

(2016) 01 MAN CK 0001

In the Manipur High Court

Case No : Civil Revision Petition No. 5 of 2012.

Dr. M.S. Abdul Khaliq Chishti and Others

APPELLANT

Vs

Sheikh Abdul Hye Chishti and Others

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115

Citation : (2016) AIRCC 1166 : (2016) 3 CivCC 668

Hon'ble Judges : L.K. Mohapatra, C.J.

Bench : Single Bench

Advocate : N. Umakanta, Advocate, for the Appellant; H. Manglem and F.A. Khalid, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

L.K. Mohapatra, C.J. - This Revision is directed against the order dated 23.7.2012 passed by the learned Civil Judge, Sr. Divn-II, Manipur East in Judl. Misc. Case No. 79 of 2012 arising out of O.S.No.33/2004/27 of 2009 rejecting an application for amendment of the written statement filed by the defendant No. 1.

2. The learned Civil Judge has rejected the application in the impugned order on the ground that the proposed amendment will take away the effect of admission made by the defendants-1, 5, 6 and 7 who had filed a joint written statement and also on the ground that no due diligence has been shown on the part of the defendant No. 1 in filing the application for amendment of the joint written statement at the stage of examination of witnesses for defendants.

3. A preliminary objection was raised by the learned counsel for the respondents on the ground that when a joint written statement is filed by more than 1 defendants, one of such defendants cannot seek for amendment of the joint written statement without consent of the other defendants who had joined him in filing the joint written statement. In the present case, at it appears from Annexure-A/3, a joint written statement was filed by the defendants-1, 5, 6 and

7. The proposed amendment is filed only by the defendant No. 1 and there is nothing in the said petition to show that consent of the other 3 defendants namely the defendants- 5, 6 and 7 had been taken for filing the application for amendment of the joint written statement. The verification has also been made only by the defendant No. 1 on his own behalf.

In this connection, reference may be made to a judgment of the Allahabad High Court reported in 2000 Legal Eagle(ALD) 155. In paragraph 5 of the judgment the learned Single Judge held that an amendment of written statement jointly filed by defendants-1, 2 and 3 cannot be entertained when filed by only one of them. When the written statement is jointly filed by the said defendants, it cannot be amended at the behest of one when the other two defendants do not join him. A similar view has also been expressed by the Karnataka High Court in the case of Sri R.D. Suresh @ Manjunath v. Sri R.A. Manjunath in Writ Petitions No. 34252-57 of 2014 (GM-CPC) disposed of on 24.6.2015. In para 18 of the judgement it was held that when joint written statement has been filed, one of the defendants cannot be allowed to take inconsistent stand without the consent of the other defendant.

4. In the present case, as stated earlier, out of the 4 defendants who had filed joint written statement, only defendant No. 1 has filed this application for amendment of the joint written statement without obtaining consent of the others. As a matter of fact, one of the defendants who had joined the defendant No. 1 in filing the joint written statement has objected to the proposed amendment. Under these circumstances, I am of the view that the learned Civil Judge rightly did not allow the application for amendment of the joint written statement at the behest of one of the defendants who had filed application for amendment of the joint written statement without obtaining consent of the others who had joined him in filing the joint written statement.

5. Revision is accordingly dismissed.