

RSA Nos.1281 & 1283 of 2016 (O&M)

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

Date of decision : 29.08.2018

1. RSA-1281-2016 (O&M)

Rattan Singh and others

... Appellants

Versus

Balbir Singh and others

... Respondents

2. RSA-1283-2016 (O&M)

Rattan Singh and others

... Appellants

Versus

Jaswant Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Namit Gautam, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing **RSA No.1281 of 2016** titled as **“Rattan Singh and others V/s Balbir Singh and others”** arising out of Civil Suit No.377-1 dated 25.01.2008 and **RSA No.1283 of 2016** titled as **“Rattan Singh and others V/s Jaswant Singh and others”** arising out of Civil Suit No.264-1 dated 26.08.2008, as common questions of law and facts are involved. However, the facts have been extracted from **RSA No.1281 of 2016**.

The appellants-plaintiffs are aggrieved of the concurrent findings of fact and law, whereby the suit for specific performance of two

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agreements to sale of even date i.e. 02.05.2008 in respect of two parcels of land, measuring 28 kanals and 12 kanals, respectively.

The plaintiffs alleged that the vendor-Balbir Singh had agreed to sell the aforementioned parcels of land, vide two agreements to sell, aforementioned, on receipt of earnest money of ₹1 Lac as the total price fixed was ₹7 Lacs per acres. The stipulated date for registration and execution of the sale deed was 04.11.2008. A legal notice dated 02.07.2008 was served upon the defendants as the plaintiffs acquired the knowledge that Balbir Singh was trying to alienate the property during the subsistence of the agreement to sell, but was flabbergasted to notice that a sale deed dated 14.07.2008 in respect of both the area i.e. 14 kanals in respect of 28 kanals and remaining entire land, was executed in favour of the subsequent vendee. The appellants-plaintiffs had always been ready and willing to perform the part of the agreement to sell and therefore, ingredients of Section 16(c) of the Specific Relief Act, 1963, have been proved to the hilt. The agreement to sell has also been proved through the examination of plaintiffs, attesting witnesses and scribe as the vendor was proceeded *ex parte*. Despite that the Courts below have abdicated in not decreeing the suit, but alternative relief of refund of earnest money has been granted.

I have heard learned counsel for the appellants-plaintiffs, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Namit Gautam, for, the subsequent vendee has been able to prove the prior agreement to sell dated 18.10.2007 (Ex.D1), resulting into, registration and execution of the sale deeds dated 14.07.2008, as mentioned hereinabove. Admittedly, the vendor-Balbir Singh was proceeded *ex parte*. It would be immaterial, even if the plaintiffs were

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successful in proving the agreement to sell, for, the defendants, on the other hand, through examination of the attesting witness of agreement to sell, proved that the vendor had already agreed to sell the aforementioned parcels of land in favour of the vendee, therein.

Tilak Raj, the attesting witness of the agreement to sell of 2007, had been coherent and consistent despite extensive cross-examination. The other witness, Santa Singh, though had not been examined, but cannot be said to be fatal for declining the discretionary relief.

In such circumstances, I am of the view that the concurrent findings of fact and law rendered by the Courts below do not call for interference, much less, no substantial question of law arises for determination.

No ground is made out for interference.

The present regular second appeals are dismissed.

29.08.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No