

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1413 of 2018

In
Civil Writ Jurisdiction Case No.22136 of 2014

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Shyam Babu Sah son of Late Bhukhalu Sah Resident of Ward No. 9, Nagar Panchayat Sheohar, P.O. and P.S. Sheohar, District - Sheohar.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and 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 Sri Ram Babu Sah, Resident of Ward No. 9, Nagar Panchayat Sheohar, P.O. and P.S. Sheohar, District - Sheohar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajesh Mohan, Advocate
For the Respondent/s : Mr. Arun Kumar Bhagat, A.C. to A.A.G.12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 25-09-2024

1. Heard learned counsel for the appellant and learned counsel for the respondents.

2. The appellant has preferred this appeal against the order dated 21.8.2018 whereby the learned Single Judge was pleased to dismiss the writ application with liberty to the appellant to file a petition before the competent Civil Court to get the property partitioned between the two brothers.



3. The relevant facts in brief are that the appellant and the husband of respondent no.6 are full brothers. The respondent no.6 filed a petition on 24.2.2011 before the District Magistrate, Sheohar praying therein that the partition carried out by her mother-in-law, the measurement having got done by the Deputy Collector Land Reforms, Sheohar and the measurement report be set aside and the disputed shop be given in possession to the respondent no.6. On the matter being referred by the District Magistrate to the D.C.L.R., Sheohar, Land Dispute Resolution Case no.2/11-12 (Lalmuni Devi vs. Shyam Babu Sah) was registered and after hearing the parties, the D.C.L.R. was pleased to dispose of the same by order dated 6.7.2011 (Annexure-2) holding that partition having taken place between the appellant and his brother and the shop in question falling in the share of the appellant, the same be handed over to him.

4. The respondent no.6 preferred an appeal against the order dated 6.7.2011 of the D.C.L.R.-cum-Competent Authority, Sheohar which was registered as B.L.D.R. Appeal no.148/2011 and it was decided by the Commissioner by order dated 2.9.2024. The learned Commissioner observed that the partition which had taken place in the family was accepted by one side and denied by the other. The jurisdiction to decide the



dispute with respect to partition of land holding was provided under the B.L.D.R. Act under section 4(1)(e), however, the Authority under the Act would only decide matters of unauthorised and unlawful dispossession of any person under any Act contained in Schedule-1 of the B.L.D.R. Act. As the matter related to partition of an ancestral property between the parties, the same would not be maintainable under the B.L.D.R. Act. The order dated 6.7.2011 in Case no.2/11-12 of the D.C.L.R.-cum-Competent Authority, Sheohar was set aside and the parties were left with the liberty to move before the Competent Court.

5. The appellant challenged the order dated 2.9.2024 of the Commissioner in this Court by filing CWJC no.22136 of 2014. Taking note of the judgment in the case of ***Maheshwar Mandal & Anr. vs. The State of Bihar and others, 2014 (3) PLJR 281 (DB)*** and the case not being one of simple demarcation but of partition between the two brothers which cannot be decided under the B.L.D.R. Act, the learned Single Judge dismissed the writ application giving liberty to the appellant to move before the competent Civil Court. It is against this order that the instant appeal has been preferred.

6. Learned counsel for the appellant submitted that



the learned Single Judge has failed to appreciate the very purpose of the Act which was to provide speedy and effective resolution of disputes between the parties and the Revenue Authorities were equipped to resolve the boundary disputes also. No complex question of title was involved and the matter did not relate to partition.

7. The appeal is opposed by learned counsel appearing for the State of Bihar. It is submitted that the matter related to partition of property between the two brothers and the same could not be decided under the B.L.D.R. Act.

8. Having heard learned counsel for the parties and having perused the material on record, this Court finds that the proceedings with respect to the instant case arose out of an application dated 24.2.2011 filed by the respondent no.6 before the District Magistrate, Sheohar praying therein to set aside the partition conducted by her mother-in-law, the measurement carried out by the D.C.L.R., Sheohar as also the measurement report. The said application on being referred by the District Magistrate led to registration of Case no.2/11-12 under the B.L.D.R. Act. Section 4 of the B.L.D.R. Act which deals with jurisdiction of the Competent Authority to resolve disputes categorically provides the list of the types of the dispute and



which includes unauthorised and unlawful dispossession under any of the six Acts contained in Schedule-1 of the B.L.D.R. Act.

