

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

CIVIL REVISION No.5535 of 2014
Date of Decision : 12.10.2015

Pyara Devi

..... Petitioner

Versus

Satgir and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. J.S. Mehndiratta, Advocate
for the petitioner.

Mr. Gorakh Nath, Advocate
for the respondents.

K. KANNAN, J.

The petitioner-plaintiff has filed the suit for declaration and injunction describing the property in specific linear measurements that made reference to the property at situate 180' at North, which I believe as the distance running East to West and 75' on the East and 90' on the West which extent shall be the running feet from North to South. Along with the plaint, the plaintiff had submitted Annexure P-9 which details the linear measurements at a variation of 96' + 43' on the North and 125' on the East and 205' on the West and 148'. With 4 different measurements, running East to West and South to North, it is

comprehensible as to how the plaintiff had given the extent as mentioned in the plaint which was different from what was stated in the village records. The plaintiff brought an amendment to the plaint pointing out to fresh encroachments, which was allowed.

The plaintiff had the property measured through the Local Commissioner's report. On the basis of that report, the plaintiff wants to substitute new measurements which describes that northern portion of the property as 96' + 43' which is East to West and 148' on the South which similarly must be taken to East to West and the measurement on the East was set up as 125' + 22' and on the West 186' + 41'.

The application for amendment was brought on the plea that the defendant had changed the dimensions of the property and had shifted the katcha kotha and raised small walls and put up more constructions. This is purported to be a further encroachment.

A common sense for any encroachment shall result in deduction of the area. The property as originally claimed with linear measurements worked out approximately to the area of 15675 square feet. After the alleged encroachments with a new linear measurement given by the plaintiff, he was setting out the extent to be 26691 square feet approximately, which is more

than 10,000 square feet than what was claimed originally. I cannot allow for the plaintiff to bring a modification fancifully based on merely the Commissioner's report. If the plaintiff had exercised any diligence and had given the description of property after actually measuring the same, there could not have been such wild variations between what he claims and what the documents refer to. The amendment that shall be become possible under Order 6 Rule 17 CPC after the commencement of the suit shall be restricted to incidents which the plaintiff did not know in spite of due diligence and on facts which are not known to the plaintiff. The plaintiff cannot set up such a plea and the amendment itself is betrayal of brazen negligence on the part of the plaintiff. The plea for amendment had been rightly rejected.

I find no scope for interference. The revision petition is dismissed.

**(K. KANNAN)
JUDGE**

12.10.2015
'yogesh'