

2022 LiveLaw (SC) 246

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SANJAY KISHAN KAUL; M.M. SUNDRESH, JJ.**

FEBRUARY 28, 2022

CIVIL APPEAL NOS.1701-1702/2022

[@ SLP [C] NOS.3800-3801/2022] [@ Diary No(s). 35380/2019]

DARSHAN KAUR BHATIA VERSUS RAMESH GANDHI & ANR.

Civil Suit - Adverse Possession - Suit for declaration based on adverse possession having matured into ownership – Maintainable. [Referred to Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors.- 2019 (8) SCC 729]

(Arising out of impugned final judgment and order dated 19-09-2018 in CR No. 191/2017 26-06-2019 in WP227 No. 494/2019 passed by the High Court Of Chhatisgarh At Bilaspur)

For Petitioner(s) Mr. Amol Chitale, Adv. Mrs. Pragya Baghel, AOR Mr. Sourabh Tandon, Adv.

ORDER

Delay condoned.

The office report shows that service was complete as recorded in the order of the Registrar dated 12.02.2020. Thus, more than two years have passed and none has put in appearance for the respondent(s).

Leave granted.

We have heard learned counsel for the appellant and perused the records. The appellant is the original plaintiff who instituted a suit for declaration of title inter alia pleading that adverse possession on the suit property granted him certain rights but on an application filed by respondent No.1 under Order VII Rule 11, Code of Civil Procedure, the same was rejected. The revision petition filed before the High Court was however partly allowed.

The High Court on examination of judgment of this Court had opined that the appellant as plaintiff cannot seek a declaration based on adverse possession having matured into ownership on the premise that the plea of adverse possession was only a plea of defence and not of establishing rights as a plaintiff though injunction suit would be maintainable. The moot point is that the legal position in this behalf now stands enunciated to the contrary in terms of the judgment of this Court in **Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors.- 2019 (8) SCC 729**.

The aforesaid being the position, the application filed by respondent No.1 under Order VII Rule 11, CPC predicated on a contrary legal view could not have been sustained and thus, the order of the High Court is set aside and the application of respondent No.1 stands rejected with the direction to the trial Court to try the suit on merits as expeditiously as possible.

The appeals are accordingly allowed leaving parties to bear their own costs.

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