SECOND DISTRICT LEVEL WORK SHOP, KURNOOL

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ON

“INTRICACIES AND CASES LAW”

TOPICS:

1. *Framing of issues,*
2. *Necessity of Framing of Preliminary Issues*

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With profound gratitude
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PRESENTATION ON

FRAMING OF ISSUES, NECESSITY OF

FRAMING OF PRELIMINARY ISSUES

BY

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FRAMING OF ISSUES

1. INTRODUCTION :

Settlement of issues is one deserted area where the trial courts and advocates used to demonstrate tepid attention. It is duty of court to frame issues from material propositions. To frame issues, court is to find out questions of fact ,questions of law and mixed questions of fact and law from pleadings of parties and other materials, which are provided with pleading and parties are to produce their evidence to prove or disprove frame issues.

2.RELEVANT PROVISIONS:

Following are the relevant provisions of law regarding to the concerned topic

- Order 14 Rule 1 to 6 of CPC 1908
- Order 18 Rule 2 of CPC 1908
- Order 20 Rule 5 of CPC 1908
- Order 41 Rule 31 of CPC 1908
- Order 15 Rule 1 of CPC 1908

3. Definition of issue :

"A single material point of fact or law in litigation that is affirmed by one side and denied by the other and that subject of the final determination of the proceedings"

4. Framing or Non framing of issues in case of Ex-Parte Proceeding :

Court should only frame issues when defendant has made his defense against suit through submission of his written statement. However,court should not frame issues when defendant has not appeared before court and, therefore has not made his defense through submission of his written statement.

5. Meaning of material proposition

Material proposition are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defense.

6. kinds of Issues

a. Issues of fact
b. Issues of Law
c. Mixed Issues of fact and law

A question of law on which no evidence is to be brought in by the parties can be tried as a preliminary issue. It is being done when the issue involves a question of law alone. To decide to try anything as a preliminary issue is a matter of discretion for the court,but it is not an obligation (O.XIV R.2(2))

When determination of a 'question of law' depends on a 'question of fact', then the issue of law should not be tried as a preliminary issue. The plea of limitation, estoppel, resdudicata etc, raised in the beginning of a case can be tried as preliminary issue.

7. Object of framing issues

The object of framing issues it to ascertain the real dispute between the parties by narrowing down the area of conflict and determining where the parties differ.Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. At the first hearing of the suit,the court shall after reading the plaint and the written statements and after examination under Order IX Rule 2 and also after hearing the parties or their pleaders,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 righy decision of the case appears to defend. But, if the defendant did not make any defense at the first hearing of the suit,there is no requirement on the court to frame and record any issues. Even when there is no written statement,if the court is of opinion that a question like limitation has to be decided,it can frame an issue/point for consideration, because section 3 of limitation Act places an obligation on the court to decide the question of limitation,even when no defence is taken.

8. Duty Of Court

It is the duty of the judge himself to frame proper issues. When parties are not satisfied ,it is their duty to get proper issues framed. A look at the provisions contained in Rules 1 to 3 of Order XIV CPC would show that a duty and responsibility is cast on the trial court, at the first hearing of the suit, after reading the plaint and the written statements, and after examination under Order X Rule 2 and after hearing the parties or their advocates, ascertain upon what material propositions of fact or of 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.

It is necessary for the trial court while framing issues, to bear in mind the allegations made on oath by the parties or by any person present on their behalf or made by the pleaders of such parties. It is mandatory for the trial court to assess the evidence of the parties and consider the relevant issues which arise for adjudication and bearing of the evidence on those issues.

Siddavarapu Sivakota Reddy Vs State Bank Of India, Indukurupeta Branch
2008 (5) ALD 317 " where the trial court has failed to frame an issue so as to deprive the defendant in a money suit instituted by the bank to lead evidence that the loan was taken for the purpose of purchasing a tractor and the suit is for non-joinder of vendor of tractors for the failure on the part of the trial court in framing the issue after going through the respective pladings especially the written statement failed by the defendant."

