

Uttam Sharma @ Uttam & Another Vs. Arti Sharma

RSA No. 237 of 2021

21.12.2024 Present: Mr. Ashish Verma, Advocate, vice Mr. B.S. Attri, Advocate for appellant No.1.
Appellant No.2 is stated to have expired.
Mr. Romesh Verma, Senior Advocate with Mr. Digvijay, Advocate, for the respondent.

CMP(M) No.921 of 2022

In this application, issues were framed on 3.10.2023, however, with the consent of the parties, the present application is allowed and the proposed legal representatives of appellant No.2-Belu Ram, mentioned in para 2 of the reply, are ordered to be brought on record as appellant No.2(a) to 2(h).

The application stands disposed of.

CMP No. 16105 of 2021

By way of the present application, filed under Order 41 Rule 5 of the CPC a prayer has been made to stay the execution of the decree dated 27.11.2021, passed by the Court of learned District Judge, Kullu, District Kullu (hereinafter referred to as the 'First Appellate Court'), in Civil Appeal No.7 of 2018, titled Arti Sharma versus Uttam Ram @ Uttam & Another.

Vide judgment and decree dated 27.11.2021, the learned First Appellate Court has allowed the Civil Appeal filed by the respondent–Arti Sharma, against the judgment and decree dated 31.3.2018, passed by the Court of learned Senior Civil Judge, Lahaul and Spiti, District Kullu, H.P. (hereinafter referred to as the ‘trial Court’), in Civil Suit No.268/2013/2009, titled Arti Sharma versus Uttam Ram @ Uttam & Another, by granting the following relief:-

“ In view of my discussion and findings on point No.1, above, the present appeal succeeds and the same is hereby allowed. The judgment and decree passed by learned trial Court is set aside and the suit of the plaintiff for specific performance of contract is hereby decreed with costs to the effect that defendant No.1 Uttam Ram is hereby directed to execute sale deed of the suit property measuring 15 biswansis of land out of total land measuring 2-00-00 bighas adjacent to northern side of hotel Akash Deep comprised in old Khasra No.1213 (corresponding to new Khasra Numbers 961, 962, 963, 964, 977, 978 and 980) as shown in the copy of Jamabandi Ex.C-1 for the year 2000-2001 and it is made clear that plaintiff will only become co-sharer in the total land bearing Khata Khatauni No.56/83, total land measuring 00-16-13 hectare (2-00-00 bighas). Further, consequential relief of permanent prohibitory injunction is also granted in favour of plaintiff to the effect that defendant No.1 Uttam Ram is hereby restrained

from creating any charge or alienating the suit land in any manner whatsoever till the execution of sale deed in favour of plaintiff. Decree sheet be prepared. The record of trial Court be returned alongwith copy of this judgment. The file after needful completion be consigned to record room.”

Vide judgment and decree dated 31.3.2018, learned trial Court had dismissed the suit of the non-applicant.

Now, the parties are before this Court, by way of the Regular Second Appeal. The accompanying appeal preferred by the applicants-appellants will take sufficient time for its disposal. As such, during the pendency of the appeal, execution of the decree, dated 27.11.2021, qua specific performance of the contract, as passed by the learned First Appellate Court, is ordered to be stayed, subject to the condition that the applicants-appellants shall furnish a security bond in the sum of Rs.1,00,000/-, to the satisfaction of the learned trial Court (Executing Court), within seven days from today, by giving an undertaking for due performance of the decree, which has been passed by the learned First Appellate Court, in case of ultimate dismissal of the appeal by this Court.

It is further clarified that the stay of the execution of the decree shall operate, when the above order is complied with.

RSA No. 237 of 2021.

List for admission after eight weeks.

**(Virender Singh)
Judge**

December 21, 2024 (ps)