

RSA No.5034 of 2014 (O&M)

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

RSA No.5034 of 2014 (O&M)

Date of Decision: January 14, 2016

Parveen

...Appellant

Versus

Tirath Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. S.K. Yadav, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Narnaul, dated 31.10.2011, whereby, the suit of the appellant-plaintiffs for prohibitory injunction restraining the respondent-defendants from creating any interference or raising any construction over the suit property which is an open plot adjacent to the house of the appellant-plaintiffs, was dismissed, appeal against which preferred has been dismissed by the District Judge, Narnaul, on 02.08.2014.

It is the contention of the learned counsel for the appellant that the stand of the respondent-contesting defendants has been negated by the Court because of non-production of the requisite documentary evidence with regard to their purchase of the said land from the custodian department. He contends that

admittedly, the plot is on the Northern side of the house of the appellant-plaintiffs and there is a door also opening there. Apart from that, the said area is being used as Guwada not only by the appellant-plaintiffs but their ancestral were also doing the same. He, thus, contends that the findings recorded by the Courts below cannot sustain and deserve to be set aside and the suit decreed, as prayed for.

I have heard the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments, but do not find any ground for interfering with the findings as recorded by the Courts below.

It is not in dispute that the star witness so far as the appellant-plaintiffs are concerned, could be said to be someone independent as Rajender Kumar PW-3, Draftsman, who had prepared the site plan, who, when appeared as a witness, has categorically stated that the main gate of the house of the appellant-plaintiffs opens towards the East. The door which has been carved out towards the Northern, where the suit property is situated, has been opened after breaking the wall, which clearly indicates that the door did not exist originally in the house. He has further stated that there is no boundary wall around the plot and the plot is lying open and vacant. Merely because, as per the assertions it is being used for a Guwada, which aspect they have not been able to prove and there are certain other things such as water tank, stone 'patti' lying in

that area, it cannot be said to be a plot which is either in their possession or an ancestral property.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

January 14, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**