9. Matters to be considered before framing issues

i. Reading of the plaint and written statement :- The court shall read the plaint and written statement before framing an issue to see what the parties allege in it.
ii. Ascertainment whether allegations in pleadings are admitted or denied :- Order 10 Rule 1 permits the court to examine the parties for the purpose of clarifying the pleadings, and the court can record admissions and denials of parties in respect of an allegation of fact as are made in the plaint and written statement.

iii. Admission by any party
If any party admitted any fact or document,then no issues are to be framed with regard to those matters and the court will pronounce judgment respecting matters which are admitted.
iv. Examination of material proposition
The court may ascertain, upon what material proposition of law or fact the parties are at variance.
v. Examination Of witnesses
The Court may examine the witnesses for purpose of framing of issues.
vi. Consider the evidence
The court may also in the framing of issues take in to consideration the evidence led in the suit. Where a material point is not raised in the pleadings,comes to the notice of the court during course of evidence the court can frame an issue regarding it and try it.
vii. Examination of any witnesses or documents under Order 14 Rule 4
Under this rule any person may be examined and any document summoned,for purpose of correctly framing issues by court,not produced before the court.

10. Materials on which issue may be framed
The court may frame the issue from all or any of the following materials.

- Allegations made on oath:- Issues can be frame on the allegations made on oath by the parties or by any person present on their behalf or made by the pleader of such parties.

- Allegations made in pleadings :- Issue can be framed on the basis of allegations made in the pleadings.

- Allegations made in interrogatories :- Where the plaint or written statement does not sufficiently explain the nature of the partie's case, interrogatories may be administered to the party, and allegations made in answer to interrogatories, delivered in the suit, may be the basis of framing issues.

- Contents of documents :- The court may frame the issue on the contents of documents produced by either party.

- Oral examination of parties :- Issues can be framed on the oral examination of the parties.

- Oral objection :- Issues may be framed on the basis of oral objection.

10. Amend or strike out framed issues :

- Amendment of Issues : At any time before passing of decree, court can amend framed issues on those terms, which it thinks fit. However, such amendment of framed issues should be necessary for determination of matters in controversy between parties.

- Striking out of issues : At any time before passing of decree, court can strike out framed issues especially when it appears to court that such issues have been wrongly framed or introduced.

The contingency to settle additional issues or amendment of certain issues generally will arise when pleadings are amended, parties are added or deleted or transposed. Whenever,the court takes up the matter for the first time for recording of evidence, the presiding officer shall invariably go through the issues and pleadings fpr a while so that he will a first-hand information about the matters in controversy and on what points that parties are preparing to adduce evidence. It will be an opportunity to the presiding officer to assess the adequacy and correctness of the issues already framed ;and in case he feels necessary can recast them after giving opportunity to the parties or their pleaders. If during the course of trial issues are recast, opportunity shall be given to the parties to adduce fresh evidence if necessary. It is also in the experience in most of the cases, the controversy that is reflected in the issues originally framed in the initial stage would continue till the disposal of the suit, but in certain cases as-and-when the suit proceeds from one stage to other, the area of controversy gets altered while some of the issues which have already been settled, may become irrelevant or obsolete, necessity may arise for framing additional issue. For this reason obviously the legislature had empowered the courts under rule five to frame additional issues at any stage on the suit.

- Discretionary Power

  Regarding amendment of frame issues, court possesses discretionary power. Court can exercise this power when no injustice results from amendment of frame issue on that point, which is not present in pleading, However, it cannot be exercised when it alters nature of suit, permits making of new case or alters stand of parties though rising of inconsistent pleas.

