

RSA-1918-2017 (O&M)

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

RSA-1918-2017 (O&M)

Date of decision : 21.01.2019

Santosh Rani

... Appellant

Versus

Anish Kumar Lumba and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. O.P. Hoshiarpuri, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff has not been successful in obtaining the decree of discretionary relief under Section 20 of the Specific Relief Act as it confined only to alternative remedy of refund of earnest money of ₹25,000/- along with interest.

The plaintiff alleged to have entered into an agreement with Sohan Lal on 22.07.1992 for a consideration of ₹1,25,000/- against the payment of ₹25,0000/- as earnest money. Since Sohan Lal sought certain apprehension for selling of the land, injunction suit was filed, where on 17.07.1998, suffered a statement that he will not alienate the property and would send one month's legal notice, in case litigation pending in the Court was over, which was over on 03.09.2008.

The defendants stated that the matter was compromised, vide Ex.D8 and Ex.D9 and it was found that Sohan Lal was not owner, whereas defendant Nos.8 and 9, were the owners.

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In such circumstances, the Courts below declined to grant the discretionary relief.

Learned counsel for the appellant-plaintiff submitted that the legal notice dated 11.10.2008 was served upon the Legal Representatives of Sohan Lal, who admitted that he was the owner of the property. It itself is a clincher for the Court to grant discretionary relief. Even otherwise, the delay, as noticed above, occurred only on account of the litigation pending between Sohan and defendant Nos.8 and 9. Once there was admission in the written statement qua 1/3rd share, the suit could have been decreed to the aforesaid extent.

I am afraid the aforementioned argument is not sustainable as the suit property known as *Ahata Behla Wala* bearing property No.CS-5/33/34. The sale deed dated 28.08.1994 and the remaining sale deeds (Ex.D2 and Ex.D3) were pertaining to the same property. In such circumstances, the plaintiff miserably failed to prove that the defendant was exclusive owner, whereas, it has come on record that defendant Nos.8 and 9 were the owners. In such circumstances, decree of alternative relief is most appropriate one and cannot be said to be suffering from illegality and perversity.

No ground is made out for interference, much less, no substantial question of law arises for determination. Accordingly, the present regular second appeal is dismissed.

21.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**