

Settlement of issues

Relevant Provisions

Order 14, Civil Procedure Code, 1908



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Introduction

The term "issue" in a civil case means a disputed question relating to rival contentions in a suit. It is the focal point of disagreement, argument or decision. It is the point on which a case itself is decided in favour of one side or the other, by the court.

Framing of issues is probably the most important part of the trial of a civil suit. For a correct and accurate decision in the shortest possible time in a case, it is necessary to frame the correct and accurate issues. Inaccurate and incorrect issues may kill the valuable time of the court.

In Siddhi Chunilal vs. Suresh Gopkishan, it was observed that if correct and accurate issues were not framed, it leads to gross injustice, delay and waste of the court's valuable time in deciding the matter.

Definition of issues

Issues mean a single material point of fact or law in litigation that is affirmed by one party and denied by the other party to the suit and that subject of the final determination of the proceedings.

In *Howell v. Dering*, the court held that, an issue is that which, if decided in favour of plaintiff, will in it give a right to relief; and if decided in favour of the defendant, will in itself be a defence.

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

What are the material propositions



- According to Rule 1 (2), material propositions are those propositions of fact or law which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defense.
- Each material proposition affirmed by one party and denied by the other shall form the subject - matter of a distinct issue.

Kinds of issues

As per the Order 14 Rule 1(4) of the C.P.C. issues are of two kinds:

1- Issues of fact, 2- Issues of Law.

3- Issues, however, may be mixed issues of fact and law.

Rule 2(1) of Order 14 provides that where issues both of law and fact arise in the same suit, notwithstanding that a case may be disposed of on a **preliminary issue**, the court should pronounce judgment on all issues. But if the court is of the 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:

The jurisdiction of the court; or

A bar to the suit created by any law for the time being in force,

For that purpose, the court may, if it thinks fit, postpone the settlement of the other issues until the issues of law have been decided.



Mandate of law must be comply before framing of issues-

It is necessary to comply mandate of *Section 89 CPC* and *Order 10 Rule 1A to 1C* and *Rule 2 CPC* before framing the issues, as the Hon'ble Supreme Court has given direction in the case **Afcons Infrastructure Ltd. & Anr vs cherian varkey construction co. (p) Ltd.- civil appeal no- 6000/2010**, In this case, 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.

Object of framing of issues

- The main object of framing issues is to ascertain the real dispute between the parties by narrowing down the area of conflict and determine where the parties differ.
- An obligation is cast on the court to read the plaint and the written statement and then determine with the assistance of the learned counsel for the parties, material propositions of fact or of law on which the parties are variance. The issue shall be formed on which the decision of the case shall depend.
- The evidence shall be confined to the issues. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment then proceeding issue-wise would be able to tell precisely how the dispute was decided.



Case laws

MB Sanghvi v Secretary, Madras Chillies Merchant,
AIR 1969 SC 530 *Supreme Court held that, the Court should not determine an issue which does not arise on the pleadings and should not decide a suit on a matter on which no issue has been raised. No issue need be framed on a point of law which is perfectly clear.*

Akha Ram v LR of Ram Sahai, AIR 2009 Raj 138 *the court held that where broader issue framed having mixed facts, some facts relating to plaintiff and some facts relating to defendant, the trial Court allowing plaintiff to lead evidence of defendant was not improper.*

When issues are framed

- According to rule 1, issues are framed and recorded by the court at the first hearing after reading the plaint, written statement, examining and hearing of parties and their pleaders.
- Where the Court finds 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 the issues to a future day (maximum of 7 days).



Court's power and Duty as to issues



- The duty to frame proper issues rests primarily on the Court. The judge must apply his mind with due care, caution and diligence and understand the facts of the case before framing issues. The pleaders appearing for both the parties also should assist the court in framing issues.
- Issues must be specific and clear and not vague or evasive. The court may examine the witnesses or inspect documents before framing issues, to amend the issues, to frame additional issues or to strike out issues that may appear to it to be wrongly framed.

Materials are required for framing of issues

The issues may be framed by the Court from all or any of the following materials:

- Allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;
- Allegations made in the pleadings or in answers to interrogatories delivered in the suit;
- The contents of the documents produced by either party.



Amendment of issues framed

- Order 14 Rule 5, C.P.C. empowers the court to amend issues framed or frame additional issues at any stage of proceedings.
 - Issues can be amended at any stage of the trial.
 - They can also be amended by appellate or revisional court.

Nagubai Ammal v. B. Shama Rao, AIR 1956 SC 593

Supreme Court observed that, a trial does not get vitiated on wrong, improper or defective issues.



Omission to frame 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 be or may not be a material one.
- If such an omission affects the disposal of the suit on merits, the case must be remanded to the trial court for a fresh trial.
- Where the parties went to 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.

Conclusion



- Issues are very important not only for the parties but also for the Court.

- Thus framing of issues is a very important stage of a civil trial.

- Parties are required to prove or disprove the issues framed by the court, not the pleading.
- On the other side, court is also bound to give decision on each framed issue.
- Therefore, the Court is not to decide those matters on which no issues have been framed.

If issues are properly framed, the controversy in the case can be clearly focused and documents can be properly appreciated in that light.

- The relevant evidence can also be carefully examined.
- Careful framing of issues also helps in proper examination and cross examination of witnesses and final arguments in the case.



Thank you