9. A Division Bench of this Court in the case of **Maheshwar Mandal** (supra), while considering the constitutional validity of section 4 of the B.L.D.R. Act held that the scope and ambit of the B.L.D.R. Act is limited and circumscribed to the extent of enforcement of rights conferred by or accrued under the said six enactments. It further held that the Competent Authority irrespective of the nature of case involving issues of title will be bound to close the proceedings for want of jurisdiction. The relevant paragraph nos.18 and 39 of the judgment are quoted herein below:

“18. It is apparent that the Act of 2009 has been enacted with a laudable purpose of giving quick relief to the allottees and settlees who have earned a right or to whom a right has accrued under any of the aforesaid six enactments. That is why [Section 3](#) of the Act of 2009 gives that Act overriding effect over the procedure prescribed under any of the said six enactments. Thus, in my view, the scope and ambit of the Act of 2009 is limited and is circumscribed to the extent of enforcement of rights conferred by or accrued under the aforesaid six enactments. In other words, it is an enactment for execution of the orders made



under the above referred six enactments. This intention is reinforced by Sub-section(2) of [Section 4](#) of the Act of 2009 insofar as it expressly provides, "Competent Authority shall exercise his authority for resolving the dispute brought before him on basis of any final order passed by any of the authorities empowered to do so under the Acts contained in [Schedule-1 of the Act](#)". Similarly, Sub-section (3) thereof expressly prohibits the Competent Authority from exercising its jurisdiction to adjudicate any fresh rights of allottee or settlee or a raiyat not yet determined under any of the aforesaid six enactments. Thus, the legislative intent to confine the Act of 2009 to execution of the orders made under the aforesaid six enactments is clear and unambiguous. Having thus circumscribed the powers of the Competent Authority under the Act of 2009, the mischief has crept in in Sub-sections (4) & (5) of [Section 4](#) of the Act of 2009. The said Sub-section (4) of [Section 4](#) of the Act of 2009 enables the Competent Authority to determine the rights of allottees or settlees or raiyats which are not yet determined. Similarly, Sub-section (5) of [Section 4](#) of the Act of 2009 confers a discretionary power upon the Competent Authority either to adjudicate complex questions of title himself or to allow the parties to seek remedy before the Civil Court. But for



Section 4(4) of the Act of 2009, the Competent Authority is not vested with power of adjudication under any of the other provisions of the Act of 2009. The Act which is designed to execute the orders made or to enforce the rights accrued under any of the aforesaid six enactments, has been converted into a substantive or adjudicating enactment by Section 4(4) of the Act of 2009. The power of adjudication conferred under the aforesaid Sub-sections (4) & (5) of Section 4 of the Act of 2009 are largely misused. The power, which is confined to the disputes in relation to the allottees or settlees or raiyats, is exercised in respect of any dispute including the complex issues of title. Though there is no express bar against the jurisdiction of the Civil Court, the said sub- sections practically take away the jurisdiction of the Civil Court to entertain and adjudicate the disputes relating to the title to the land.

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39. In above view of the matter, I am of the considered opinion that sub-section (5) of Section 4 of the Act of 2009 strictly forbids the Competent Authority to entertain matters involving questions of adjudication of title. I am of the view that the Competent Authority, irrespective of nature of cases involving issues of title, is bound to close the



proceedings for want of jurisdiction and leave it open to the parties to seek remedies before the competent Civil Court.”

10. In view of the settled position of law with respect to scope of the disputes which can be decided under the B.L.D.R. Act as held in the judgment of Maheshwar Mandal (supra) quoted herein above, in the opinion of this Court, the learned Commissioner rightly set aside the order of the D.C.L.R. and the learned Single Judge was right in dismissing the writ application with liberty to the appellant to file a petition before the competent Civil Court to get the property partitioned between the two brothers in accordance with law.

11. This Court finds no merit in the instant appeal and the same is dismissed.

(Partha Sarthy, J)

K. Vinod Chandran, CJ: I agree.

(K. Vinod Chandran, CJ)

Saurabh/-

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