

FRAMING OF ISSUES AND NECESSITY OF FRAMING OF PRELIMINARY ISSUES

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A judgment is the outcome of application of law to the facts of a given case after appreciation of the evidence. It is an expression of the ultimate opinion of the Judge which he renders after due consideration of evidence and arguments advanced before him. It is intended to put a final end to the controversy (issues) involved in the matter, so that, the dispute brought before the Court by the parties is set at rest. Hence, without the controversy or dispute, there is no issue to be decided and without the controversy/issues, there is no necessity for the judgment. The parties cannot be allowed to adduce evidence out of the purview of the issues, this is so because, as per Sec.5 of the Indian Evidence Act, 1872 which reads as:

*"Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in **issue** and of such other facts as are hereinafter declared to be relevant and of no others".*

Good judgments enhance the image and perception in the justice delivery system increases public confidence.

2) Judgment as per the definition under Sec.2 (9) Civil Procedure Code, 1908 (hereinafter referred as CPC) means the statement given by the judge on the grounds of a decree or order. Hence, it is necessary to know what is decree. As per Sec.2 (2) of CPC, decree means the formal expression of an adjudication by which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. Hence, if the controversy is correctly determined by framing correct issues, then only, the Court can give the correct judgment and the parties also would be in a position to know what proposition of fact they have to prove in order to succeed their case. The issues and judgment are inter-related with each other. Without proper framing of issues, one cannot expect a correct judgment. The Court shall state its finding or decision on each issues as per Or.XX Rule 5 of CPC.

- 3)** The expression "issues" is not defined anywhere, but, it can be understood by going through the various provisions. As per Or.XIV Rule 1 of CPC, when one party affirms a material proposition of fact or law and denied by the other party, then, the occasion to frame issues on each such fact and law arises on such controversy. Issues are of two kinds: 1. Issues of fact; and 2. Issues of law. Issues have to be framed before proceeding for trial at the first hearing of the suit. The Court shall, after reading the plaint and written statement and after examination of parties under Or.X Rule 2 of CPC, find out at what proposition of fact and law the parties are differing and frame issues on such deference to deliver a right judgment to right decision to be delivered. If any material proposition of fact or law is not denied by the other party, there is no occasion to frame an issue.

ISSUES:-

- 4)** As stated above, the Issues are the very foundation of the case and if they are not framed with accuracy and skill, it leads to defects in the entire trial leading to an incorrect judgment. In ***Ritesh Tewari Vs. State of U.P. ((2010) 10 SCC 677)***, the Apex Court observed as hereunder:

"Every trial is voyage of discovery in which truth is the quest."

In ***Sannidhi Satyanarayana Murthy Vs Bangaru Rajeswari (2011 (3) ALD 714)*** Hon'ble High Court of Andhra Pradesh observed that

The object of framing issues is to ascertain/shorten the area of dispute and pinpoint the points required to be determined by the court. The issues are framed so that no party at the trial is taken by surprise. It is the issues fixed and not the pleadings that guide the parties in the matter of adducing evidence-

- 5)** As per Or.XIV Rule 3 of CPC, the court may frame the issues from all or any of the following material:
- (a) allegation 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; and*
 - (c) the contents of documents produced by either party.*
- 6)** That as per Or.XIV Rule 4 of CPC, if the Court is of opinion that the issues cannot be correctly framed without the examination of some person or without

inspection of documents which are not before the Court, then, the court may adjourn the framing of issues not later than seven days and compel the presence of such witnesses or production of any such document.

In ***Maddala Sai Lakshmi v. Mediseti Lakshmi Narasamma***(2006 (3) **ALT 708**) the Hon'ble High court of Andhra Pradesh, it was held as hereunder:

"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 re-framing of issues is needed on the core issues in dispute. Trial be commenced only after such exercise."

That Or.XIV of CPC is clear as to the manner in which the issues are to be framed. Chapter VII of the Indian Evidence Act, 1872 stipulates in clear terms with regard to burden of proof. Hence, while framing of the issues, the burden of proof would be fixed on the party as per the provisions of section 101 to 114A of the Indian Evidence Act, 1872 depending upon the facts and circumstances of each case.