  Certain guidelines for framing issues:

- Burden of Proof : While framing issues on disputed question of fact, the court shall keep in mind as to which party has to prove certain fact and the issue shall be framed reflecting such burden on certain party. For this purpose, Section 101 to 112,114, and the presumptions under Negotiable Instruments Act etc. have kept in mind (Rule 106(2) of Civil Rules of Practice)

  The following points to be borne in mind while dealing with issues and burden of proof.

  ➢ The court are not expected to determine an issue which does not arise from the pleadings. A point alleged by the plaintiffs and admitted by the defendants cannot be said to be in issue and a decision can be given on the basis of the admission without an issue.

  ➢ A mere vague recital that the suit is not maintainable in law cannot give rise for framing of an issue as to maintainability of the suit.

  ➢ Similarly, mere assertion in the written statement that the defendants are in possession of the suit land since long or for many years without any knowledge thereof to the plaintiffs and without claiming the right of adverse possession, does not warrant framing of issue on adverse possession.

  ➢ A denial in the reply notice is not sufficient for this purpose; such denial shall be made in the written statement.

  ➢ The averments contained in the plaint which are not traversed in the written statement and as to which no issue has been asked for are to be deemed to be admitted. If the party intends to make a particular averment to be the subject matter of an issue in a suit, then it must be specifically denied. Mere non admission could not warrant the court to frame an issue in that regard.

  ➢ The court is not bound to frame issues sue moto on questions of fact where the parties do not ask for the same. The omission to raise an issue on a point implies abandonment of such point by the party.

  There is no need for rising issues always there shall be pleadings. Either they may arise from the question of law raised by the parties during hearing of the matter for settling the issues sometimes the court itself may raise the same. For example, even though the parties did not canvass the question of limitation, the court is bound to decide whether the matter is in time or barred by limitation. Therefore, court will frame such issue on its own.

Separate and distinct issue

Every material proposition of fact and every proposition of law which is affirmed by one side and denied by the other shall be made subject matter of a separate issue. (Rule 106(1) CROP).

Issue of Law

Every issue of law shall be so framed as to indicate, either by a statement of admitted or alleged facts, or by reference to the pleadings or some documents mentioned therein, the precise question of law to be decided.

What shall not be an issue

No proposition of fact which is not by itself a material proposition but is relevant only as tending to prove a material proposition, shall be made of an issue. No question regarding admissibility of evidence shall be made an issue. (Rule 106(4),5 of CROP)

Form of Issues

The issues framed by the court and any order passed upon any application under Rule 101 or of CROP shall be drawn up in Form No.21 and shall form part of record in the suit; and all parties shall be entitled to inspect the same and to obtain copies thereof. (Rule 107 CROP).

Judgment Shall be on all Issues (Order 14 Rule 2)

Notwithstanding that a case may be disposed of on a preliminary issue, the court shall,pronounce judgment on all issues, however subject to sub-rule (2) of Order XIV Rule 2. Those exceptions are according to Rule 2(2); if that issue relates to (a) jurisdiction of court; or (b) a bar to the suit created by any law for time being in force. If the court is of opinion that the case or any part of it may be disposed on an issue of law only, it may try that issue in the first instance if that issue relates to above two categories. For that purpose, the court may 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. In suits in which issues have been framed,the court shall state its finding or decision, with reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues sufficient for the decision of the suit. (Order XX Rule 5)

Where in a suit for declaration of title and possession of bond, the defendant is denying any sort of encroachment by him and that is a common bund for him and the plaintiff. In such case, the court shall not direct the defendant to restore the bund without specifically deciding the issue whether disputed bund belonged to the plaintiff as claimed by him is unsustainable as held in " Gopalankutty Nair Vs Kunhirama Tharakan, AIR 2000 SC 1077.

Hon'ble High Court of A.P had given certain instructions for proper framing of issues to the Subordinate Courts in ROC NO 558/SO/2006 Dt 14.06.2006. The gist of that circular is that to avoid lapses or late realization of improper framing of issues, in every case, before commencement of trial a specific date has to be posted for hearing both the sides once again on the issues, to see if they have been properly framed or needs any reframing and it is only after such exercise is done, the trial should be allowed to commence and proceeded with, Even at the hearing, both the side as can be called upon to file any draft issues for warranting reframing. This exercise ultimately can safely avoid orders of remand by appellate courts.

