

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

110

2025:PHHC:058628



**SAO-98-2016(O&M)
Date of decision: 05.05.2025**

ASHOK KUMAR

..Appellant

Versus

JARNAIL SINGH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Salathia, Advocate
for the appellant.

Mr. A.P.S. Sandhu, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. It is strange that the plaintiff's suit for possession by way of specific performance of agreement to sell was ordered to be dismissed by the trial Court without giving him opportunity to lead evidence, which in appeal has been affirmed by the Appellate Court.

2. The plaintiff alleged that late Smt. Amarjit Kaur entered into an agreement to sell in his favour with respect to land measuring 3 kanal and 9 marlas on 24.06.2011 after receipt of Rs.5,40,000/- as earnest money out of Rs.27,37,500. The sale deed was agreed to be executed on 23.02.2012, which was extended to 06.04.2012. 6th, 7th and 8th April, 2012 were holidays, hence, the plaintiff attended the office of Sub-Registrar on 09.04.2012 and thereafter, he filed the suit. The defendant-Smt. Amarjit Kaur died during the course and her legal representatives were brought on record, who conceded the plaintiff's case and agreed to honour the agreement to sell. They filed application to this effect, which was opposed by the plaintiff on the ground that defendants are in possession of only 2 kanal and 14 marlas land and not 3 kanal and 9 marlas. Shockingly, the trial Court dismissed the suit, which as



already noticed was affirmed in appeal. Once, the suit was filed for specific performance of the agreement to sell on payment of *ad valorem* Court fee, the same was required to be decided in accordance with procedure laid down by the Code of Civil Procedure, 1908. The trial Court has erred in deviating from the procedure laid down particularly when the parties were at issue when the legal representatives of Smt. Amarjit Kaur filed application agreeing to honour the agreement to sell. The plaintiff filed reply claiming that the defendants are not in possession of 3 kanal and 9 marlas land, whereas, they are in possession of only 2 kanal and 14 marlas.

3. Learned counsel for respondents submits that once the defendants agreed to honour the agreement to sell, the suit was required to be decided.

4. It is evident that the parties were not *ad idem* and there was a serious dispute between the parties, which required framing of issues and calling upon them to lead evidence.

5. Consequently, the appeal is allowed. The impugned orders passed by both the Courts are set aside while remitting the matter back to the trial Court for fresh decision.

6. The parties through their learned counsel are directed to appear before the trial Court on 28.05.2025.

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

May 05th, 2025

Ayub

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*

(ANIL KSHETARPAL)
JUDGE