- 7)** As per Or.XIV Rule 5, the Court has wide powers to amend or strike out any issues framed at any stage before passing the decree. Further, the Court has been given powers to amend or frame additional issues as may be necessary for determining the matters in controversy between the parties. This itself shows how the issues occupy greater importance as the Courts are given wide powers for amending to decide all the matters in controversy.

Guidelines of our High Court in the year, 1970

- 8)** The Hon'ble High Court of AP issued manual of instructions for the guidance of subordinate civil courts summarized. Some guidelines as under:
1. The pleadings should be perused carefully and while perusing a note should be made on a paper of the points in dispute and after the perusal is over, concise and comprehensive issues should be framed with the help of the said note.
 2. Every material proposition of fact and every proposition of law, which is affirmed by the one side and denied by the other side, shall be made the subject of a separate issue.
 3. Every issue of fact shall be so framed as to indicate on whom the burden of proof lies.

4. Every issue of law shall be so framed as to indicate either by 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.
5. No proposition of fact which is not itself a material proposition shall be made subject of an issue.
6. No question regarding the admissibility of evidence shall be made subject of an issue.

Importance of issues:-

- 9) In a judgment of the Hon'ble Supreme Court of India in **Makhan Lal Bangal v. Manas Bhunia and Others (AIR 2001 Sc 490)** in an Election Petition regarding framing of issues, the Apex Court held as follows:

"19. An Election Petition is like a civil trial. The stage of framing the issues is an important one in as much as on that day the scope of the trial is determined by laying the path on which the trial shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the court reflecting the pleadings of the parties pinpoints into issues the disputes on which the two sides differ. The correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. The scheme of Order XIV of the Code of Civil Procedure dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Each material proposition affirmed by one party and denied by other should form the subject of a distinct issue. An obligation is cast on the court to read the plaint/petition and the written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties, the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission....."

FRAMING OF ISSUES

- 10)** Framing of issues is a very important stage of a civil trial. It is imperative for a judge to critically examine the pleadings of the parties before framing of issues. Rule 2 of Order X CPC enables the Court, in its search for the truth, to go to the core of the matter and narrow down, or even eliminate the controversy. Rule 2 of Order X reads as under:-

"2. Oral examination of party, or companion of party. - (1) At the first hearing of the suit, the Court -

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is accompanied".

It is a useful procedural device and must be regularly pressed into service. As per Rule 2 (3) of Order X CPC, the Court may if it thinks fit, put in the course of such examination questions suggested by either party. Rule 2 (3) of Order X CPC reads as under:-

"The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party."

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.

CIRCULAR IN ROC No.558/SO/2006 Dated 14-6-2006

- 11)** On the direction given in ***Maddala Sai Lakshmi Vs. Mediseti Lakshmi Narasamma and Ors. (2006(3) ALT 708)*** the Hon'ble High court issued the circular to the subordinate courts for framing of issues properly as under:

"Before parting, we are very often coming across a situation where it is noticed that the issues as framed at the inception are not correctly representing the dispute in between the parties. We are conscious of the fact that immediately after filing any written statement, no serious attention is being paid by either side in the court below nor due assistance is given at the time of framing the issues. No draft issues are being filed at that stage. No attempt is made to point out whether the issues as framed are proper at the

stage of commencement of trial. It is only after proceeding with the trial or may be at a later stage, including arguments stage. It is noticed that the issues are not properly framed and it requires re-framing. this is a clear instance where the court below totally lost sight of the core dispute , which arises between the parties, in regard to the adoptions as set up by them in their respective pleadings and yet, we do not find any issue framed thereon. To avoid such lapses or late realization, in every case, before commencement of trial a specific date has to be posted for hearing both the sides once against on the issues, to see if they have been properly framed or needs any re-framing 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 re-framing. This exercise ultimately can safely avoid orders of remand by Appellate Courts, as is being done in this case"

The Hon'ble High court by the above circular instructed all the subordinate courts to follow the said directions scrupulously.