2. **Necessity of framing of preliminary issues**

In the Code of Civil Procedure (CPC), a preliminary issue is a legal question that can be decided before the main issues of a case, potentially leading to a final judgment without delving into factual disputes. It's typically about jurisdictional or legal issues that can resolve the case without extensive trial.

Key aspects of preliminary issues in CPC:

Focus on Legal Questions:

Preliminary issues usually involve questions of law or jurisdiction, not factual matters.

Expeditious Resolution :

They aim for a quicker resolution of the case by addreeing key legal points first

Court Discretion:

The court has the discretion to decide whether an issue should be traeated as a preliminary issue.

Examples :

Jurisdictional Issues : Questions about whether the court has the authority to hear the case can be decided as preliminary issue.

Limitation : If the case is barred by the Limitation Act (meaning the time to file the suit has passed), it can be decided as a preliminary issue if the facts are not in dispute.

Maintainability of the Suit: If the suit is not legally valid or does not follow the appropriate procedure, it can be dismissed as a preliminary issue.

Res Judicata: If a similar case has already been decided by a competent court, the issue of res judicata (the principle that a case cannot be relitigated) can be decided as a preliminary issue.

Legal Framework: Order 14, Rule 2 of the CPC allows for the trial of preliminary issues, particularly those related to jurisdiction or a bar to the suit.

Preliminary issues can be decided before framing other issues or even after they have been framed.

Importance:

Preliminary issues help streamline the legal process by allowing the court to address key legal questions early on, potentially avoiding unnecessary trial and evidence-gathering.

Preliminary issues can be those where no evidence is required. Thus, on the basis of reading of plaint or applicable law, if jurisdiction of Court or bar to suit is made out, Court may decide such issues with the sole objective for expeditious decision. Where the issue is a mixed issue of law and fact, or issue of law depends upon decision of fact, such issues cannot be tried as preliminary issues. [Sathyanath and another v. Sarojamani (2022) 7 SCC 644]

Sub-Rule (2) of Order XIV CPC refers to the discretion given to the court where the court may try an issue relating to the jurisdiction of the court or the bar to the suit created by any law for the time being in force as preliminary issue.

When the entire evidence has been led, the matter is at the stage of final arguments and the point raised does not relate to the point pertaining to sub-rule (2), neither the point raised to bar created by any law nor the jurisdiction of the court to entertain the suit. It is just an averment made in the plaint. Contention of the appellants for treating the said issue as preliminary issue is against the spirit of law as referred in Order 20 Rule 5 and Order 14 Rule 5 of CPC as held in "Ramrameswary Devi Vs Nirmala Devi, (2011) 3 SCC (cri) 481

Issue of a fact on which all other issues are depending should be decided as a preliminary issue. However, the court cautioned that wherever an issue involve question of fact and law together, that cannot be taken up as preliminary issue. Inspite of amendment to Rule 2 of Order XIV by the Amendment Act,1976, there can be no departure from the principle that the code confers no jurisdiction upon the court to try a suit on mixed issue of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue as held in

"Ramesh B. Desai Vs Bipin Vadilal Mehta, (2006) 5 SCC638

Issue of territorial jurisdiction is a preliminary issue and if the issue is answered against the plaintiff, the plaint shall be returned to be presented before proper court by following the procedure under Order 7 Rule 10-A of the code.

An issue as to the entertainability of the suit in civil court in view of the fact that the property is Wakf property shall be decided as preliminary issue. But in a given case, where the nature of property whether belonging to wakf or not, then such issue cannot be treated as

preliminary issue and that should be answered after recording evidence only as held in “R.K Pratapa Vs Tahsildar, Srinivasapura Taluk, Kolar District, (2009) 4 KarLJ 731”.

