

FRAMING OF ISSUES

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Introduction :

When one party affirms and other party denies a material proposition of fact or law, then only issues arise. If there is no specific denial, the question of framing issue does not, generally, arise. Material propositions are those propositions of law or fact. The plaintiff must allege such material propositions in order to show his right to sue. In the same way, defendant must allege as to constitute his defence. Unless each material proposition is affirmed by the plaintiff and denied by the defendant, a distinct issue will not form.

Material Propositions :

Basically, Material propositions can be understood in sense of two aspects. Those are Proposition of fact and Proposition of law. Those propositions of fact or law which a plaintiff must specifically allege in order to show a right to sue or a defendant must specifically allege in order to constitute his defence in such suit. In *Sri Nanjudchari vs. The Chairman*¹, it was held that " It is mandatory on the part of the trial court to frame all necessary issues arising from pleadings i.e., material proposition of fact and law of affirmed by the one party and denied by another.

When Does A " Distinct Issue" Form?

To form a distinct issue, a material proposition must affirm by one party and denied by other. Unless each material proposition is affirmed by the plaintiff and denied by the defendant, a distinct issue will not form.

At this juncture, it is not out of scope to see Rule 1 (3) of Order XIV of C.P.C, which reads as infra :

" Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue."

Kinds of Issues :

If defendant makes no defence, framing and recording issue by the Court does not arise. That too, in such a case, a Court need not frame and record an issue inasmuch as the defendant makes no defence at the first hearing of the suit². In *Desi Kedri vs. Huzurabad Co-Operative*

Marketing Society Ltd³., it was held that "Issues need not be framed when there is no dispute with regard to material averments in the plaint."

According to Rule 1(4) of Order XIV of C.P.C, issues are of two kinds.

- a) Issues of fact,
- b) Issues of law.

Relevant Case-Law :

1. Seela Venkata Subbaiah v. Jinka Muni Swamy; 1997(6) ALT 654.
2. Madhabananda Ray And Anr. vs Spencer And Company Ltd. on 1 May, 1987 ,AIR 1988 Ori 35 ;
3. The Manager, Bettiah Estate vs Sri Bhagwati Saran Singh And ... on 27 March, 1992 ,AIR 1993 All 2;
4. Mannam Anjmma vs. N.Nageswara Rao; 1997(6) L 645.
5. Maharashtra State Warehousing ... vs Bhujang Krishnaji Kohale on 16 June, 1998 , (1999) 101 BOMLR 83;
6. Mohammed Ali vs Dawood Basha on 18 October, 1995 ,ILR 1995 KAR 3420;
7. Sangli Municipal Council vs Syndicate Bank, Branch Sangli And ... on 12 June, 1979 ;
8. Hanumantha Gowda vs. Gidde Gowda, 1998(2) CCC 365 (Karn.) = 1998(5) ALT 21.1 (DN OHC);
9. Naresh Chandra Das vs Gopal Chandra Das on 23 August, 1990 ;AIR 1991 Cal 237 ;
10. Mantu Naik vs Bankim Chandra Maity & Anr. on 29 November, 1995 ,(1998) 3 CALLT 160 HC ;
11. Prithvi Raj Jhingta And Anr. vs Gopal Singh And Anr. on 7 September, 2006, AIR 2007 HP 11;
12. Maddaa Sai Lakshmi v. Mediseti Lakshmi Narasamma 2006(3) ALT 708.
13. P.Chidambaram vs St on 14 June, 2005 ;

14. Major S. S. Khanna vs Brig. F.J. Dillon on 14 August, 1963 ;1964 AIR 497

How May an Issue of Fact Arise?

At this stage, I deem that it is not out of place to discuss about the word " Fact" which is defined under section 3 of Indian Evidence Act, 1872.

"Fact". "Fact" means and includes-- (1) anything, state of things, or relation of things, capable of being perceived by the senses; (2) any mental condition of which any person is conscious.

Illustrations

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something is a fact.

(c) That a man said certain words is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has a certain reputation, is a fact. "Relevant" One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts." Facts in issue." The expression " facts in issue" means and includes-- any fact from which, either by itself or in connection with other facts, the existence, non- existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.-- Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, 1[any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations A is accused of the murder of B. At his trial the following facts may be in issue:-- that A caused B' s death; that A intended to cause B' s death; that A had received grave and sudden provocation from B; that A, at the time of doing the act which caused B' s death, was, by reason of unsoundness of mind, incapable of knowing its

nature.]

In view of above, it is apt to say that understanding the word "fact" under purview of Indian Evidence Act is very important as to issues of fact.

