, therefore, the D.C.L.R. has got no jurisdiction to pass any order under B.L.D.R. Act in view of the law laid down by the Division Bench of this Court in the case of Maheshwar Mandal and Another vs. The State of Bihar, reported in 2014(3) P.L.J.R. 281. The D.C.L.R. after hearing both sides directed the petitioner not to interfere into peaceful possession of respondent no.5.

5. Learned counsel for the petitioner submits that the matter is pending before the Civil Court in appeal against the judgement and decree passed in Title Suit No.301 of 2001. There is a dispute between two sides with regard to title of the land. The D.C.L.R. under the B.L.D.R. Act has got no jurisdiction to pass order of injunction restraining the petitioner from interfering into alleged possession of respondent no.5 (now deceased) and substituted legal heirs of respondent no.5 when the matter is pending before the competent Civil Court.

6. Learned counsel for substituted legal heirs of respondent no.5 submits that of course the D.C.L.R. only restrained the petitioner on the basis of order passed in Title Suit No.301 of 2001 and the order passed by the consolidation authority but I find that the submission of learned counsel for substituted legal heirs of respondent no.5 is not acceptable. The



D.C.L.R. under the provisions of the B.L.D.R. Act is not vested with power to decide title of a party and restrain other side from interfering into possession. The petitioner has already filed title appeal against the judgement and decree passed in Title Suit No.301 of 2001. Respondent no.5 should have filed petition under Order 39 Rule 1 and 2 of the CPC for grant of injunction against the petitioner as in the case, the dispute is with regard to title over the land, Therefore, I find that the order of the D.C.L.R. lacks jurisdiction and the same is not sustainable in the eye of law. Accordingly, order dated 30.05.2014 is set aside. Thus, this writ petition is allowed. The substituted legal heirs of respondent no.5, if so desired, may file petition before the appellate court for grant of injunction.

(Prabhat Kumar Jha, J)

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