



**116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

SAO-94-2017 (O&M)

Date of decision : 03.04.2025

Devender Kumar

...Appellant

Vs.

Sanjiv Kumar and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep K. Sharma, Advocate
Mr. Saroj Kumar, Advocate for
Mr. Gurinder Pal Singh, Advocate
for the appellant.

None for the respondents.

ANIL KSHETARPAL, J. (Oral)

1. The respondents despite receipt of notice have not entered appearance.
2. The plaintiffs assail the correctness of the First Appellate Court's order remitting the matter back to the trial Court for fresh decision.
3. Sh. Sanjiv Kumar was the owner of a shop. He appointed his uncle Sh. Ram Dayal as his power of attorney. Sh. Sanjiv Kumar through Sh. Ram Dayal entered into an agreement to sell with respect to the shop in favour of the plaintiff, which was not honoured, forcing the plaintiff to file a suit by way of specific performance of the agreement to sell. In the aforesaid suit, the plaintiff impleaded Sh. Sanjiv Kumar as defendant No.1, whereas, Sh. Sahab Ram and Smt. Shakuntla Devi wife of Sh. Ram Dayal as defendants No. 2 and 3. The suit was decreed on 19.12.2013. Sh. Sanjiv Kumar filed the first appeal. The



First Appellate Court has remanded the matter back to the lower Court on the ground that Sh. Ram Dayal had left behind a widow and three daughters. The aforesaid three members have not been impleaded as a party. Hence, the judgment of the trial Court has been set aside. It is evident that the order passed by the First Appellate Court is patently wrong. Sh. Ram Dayal was only an attorney of Sh. Sanjiv Kumar. Moreover, Sh. Sanjiv Kumar himself filed the appeal. Widow of Sh. Ram Dayal was already a defendant in the suit. Additionally, Sh. Ram Dayal was only acting as attorney of Sh. Sanjiv Kumar. Hence, the daughters of Sh. Ram Dayal have no interest in the property. Moreover, the interest of Sh. Ram Dayal can be watched by his widow.

4. Consequently, the impugned order passed by the First Appellate Court is set aside while restoring the first appeal to its original number. The First Appellate Court is directed to decide the case.

5. The parties through their counsel are directed to appear before the First Appellate Court on 30.04.2025.

6. The appeal is disposed of.

7. All the pending miscellaneous applications, if any, are also disposed of.

03.04.2025

neeraj

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No