Non-framing of correct issues

- 12)** In a decision, the Division Bench of the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in ***Apollo Health and Lifestyle Limited and Another v. Anupam Saraogi(2015 (2) ALT 550)*** while dealing with the entire provisions of Order XIV CPC deprecated the practice of framing issues vaguely and held that merely framing an issue as ***"whether the plaintiff is entitled for recovery of suit amount as prayed for"*** is hopelessly an inadequate method of meeting the requirement of the provisions contained in Order 14 of the Code in which it was held as under:

[5] It is now well settled that issues, as contemplated by Order 14 Rules 1, 2 and 3 of the Code of Civil Procedure (for short the Code), must cover all important questions involved in the case and they should not be general and vague. The learned judge dealing with the suit should not approach the suit merely from the point of speedily disposing of the same. The suit must be also intelligently disposed of after taking note of the arguments advanced, the issues arising from the arguments, and the other materials on record and then decide those issues properly on merits. A failure to understand the object of the provisions contained in Order 14, in particular Rules 1 to 3 thereof, in the instant case has demonstrably resulted in failure of justice.

[6] A bare look at the provisions contained in Rules 1 to 3 in particular of Order 14 of the Code would show that a duty/responsibility is cast on the trial court, at the first hearing of the suit, 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 thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. Notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2) of Rule 2 of the Code, pronounce judgment on all issues. 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 the jurisdiction of the court or 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 issue in accordance with the decision on that issue.

[7] It is also necessary for the learned judge, while framing the issues, to bear in mind the allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties; the allegations made in the pleadings or in answers to interrogatories delivered in the suit; and the contents of the documents produced by their party. It is also 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. Thus, as contemplated by Rule 5 of Order 14 of the Code, the trial court must record reasons for its decision on each issue independently and such exercise should be done after formulating the issues, that arise for consideration/determination. In other words, the trial court while considering and deciding the suit should realise that it has to be decided strictly in adherence with the provisions contained in Order 14 of the Code. The provisions contained in this Order deal with the judgment to be pronounced by the court on all issues. When a requirement such as this is insisted upon by the procedural law, one must try to understand the object and scope of such provision. It must be evident from the judgment of the trial court that it has properly appreciated the facts/evidence, applied its mind and decided the case considering the materials/evidence on record. Unless the trial courts judgment is based on independent assessment of the relevant evidence on all issues, it would not amount to substantial compliance of the

provisions contained in Order 14 of the Code. It is, therefore, necessary for the trial court to frame the issues for determination and examine the same in the light of the facts/evidence led by the parties. Merely asking the question as to whether the plaintiff is entitled for recovery of suit amount as prayed for is hopelessly an inadequate method of meeting the requirement of the provisions contained in Order 14 of the Code. Thus, it is necessary that the entire evidence must be considered and discussed in detail and such exercise should be done after formulating the issues for determination in terms of the provisions contained in Order 14 of the Code.

Acquiescence:-

- 13)** Non-framing of issues sometimes is not a fatal when the parties knowingly lead the entire evidence and the evidence adduced in overall aspect, but, for the non-framing of the issues if a party failed to adduce any evidence which prejudices him, then, it entitles for retrial for adducing evidence on such issues. In **Swamy Atmananda Vs. Sri Ramakrishna Tapovanam (2005 (10) SCC 51)** wherein it was held at Para No.39 as under:

"If the parties went to the trial knowing fully well the real issues involved and adduced evidence in such a case, without establishing prejudice, it would not be open to a party to raise the question of non-framing of particular issue."

In **Makhan Lal Bangal Vs. Manas Bhunia (2001 (2) SCC 652)** the Hon'ble Supreme Court of India held that 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. The Supreme Court further held that an omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission.

