

RSA No.244 of 2016.

28.12.2016 Present: Mr. R.K. Sharma, Sr. Advocate with Ms. Anita Parmar, Advocate, for the appellant.

Mr. Sanjay Jaswal, Advocate, for the respondents.

RSA No.244 of 2016.

Admit on the following substantial questions of law :

1. Whether the learned Court below has misappreciated pleadings and misinterpreted the evidence as well as documents, which have come on record and law has not been applied correctly and the findings are perverse ?
2. Whether the appellant/defendant has taken a specific plea of adverse possession in para-8 of the written statement, whether the non-framing of issues on this point has not caused a material prejudice to the appellant/defendant ?
3. Whether the learned First Appellate Court is justified to decree the suit on the basis of Section 118 of the H.P. Tenancy & Land Reforms Act, when there was no such plea in the suit ?
4. Whether the learned First Appellate Court has wrongly rejected the plea of res judicata ?

CMP No.4203 of 2016.

The present application is maintained by the applicant under Order 41 Rule 5 read with Section 151 of the Code of Civil Procedure, for staying the execution of the impugned judgment and decree. As per the applicant, he is in possession on the land in dispute, which is also proved from the long standing entries and if the execution of the impugned judgment and decree is not stayed, the applicant will suffer an irreparable loss and injury which cannot be compensated in terms of

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money and there will also be a multiplicity of litigation. The application is duly supported with an affidavit.

Reply to the application has been filed and it is averred in the application that the land is fertile and the applicant is entitled for means profits of the suit land. The reply is duly supported with an affidavit.

Heard. At this stage, taking into consideration the fact that the appeal is pending adjudication on the substantial question of law and in case the execution of the impugned judgment and decree is not stayed, the same will give rise multiplicity of litigation and also the appeal will become infructuous, in case the judgment and decree is executed. So, it is ordered that the execution of the impugned judgment and decree passed by the learned Court below will remain stayed till the final disposal of the appeal. Ordered accordingly. The application stands disposed of.

RSA No.455 of 2016.

Learned counsel appearing on behalf of respondents submits that hearing of the appeal is required to be expedited, as the respondents are out of possession because of the pendency of the appeal. Taking into consideration the averments made in the application, hearing of the appeal be expedited.

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**(Chander Bhusan Barowalia)
Judge**

28th December, 2016
(CS)