Where res judicata is the issue, it may be decided as preliminary issue provided it can be decided on admitted facts. Inspite of amendment to Rule 2 of Order XIV by the Amendment Act, 1976, there can be no departure from the principle that the code confers no jurisdiction upon the court to try a suit on mixed issue of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue, Thus the plea raised is about the limitation being a mixed question of law and fact cannot be tried as preliminary issue. To decide whether in a given case the question of limitation is a pure issue of fact of a mixed issue of law and fact, the court is bound to read the pleadings as held in “Lufthana German Airlines Vs Vij SalesCorporation, (1998) 8 SCC 623.

Admissibility of document in evidence shall not be a preliminary issue. Thus, whether an unregistered and unstamped family settlement is admissible or not would be a matter of evidence and could not be decided without granting the opportunity to the parties to lead evidence or to challenge the genuineness of that document, as held in “Radha Charan Vs ADJ(FT) No.1, Dholpur and others, 2012 (2) RLW (raj) 1194

An election petition under the provisions of Representation of the people Act,1951 cannot be dismissed at the threshold by framing a preliminary issue as to non-compliance of section 83 of the Act. This is because Order XIV Rule 2 CPC is not applicable to the election petitions. As held in “Challa Styanarayana Vs Tadi Laksshmana Rao, 2008 (1) ALT 435.

M/s Mongia Realty and Buildwell Private Limited Versus Manik Sethi
2022 LiveLaw (SC) 148 in para 52 .
In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed. It cannot be decided as a preliminary issue if the facts are disputed and the question of law is dependent upon the outcome of the investigation of facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976.

Adequacy of court fee- Not a preliminary Issue

Where the question of Court fee is linked with jurisdiction, the defendant has right to raise objection and the court should decide it as a preliminary issue as held in Umesh Narayan Vs Jhati Devi, (2013) 1 PLJR 47.

Sufficiency of court fee paid on the ground that the property of the plaintiff cannot be a preliminary issue to be decided because it is question of fact which can be settled only after a trial had been conducted as held in " Mala Vijaya Bhaskar Vs Mala S.S Ravi Prakash, 2009 (3) ALD 363.

ROC.No.1441/SO/79 dated 20-12-1979.

The High Court directs all the civil courts in the state to follow the instructions mentioned hereunder in dealing with application filed under Order 14 Rule 2 and section 151 CPC for deciding a particular issue as a preliminary issue in Civil suits.

1. Whenever an application is filed in a suit requesting the court to decide a particular issue as a preliminary issue, the court at that stage has to decide whether a case is made for deciding that issue as a preliminary issue.

2. If the court comes to the conclusion that a case is made out for deciding a particular issue as a preliminary issue, the said application has to be dismissed and the suit will have to be proceeded with by trying all the issues together.

3. If however the court feels that the applicant is justified in his request to determine the issue application, at this stage Court has to consider only the question whether it is advisable to try an issue as a preliminary issue or not, and it is not necessary to desirable to give a finding on the preliminary issue. The I.A has to be merely ordered . The result of this order on such an application is that the court has decided only to try a particular issue as a preliminary issue. With this order the I.A is disposed of.

4. The next step for the Court is to take up the preliminary issue and give a finding on that issue. This will be a proceeding in the suit itself and certainly not I the I.A.

5. While deciding the Preliminary issue if the Court finds it necessary to record any evidence, such evidence will be the evidence in the suit itself and documentary evidence has to marked as Ex.A series and B series and the oral evidence as PWs and DWs

Conclusion :

To conclude, it can be state that issues are of great importance not only for parties, but also for court. Parties are required to prove framed issue and not their pleading. On the other hand, court is bound to give decision on each framed issue. Therefore, court is not to decide those matters on which no issues have been framed.