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

CR-7314-2018 (O&M)

Date of Decision: 22.03.2023

Kanwal Mohan

...Petitioner

Versus

Amit Gupta and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Krishan M. Vohra, Advocate
for petitioner.

Mr. Vivek Suri, Advocate
for respondent No.1.

ARUN MONGA, J. (ORAL)

Petition herein is for quashing of order dated 08.10.2018 (Annexure P-7) passed by Ld. Additional Civil Judge (Senior Division), Panchkula, whereby application (Annexure P-5) filed by petitioner under Order 6 Rule 16 CPC seeking direction to defendant No.1 (respondent No.1 herein) to delete the additions made by him in the written statement, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner is the real brother of respondent Nos.1 to 4 and respondent No.6. Petitioner along with respondent No.6 (plaintiffs) had filed a suit for declaration stating that transfer of House No.255-P, Sector 9, Panchkula, measuring 220 sq. metres, in favour of respondent No.1-Amit Gupta on the basis of family transfer is illegal, null and void and inoperative and further for declaring the above said property to be ancestral. He also sought permanent injunction restraining respondent No.1 from alienating above said suit property and for restraining respondent No.5-Haryana Urban Development Authority (HUDA) from entertaining any sale, mortgage etc. on the said property. Further he sought

mandatory injunction directing respondent No.5 to cancel the transfer made in favour of respondent No.1 and treat the said property as intestate and transfer it in favour of petitioner and respondents No.1 to 4 and respondent No.6.

2.2. Petitioner moved an application under Order 6 Rule 17 CPC for amendment of plaint by adding para No.19A which was allowed. Respondent No.1 filed an amended written statement to the amended plaint. Respondent No.1 has not only replied to para No.19A while filing the amended written statement but has also made other material alteration/additions over the original written statement in the amended written statement in para Nos.6, 13 and 15. Petitioner filed an application under Order 6 Rule 16 CPC for deletion of additions made by respondent No.1 in the said paragraphs of amended written statement. Ld. Trial Court vide impugned order dismissed the said application moved by petitioner.

3. Having gone through the record and after hearing learned counsel for petitioner, I am unable to persuade myself to accept the contention that under the garb of filing amended written statement any new plea has been raised or change of stand has been made by respondent No.1 specifically in para Nos.6, 13 and 15. The changes made therein seem to be just an extension and elaboration of the broad stand in the unamended written statement.

4. In view of the aforesaid facts and circumstances, what thus emerges is that defence which has already been taken in the unamended written statement remains the same in amended written statement there is effectively no change of defence. It is rather a diabolical stand, as on one hand petitioner states that he should be allowed to amend his plaint but when respondent No.1 pleads more elaborate factual narrative in the amended written statement, the same has been objected to.

5. Furthermore, the factual narrative in the pleadings have to be corroborated with evidence to be adduced by the respective parties making such

assertions. Therefore, even if amended written statement is allowed to remain as it is, the same is inconsequential as the onus of proving the same is on defendant which can be discharged with corroborative evidence in support thereof. Judgments cited by learned counsel for petitioners has rightly been distinguished by Ld. Trial Court.

6. No material irregularity in law or procedure has been committed by Ld. Court below while passing the impugned order calling for interference in exercise of extraordinary revisional jurisdiction.

7. In view of the aforesaid, nothing survives for adjudication before this Court. Revision petition is dismissed being devoid of merit.

8. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 22, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No