In **T. Krishna Goud S/o T. Sambaiah Goud v. Sabiha Kamaluddin W/o Kamaluddin Mohammed (2010(5) ALT 617)** the Hon'ble High Court of Andhra Pradesh held that Order 14, Rule 5 C.P.C. enables the Court to amend issues or frame issues and also to strike out any issue that appears to be wrongly framed or introduced before passing a decree. Any party to the suit can legitimately raise objection complaining non-framing of a necessary issue or framing a wrong issue or to frame additional issues. The Court is amply empowered to consider any such objections and incorporate such issues as are found to be necessary and correct. If no such objection is taken but invite judgment, it must be held that such party has

acquiesced in the judgment. Acquiescence is acceptance of a person, who, though aware of a defect or irregularity of a legal proceeding, does not raise any objection to take a chance or decision in his own favour and will be disentitled to object the same at a later stage, notwithstanding the duty of the Court to frame the issues as per Order XIV Rule 1. Acquiescence disables the disputant.

Evidence Only on the issues which are based on pleadings:-

- 14)** The parties should not be allowed to let in evidence outside the scope of the issues, this is so because as per section 5 of the Indian Evidence Act the evidence with regard to facts in issue and relevant facts only admissible, Issues are framed based on the pleadings and they cannot adduce evidence without pleadings which are main basis for framing issues, The general principle is that the Court cannot travel beyond pleadings and record a finding as held by the Apex Court in ***State of Maharashtra Vs. Hindustan Construction Company Limited((2010) 4 SCC 518) Kalyan Singh Chouhan Vs. C.P. Joshi(2011 AIR (SC) 1127) and Maria Margarida Sequeria Fernandes Vs. Erasmo Jack De Sequeria(2012 AIR (SC) 1727).***

In ***Union of India Vs. Ibrahim Uddin and another(2012 8 SCC 148)***, the Hon'ble Supreme Court of India ruled as follows:

"Relief not founded in pleading cannot be granted. A decision of a case cannot be based on ground outside the pleadings of the parties. No evidence is permissible to be taken on record in absence of pleadings in that respect. No party can be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by the parties in support of the case set up by it."

It was further held therein as follows:

"Where evidence was not in lines of pleadings, the said evidence cannot be looked into or relied upon."

Further The Hon'ble Supreme Court of India in ***Hindustan Construction Company Limited and Kalyan Singh Chouhan*** referred supra consistently ruled as follows:

*"Pleadings and particulars are required to enable the Court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the Court in narrowing the controversy involved and to inform the parties concerned to the **question in issue**, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that*

"as a rule, relief not founded on the pleadings should not be granted". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ."

Prayer for framing issues touching the jurisdiction which is not raised in written statement:-

- 15)** The Hon'ble High Court of Andhra Pradesh in ***Rev. Karra Jeremaiah (President) vs Kurrakula Lazarus And Ors(2006 (4) ALD 674)***, discussed the issue touching the jurisdiction. In this case, the petitioner filed an application under XIV rule 5 C.P.C to frame an additional issue, touching on the jurisdiction to entertain the suit. The application was rejected on the ground that such a plea was not raised in the written statement, wherein it was held as under:

"It is difficult to accept the contention of the learned Counsel for the petitioner that the issues touching on the jurisdiction can be framed, even in the absence of any pleading. In this regard, it must be noted that Section 9 CPC confers jurisdiction on the Civil Courts to entertain suits of every category, unless they are specifically excluded by any provision of law. Section 21 mandates that any objection as to territorial jurisdiction must be raised, at the earliest point of time. Rule 2 of Order 8 requires that any objection as to maintainability must be specifically raised in a written statement. A perusal of Rule 1 of Order 14 CPC makes it clear that the necessity to frame an issue would arise, if only, there is assertion by one party and denial by another. Such assertions and denials can be only through pleadings. C.P.C does not recognize any other mode in this regard. In the absence of any pleading in the plaint or written statement, the trial Court is, virtually helpless in the matter of framing issues.

In Appeals:-

- 16)** According to Order 41 Rule 25 of C.P.C., where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to be Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to

take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons there for within such time as may be fixed by the Appellate Court or extended by it from time to time.

Preliminary Issue:-

17) Order 14, Rule 2 of CPC reads as follows:

2. Court to pronounce judgment on all issues.- (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.

(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.

Order 20 Rule 5 of CPC reads as follows:

5. Court to state its decision on each issue: In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons there for, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit.

