



**Settlement Of Issues
Order XIV Of
Civil Procedure Code 1908**

**Indu Sharma
2nd Additional Civil Judge
(Senior Division)
Dehradun**



Meaning Of Issue

According to Concise Oxford Dictionary(1996)

“Issue” means “a point in question, an important subject of debate, disagreement, discussion, argument or litigation .”

In other words, an issue is that which, decided in favor of the plaintiff, will in itself give a right to relief, and if decided in favor of the defendant, will in itself be a defense.



Object & Importance of Settlement of issues

The main object of Settlement of issues is to ascertain the real dispute between the parties by narrowing down the area of conflict and determine where the parties differ.

Issues are the lifeline and guide for any suit and therefore the framing of issues has very important bearing on the trial and decision of a case.



- Wrongly constructed issues and discovery of a valid issue being left out no doubt affects the outcome of a trial as time, money and legal provisions linger the judgment of a case.



How does an issue arise?

Order 14 Rule 1 Sub Rule 1

Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other.

If there is no specific denial, the question of framing issue does not, generally, arise.



Subject matter of the issue

Order 14 Rule 1 Sub Rule 3

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



What Is Material Propositions ?

Order 14 Rule 1 Sub Rule 2

- Basically, Material propositions can be understood in sense of two aspects :-
- Proposition of fact, and
- Proposition of law.



The material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue (or file a suit) and the defendant must allege in order to constitute his defense in such suit.



In Sri Nanjudchari vs. The Chairman, Karnatka Electricity Board Banglore & Another 19 Janauary 1998

Hon'ble Karnatka High Court was held that "It is mandatory on the part of the trial court to frame all necessary issues arising from pleadings i.e., material preposition of fact and law of affirmed by the one party and denied by the another.



Kinds Of Issues

Order 14 Rule 1 Sub Rule 4

- Issues are of two kinds:
- (a) issues of fact,
- (b) issues of law.



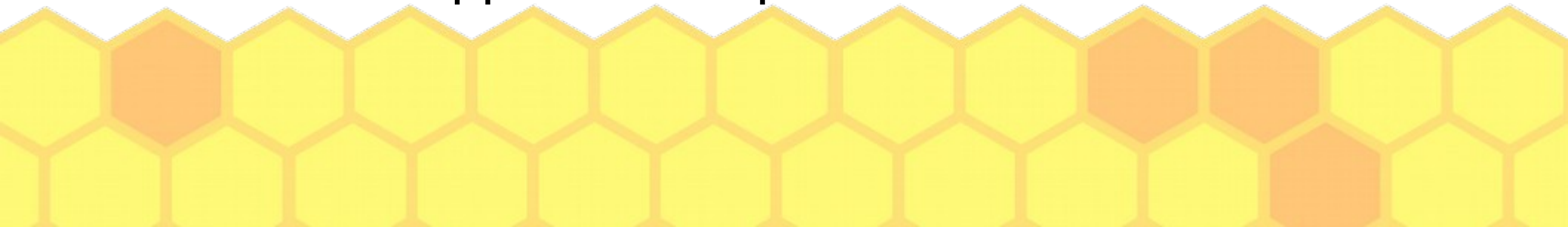
Framing of issues

Order 14

Rule 1 Sub Rule 5

Role of the Court on first hearing

At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under rule 2 of Order 10 and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall there upon proceed to frame and record the issues on which the right decision of the case appears to depend.



It is necessary for Court to
comply mandate of
Section 89 C.P.C. & Order 10
Rule 1 A to 1 C & Rule 2 C.P.C.
before framing the issues.



In the case Afcons Infrastructure Ltd. & Anr vs cherian varkey construction co. (p) Ltd. civil appeal no. 6000/2010

- **Hon'ble Supreme Court held** that it is proposed that the court has to first consider the options given in section 89 CPC and order 10 rule 1A to 1C CPC. These provisions impose a duty upon the court that before framing the issues it should be considered that this case is fit for reference or not and If the court is of the opinion that the said suit is not fit to be referred to any forum described under section 89 cpc, after recording reasons in writing, issues may be framed.