When Shall A Court Frame And Record Issues?

Basically, at the first hearing of the suit the Court shall ascertain upon what material propositions of fact or law the parties are at variance. Yet, here, three essential points are to be remembered. Before framing and recording issues, firstly, the Court shall read the plaint and written statement. Secondly, examination under rule 2 of Order X is mandatory, thirdly, the Court shall hear the parties or their pleaders. At the outset, it is apt to see words in rule 1 (5) of Order XIV of C.P.C " after reading the plaint and the written statement and after examination under rule 2 of Order X and after hearing the parties or their pleaders". Thus, the Fundamental Functions of the Court , as to before framing and recording issues , are :

1. reading the plaint and written statement;
2. examination under rule 2 of Order X of C.P.C; and
3. hearing the parties or their pleaders;

after these three essential functions, the Court, at the first hearing, shall ascertain upon what material propositions of fact or law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

In *Maddaa Sai Lakshmi v. Medisetti Lakshmi Narasamma*⁴, in this case, it was held that "Before commencement of trial, suit be posted to a specific date for hearing both sides on the issues already framed to see if they have been properly framed or if any reframing of issues is needed on the core issues in dispute. Trial be commenced only after such exercise."

Can a Court go into question and decide any aspect without framing issues?

Despite issue is not framed, court has power to go into that question and decide that aspect of the subject matter in case of sufficient evidence is adduced by both parties on pleadings . At this juncture, it is appropriate to refer ruling in *Mohd Kareemuddin Khan vs. Syed Aza*⁵, where it was observed that Defendant pleading perfection of title by

adverse possession. Issue not framed. However evidence adduced by both sides on the disputed matter. Court is not barred to go into that question and decide that aspect of the matter. In another case, *Sunyabasi Pikra vs. Paramanand Ranasingh*⁶, it was held that " Both parties have laid evidence, both documentary and oral touching that issue. Non-framing that particular issue is immaterial. "

It is thus clear that if there are pleadings and sufficient evidence is available on record, the Court can go into that question, even if issue is not framed on that question, and decide that aspect of the matter. However, in some of the cases, the matters will be remanded to the trial courts for failure to frame issues. In *Syed Mahmood vs. Dr. Manik Chandra* 1998(3) An.W.R.340, it was observed that issues were framed and therefore, the matter remitted back to trial court to frame issues as indicated and give reasonable opportunity to the parties to lead evidence etc.

Conclusion :

A fortiori, the present structure of Rule 2 of Order XIV of C.P.C was brought about by the Civil Procedure Code (Amendment) Act, 1976.

therefore, it is very important to have a look to the difference between the amended Rule 2 and earlier Rule.2. Let me conclude this article with an observation that "When one draws a comparison between the earlier Rule 2 and the amended Rule 2, the comparison immediately leads to a conclusion that whereas under the old Rule 2 it was mandatory for a Court to try the issues of law in the first instance and to postpone the settlement of issues of fact until after findings had been arrived at with respect to the issues of law, under the new, amended Rule 2, as has been spelt out and clearly stipulated in Sub-rule (1) thereof, the legislature has mandated that a Court shall pronounce judgment on all issues, both of law as well as facts, notwithstanding that a case may be disposed of only on a preliminary issue. Under the new Rule 2 the only exception is contained in Sub-rule (2) thereof which, in a manner of speaking relaxes the aforesaid legislative mandate to a limited extent by conferring a discretion upon the Court that if it is of the opinion that the case or any part thereof may be disposed of on a issue of law only, it may try that issue first, in the process postponing the settlement of other issues until the issue of law has been determined. This discretion even though conferred by the aforesaid legislative amendment has however been circumscribed and limited, specifically and explicitly only to two situations and these are that the issue or issues of law only upon which the case or any part of

the case may be disposed of must relate to either the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. By a combined reading of Sub-rule (1) and Sub-rule (2) of Rule 2 what therefore emerges is that, except in situations covered by Sub-rule (2) a Court must dispose of a suit as a whole, try all issues of law and fact together and accordingly pronounce judgment on all such issues even though the case may be disposed of on a preliminary issue."

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1. 1999(2) ALT 14.1 (DH OHC) = 1999(1) CCC 265 (Karnataka) "
2. See Order XIV, Rule 1(6) of C.P.C,1908
3. 1994(2) ALT 539 (D.B).
4. 2006(3) ALT 708.
5. 1997(2) ALT 625 (D.B) = 1997(2) APLJ 220.
6. 1997 (4) CCC 304 (Orissa) = 1998(4) ALT 1.5 (DN OHC) = 84 (1997) C.L.T. 534.