To decide a preliminary issues Court discretion:-

18) The Hon'ble High Court of Andhra Pradesh in *Munakkayala Konda Reddy And Ors. vs Thallam Venkata Reddy And Anr(2002 (1) ALT 343)*

wherein at Para No.19, it was held as hereunder:

"Order 14 Rule 2 (2) does not mandate that the Courts must try the suit on a preliminary issue. It may do so. It is the Court's discretion which is circumscribed by the fact that issue must relate to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. The Court's discretion, therefore, must be exercised judiciously. It, having regard to the fact situation of each case, may try a suit on a preliminary issue or may not. In (Mr.) Francis Joseph Rebellow v. Smt. Olivia Jane Rebellow the Bombay High Court set aside the order of the trial Judge deciding a case on a preliminary issue stating that the decision of the suit on the preliminary issue

*without examination of the legal position is something which cannot be said to be proper exercise of the Court's jurisdiction under Order 14 Rule 2 of the Code. (Also see **Laxmappa v. Election Officer**, AIR 1981 Bom. 234 at 238)".*

Circular in ROC No1441/SO/79 dated 20-12-1979:-

19) The Hon'ble High court issued certain instructions in dealing with applications under Order XIV Rule 2 C.P.C for deciding a particular issue as a preliminary issue which reads as under:

- 1. whenever an application is filed in a suit requesting the court to decide a particular issues as a preliminary issue; the court at that stage has to decide whether a case is made out for deciding that issues as a preliminary.*
- 2. If the court comes to the conclusion that a case is not 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 issues application, at that 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 or 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 issues. With this order the I.A is disposed of.*
- 4. The next step for the court is to take up the prleiminary issue and give a finding on that issue. this will be a proceeding in the suit itself and certainly not in 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 be marked as Ex.A series and B series and the oral evidence as PWs and DWs.*

PRELIMINARY ISSUE SHOULD BE TAKEN UP BEFORE COMMENCEMENT OF TRAIL:

20) In a case of **State of Andhra Pradesh and Anr Vs. Bandalam Srinivasulu and Ors.** (AIR 1982 AP 291) Hon'ble High Court of Andhra Pradesh insisted to take up the preliminary issue immediately before commencement of trail and to decide the same

The principles that emerge from the decisions cited above are that in the event of civil court, the preliminary issue regarding jurisdiction or bar should be normally taken up in the first instance and in the process of determination the courts should bear in mind whether the relief sought in the suit is completely outside the brackets of the special enactment or the order is tainted by mala fides and ulterior considerations. For the purpose of framing the issue the necessary pre-requisite is to consider whether there is a bar to the civil court trying the suit by a provision under any law. In the process of trying the preliminary issue, it has to be considered whether the rigour of the bar contained in the enactment is diluted. The salutary principle of hearing all the issues at the same time contained in the circular issued by this court should be adhered to normally but in a situation where a bar to the suit is contemplated by the Act, O.14, R. 2(b) C. P. C warrants the framing of preliminary issue and initial decision of the same. The court below erred in declining to frame the preliminary issue.

RES-JUDICATA AS PRELIMINARY ISSUE

21) In *The Jamia Masjid Vs. Sri K V Rudrappa (Since Dead)* By Lrs. & Ors. (Civil Appeal No.10946 of 2014 DATED 23.9.2021) held that

The court while undertaking an analysis of the applicability of the plea of res-judicata determines first, if the requirements of section 11 CPC are fulfilled; and if this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of res judicata would be inapplicable. We are unable to accept the submission of the appellants that res judicata can never be decided as a preliminary issue. In certain cases, particularly when a mixed question of law or fact is raised, the issue should await a full-fledged trial after evidence is adduced. In the present case, a determination of the components of res judicata turns on the pleadings and judgments in the earlier suits which have been brought on the record. The issue has been argued on that basis before the Trial court and the first appellate court; followed by two rounds of proceedings before the High Court (the second following upon an order of remand by this court on the ground that all parties were not heard). All the documentary material necessary to decide the issue is before the court and arguments have been addressed by the contesting sides fully on that basis.