Order 14

Rule 1 Sub Rule 6

- Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.



Court to pronounce judgment on all issues

Order 14 Rule 2 Sub Rule 1

- Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.



Order 14 Rule 2 Sub Rule 2

Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.



Is any issue other than mention in Order 14 Rule 2 Sub Rule 2 could be decided as preliminary issue?

Such as issue related Non joinder of Parties

State of Mijoram vs. Sanglawn AIR 2011 GAUHATI 178 :: (2011) Hon'ble Gauhati High Court held that “ Issue relating to non-joinder or mis-joinder of necessary party Neither relates to jurisdiction of Court nor bar to suit created by any law for time being in force , Cannot be decided as preliminary issue.



Kaloo vs State Of U.P. through collector Bareilly & others 2004 (56) ALR 673 Allahabad H.C.

- Issue relating to non-joinder of necessary party Can be decided as preliminary issue, Because no suit shall be defeated by reason non-joinder of parties. If this issue is decided as preliminary issue plaintiff can be directed for add the necessary party in the suit but if issue is decided at the time of judgement plaintiff have no option.



Materials from which issues may be framed

Order 14 Rule 3

- The Court may frame the issues from all or any of the following materials:—
 - (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;
 - (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit
 - (c) the contents of documents produced by either party.



- This means that apart from those mentioned in the plaint or written statements alone, issues can also be formed by the Court during first hearing through interrogations (of both sides) or even through presentation of documents by the parties to the suit



Court may examine witnesses or documents before framing issues

Order 14 Rule 4

Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of issues to a day not later than seven days, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.



Power to amend, and strike out, issues

Order 14 Rule 5 Sub Rule 1

- The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.



Order 14 Rule 5 Sub Rule 2

- The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.



Questions of fact or law may by agreement be stated in form of issues Order 14 Rule 6 & 7

When the parties to the suit agree as to the question of fact or law to be decided between them, they may, by agreement state the same in form of an issue. If the court is satisfied that the agreement is executed in good faith, it may pronounce the judgment on such issue according to the terms of the agreement



Court's Power & Duty as to Settlement Of Issues

The duty to frame proper issues rests primarily on the Court.

The judge must apply his mind and understand the facts of the case before framing issues. But the pleaders appearing for both the parties should also assist the court in framing issues.



Omission or inclusion of faulty issues

Even though it is the duty of the court to frame proper issues, mere omission to frame an issue is not necessarily fatal to the suit.

Omission to frame an issue is an irregularity which may or may not be a material one.



Kewal Krishna v. Dina Nath (1992), AIR 1993 SC 881

- If such omission affects the disposal of the suit on merits, the suit must be remanded to the trial court for a fresh trial.
- On the other hand, if the parties went to the trial with full knowledge that a particular point was at issue, they have not been prejudiced and substantial justice has been done, absence of an issue is not fatal to the case so as to vitiate the proceedings



Sardul Singh v. Pritam Singh

[AIR 1999 SC 1704]

laid down following reasons why an issue is important in a civil suit :-

- It is the issues framed and not the pleadings that guide the parties in the matter of leading evidence,
- The Court cannot refuse to decide the point on which an issue has been framed and evidence led by the parties, even if the point involved is not mentioned in the pleadings,



- The Court should not frame an issue which does not arise in the pleadings.
- The issues must be confined to the material questions of fact or law (*facta probanda*) and not on subordinate facts or evidence by which material questions of fact or law are proved or disproved (*facta probantia*).



- One issue should cover only one fact or law in dispute between the parties.
- If the case goes in appeal, it must be dealt with by the Appellate Court on the issues settled for trial.



Conclusion

Thus Settlement of issues is an integral part of a suit. Issues are the backbone of a suit. The framing of issues, therefore has very important bearing on the trial and decision of a case.



THANKS

