

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 5530 of 2014 (O&M)

Date of decision: January 28, 2016

Rekha Jain

.....Petitioner

VS.

Kulwant Rai and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE K.KANNAN

Present: Mr. Vivek Suri, Advocate
for the petitioner.

Mr. Jagjit Gill, Advocate
for the respondent No. 1,4 and 5.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

K.KANNAN,J (Oral)

1. A curious procedure adopted by defendant of seeking for modification of decree obtained by the plaintiff under Section 151 CPC, after a judicial pronouncement of the trial Court and the Appellate Court has given rise to a more curious order allowing such a fanciful application. The suit had been filed by the plaintiff claiming declaration for a property having an area 15' x 75' with reference to House No. 68 B situated Ward No. 3, Mandi Dabwali and described as with reference to all the four boundaries and making reference to the property as having

been purchased through a sale deed Dated 22.05.1987. The defendant denied the plaintiff's claim to title but lost in the defence that resulted in decree in favour of the plaintiff as sought for. The defendant preferred an appeal reiterating the contentions made before the trial Court. The appeal was also dismissed. After disposal of the appeal on 06.05.2006, the defendant took another 4 years before he came with an application under Section 151 CPC that the property which the court has disposed of with reference to property to an extent of 15 ½ x 65' which was the way it was described in the sale deed and in a still further sale deed made by the plaintiff subsequent suit. The court has accepted this contention and allowed the modification of the decree already passed, originally in the year 2004 through an order passed 10 years later on 26.05.2014.

2. There is no scope for a trial court to touch its own papers for modification of a decree except under occasions provided in the Civil Procedure Code itself. It could be through decisions of the Appellate Court or it could be for modification of a clerical or arithmetical error that could be corrected in the manner contemplated in Section 152 CPC. An alleged misdescription with reference to a sale deed and a mismatch between what is contained in the plaint and what was stated in the sale deed cannot be reopened, for, they would amount to modification of decisions already rendered on judicial reasoning. If there was a mistake in the linear measurement given in the plaint and the defendant was in anyway aggrieved by the same, the only Forum for pointing out to such mistake could be only at the Appellate Forum. After a decree is passed, the defendant cannot seek for modification of any of the descriptions in the plaint and bring a comparison to what is contained in the plaint and what is contained in the sale deeds. It will give rise to a piquant situation of the party who obtains a decree could be put in a state of uncertainty of when his own right in the property could be

altered at any point of time by a judgment debtor who lost his case earlier.

3. The counsel for the petitioner also points out to me that along with the plaint the plaintiff had also given a rough sketch containing the actual constructed portion of the house commencing from the street which ran to 75' East West and after taking the objection that the sale deed on the basis the plaintiff claiming was itself not true, the defendant cannot seek for alteration of the description as regards the measurement. The point is well taken and I will find the jurisdiction exercised by the court below to be wholly misplaced and without any authority.

4. The order passed is set aside and the Civil Revision is allowed.

JANUARY 28, 2016

Rajeev

**(K.KANNAN)
JUDGE**