Issue touching upon bar of jurisdiction or bar to suit created by any law should be decided first:

- 22) In ***State of Tamil Nadu rep. By Dist. Collector, Vellore District v. B. Anandaiah* 2005 (3) LS 467 = 2005 (6) ALT 824** it was held that if issue touches on jurisdiction of Court or even a bar to suit created by any law, necessarily, such issue should be tried first. Issue of jurisdiction has necessarily to be taken up preliminarily.

An issue of mixed question of fact and law should not be tried as preliminary issue:

- 23) In ***Ramesh B. Desai v. Bipin Vadilal Mehta* AIR 2006 SC 3672 (Suppl.)** it was held 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.

Issue relating to sufficiency of Court fee should not be tried as preliminary issue:

- 24) In ***Moola Vijaya Bhaskar v. Moola S.S. Ravi Prakash* 2009 (2) LS 35 = 2009 (3) ALT 663 = AIR 2009 AP 150** it was held that A.P. Court Fees and Suits Valuation Act, 1956, Sections 34 (1) & 11 (2) Trying of additional issue relating to correctness of Court Fees as preliminary issue Order 14 Rule 2 shows that an issue may be tried as a preliminary issue only where it is an issue of law relating to jurisdiction of Court or a bar to suit created by any law for time being in force and where case or any part thereof may be disposed of on such issue relating to sufficiency of Court fee is not mere issue of law.

CASE LAW

- 1) In ***Kannan (dead) by Lrs v. V.S.Pandurangam (dead) by Lrs* 2008 (1) ALT 13 (SC)** it was held that Framing of issues Omission to frame an issue as required under this provision would not vitiate the trial in a suit where the parties went to trial knowing full well the rival case and led evidence in support of their respective contentions Even if no specific issue has been framed, but if parties were aware of that issue and had led evidence on it, the appellate Court should not interfere with the findings of the trial Court.
- 2) It is neither desirable nor required for the court to frame an issue not arising on the pleadings. The Court should not decide a suit on a matter/point on which no

issue has been framed. (Vide: **Raja Bommadevara Venkata Narasimha Naidu & Anr. V. Raja Bommadevara Bhashya Karlu Naidu & Ors.**, (1902) 29 Ind. App. 76 (PC); **Sita Ram V. Radha Bai & Ors.**, AIR 1968 SC 535; **Gappulal V. Thakurji Shriji Dwarkadheeshji & Anr.**, AIR 1969 SC 1291; and **Biswanath Agarwalla V. Sabitri Bera**, (2009) 15 SCC 693).

- 3) In ***Kashi Nath (Dead) through L.Rs. V. Jaganath*** ((2003) 8 SCC 740) the Supreme Court held that where the evidence is not in line with the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon. While deciding the said case, the Court placed a very heavy reliance on the judgment of the Privy Council in ***Siddik Mohd. Shah V. Saran***, AIR 1930 PC 57.
- 4) There may be an exceptional case wherein the parties proceed to trial fully knowing the rival case and lead all the evidence not only in support of their contentions but in refutation thereof by the other side. In such an eventuality, absence of an issue would not be fatal and it would not be permissible for a party to submit that there has been a mis-trial and the proceedings stood vitiated. (Vide: ***Nagubai Ammal & Ors. V. B.Shama Rao & Ors.***, AIR 1956 SC 593; ***Nedunuri Kameswaramma V. Sampati Subba Rao***, AIR 1963 SC 884; ***Kunju Kesavan V. M.M. Philip & Ors.***, AIR 1964 SC 164; ***Kali Prasad Agarwalla (dead) by L.Rs. & Ors. V. M/s. Bharat Coking Coal Ltd. & Ors.***, AIR 1989 SC 1530; ***Sayed Akhtar V. Abdul Ahad***, (2003) (7) SCC 52; and ***Bhuwan Singh V. Oriental Insurance Co. Ltd.***, AIR 2009 SC 2177).
- 5) In ***Kalyan Singh Chouhan V. C.P. Joshi***, AIR 2011 SC 1127 Hon'ble Supreme Court held that It is, therefore, not permissible for the court to allow the party to lead evidence which is not in the line of the pleadings. Even if the evidence is led, that is just to be ignored as the same cannot be taken into consideration.

CONCLUSION:

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. 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.