

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil First Appeal No. 461 / 2013

Smt. Premila

----Appellant

Versus

Smt. Sarojani Kumar & Anr.

----Respondent

For Appellant(s) : Mr. Sandeep Shah
Mr. Shreyansh Mardia

For Respondent(s) : Mr. Sajjan Singh
Mr. Prashant Tatia
Mr. Manish Bhunwal

HON'BLE DR. JUSTICE VIRENDRA KUMAR MATHUR

Order

14/09/2017

The appellant-plaintiff filed an application under Order 6 Rule 17 CPC for amendment in the memo of appeal on the ground that he has already challenged the judgment and decree dated 27.07.2013 passed by the learned Additional District Judge, No.5, Jodhpur Metro, whereby the suit filed by the appellant for cancellation of the sale-deed dated 17.10.2004 was dismissed. The said judgment and decree was passed on the basis of the fact that the evidence could not be produced by the appellant, therefore, for abandoned caution, the humble appellant deemed it appropriate to challenge the order dated 15.07.2013 also whereby her evidence was closed. In such circumstances, the appellant prayed for leave of this court to seek amendment in the cause title as also to challenge the order dated 15.07.2013 as an

impugned order while filing present appeal under Section 96 read with Section 105 of CPC and so also in the prayer clause, the appellant proposes to add prayer for quashing of the order dated 15.07.2013. It was also submitted that inadvertently, while drafting the appeal, ground for the same have not been separately added and have been incorporated in paragraphs 14 to 23 of memo of appeal. The appellant, thus, submits that to avoid technicalities, the paragraphs 14 to 23 may be treated as grounds (A) to (J) instead of paragraphs 14 to 23. It is also contended that the appellant has challenged the order dated 15.07.2013, the appellant deems it appropriate to crave leave of this court to add one more additional ground as ground (H) mentioned in the application.

On the basis of these facts, the application under Order 6 Rule 17 CPC was sought to be allowed and amendment in the appeal was sought.

Written reply to the application was not filed but the application was opposed by the counsel for the respondent.

Heard counsel for the parties.

Counsel for the appellant submits that he has challenged the judgment and decree by way of appeal under Section 96 CPC. The judgment and decree dated 27.07.2013 was passed on the ground that the appellant could not produce the evidence. After the closure of the evidence, the suit was dismissed. The appellant wants to challenge the order dated 15.07.2013, whereby the evidence was closed and for that purpose, amendment was sought in the memo of appeal.

On perusal of memo of appeal, it was found that in paras Nos.10 and 11 of the appeal, the appellant has already taken the ground that since the appellant-plaintiff was residing at Jaipur and was not keeping well, she submitted an application for recording her evidence on commission. However, the said application of the appellant-plaintiff was dismissed by the trial court without assigning reasonable cause for declining such a prayer. The appellant-plaintiff appeared for recording her evidence on 25.02.2013 but on that date, the Presiding Officer was on leave and, therefore, the matter was adjourned to 30.03.2013. However, on the next appointed date, the appellant-plaintiff was unable to come to Jodhpur and the learned trial court closed her evidence.

In view of this, in the opinion of the court, there is no such amendment necessary for the purpose of deciding real question in controversy between the parties. The application filed under Order 6 Rule 17 CPC is, therefore, dismissed.

(DR. VIRENDRA KUMAR MATHUR), J.

/skm/
I.No.30

सत्यमेव जयते