

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 335 of 2004**

Bhinset (dead) through LRs:-

1. Emrus Minj, S/o Late Bhinset, aged about 59 years,
(2-A) Smt. Maksheema Minj, aged about 55 years, w/o late Eastonilos Minj, S/o late Bhinset.
(2-B) Abhitabh Minj, aged about 35 years, S/o late Eastonilos Minj.
(2-C) Avaldeep Minj, aged about 30 years, S/o late Eastonilos Minj,
(2-D) Arvind Minj, aged about 28 years, S/o late Eastonilos Minj,
(2-E) Anugrah Minj, aged about 25 years, S/o late Eastonilos Minj.
 3. Helarious Minj, aged about 55 years, S/o late Bhinset
 4. Pradeep Minj, aged about 40 years, S/o late Bhinset.
- All R/o vilage Jhagarpur, Tahsil Bagicha, District Jashpur Nagar (C.G.)

---- Appellants/Plaintiffs

Versus

1. Alvis Kujur, S/o Jhadi, aged about years,
2. Brisyus, S/o Alvis Kujur, Aged about 55 years;
3. Leyos, S/o Alvis Kujur, Aged about 53 years;
4. Imil S/o Alvis Kujur, Aged about 50 years;
5. Fivaliyus, S/o Alvis Kujur, Aged about 48 years;
6. Silbanus, S/o Alivs Kujur, Aged about 46 years;
7. Israyal, S/o Alvis Kujur, Aged about 44 years;
8. Prabhu Prakash, S/o Alvis Kujur, Aged about 42 years,

All residents of Village : Kharridad, Tahsil Bagicha, District – Jashpur Nagar

(C.G.)

(Note : In the impugned judgment & decree the name of Nayabai W/o Chitthi has been mentioned as defendant No. 1, however, the said defendant No. 1 has already expired and her legal representatives have already been placed on record hence Nayabai has not been joined as Respondent)

9. State of Chhattisgarh, Through the Collector, Raigarh, District Raigarh (C.G.)

---- Respondents/defendants.

For Appellants	:	Mr. Ravindra Sharma, Advocate.
For Respondents No. 1 to 8	:	None present.
For Respondent No. 6	:	Ms. Shivali Dubey, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/08/2019

(1) The substantial question of law involved, formulated and to be answered in this second appeal preferred by plaintiffs states as under:

“Whether both the Courts below erred in law for not framing the issues and determination of them as required under Order 14 of the CPC ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court).

(2) The plaintiffs filed a suit for declaration of title and permanent injunction, in which, the original defendant remained ex parte and did not file his defence by way of written statement, therefore, the trial Court did not frame any issue for consideration.

(3) The trial Court, after appreciating the oral and documentary evidence available on record, by judgment & decree dated 28.02.2002, dismissed the suit. On an appeal being preferred by the plaintiffs, the first appellate Court affirmed the judgment and

decree of the trial Court, against which instant second appeal has been preferred by the appellant/plaintiffs in which the substantial question of law has been formulated and set out in the opening paragraph of the judgment.

(4) Learned counsel appearing for the appellant/plaintiff would submit that both the courts below are unjustified in dismissing the suit of the plaintiff as the issue ought to have been framed, which is mandatorily required under Order 14 Rules 1 & 2 of the CPC, as such, both the courts below have erred in deciding the suit without framing issues, as such, judgment & decree passed by both the courts below are liable to be set aside and the plaintiff's suit be decreed.

(5) None present on behalf of respondents No. 1 to 8/defendants, though served.

(6) I have heard learned counsel appearing for the appellant and considered his submissions and went through the record with utmost circumspection.

(7) In order to consider the plea raised at the bar, it would be appropriate to notice Order 14 Rule 1 to 6, which state as under :-

“Order XIV : 1. Framing of issues.- (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions 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 defence.

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

(4) Issues are of two kinds:

(a) issues of fact,

(b) *issues of law,*

(5) At the first hearing of the suit the Court shall, after reading the

plaint and the written statement, if any, and [after examination under Rule 2 or Order X 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.

(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.”

(8) A careful perusal of the aforesaid provision would show that sub-Rule 6 of Order 14 is an exception to Order 14 Rule 1 to 4, which clearly provides that the Court is not required to frame issue where the defendant at the first hearing of the suit makes no defence. The object of framing issues is to focus upon questions on which evidence has to be led and to indicate the party on whom burden of proof lies. Framing of issue is necessary in every contested regular civil suit. {See : **Fiza Developers & Inter-Trade (P) Ltd. v. Amci (I) (P) Ltd.**¹}.

(9) Framing of issues is a very important stage in civil litigation and it is bounden duty of the court that due care, caution, diligence and attention must be bestowed by Presiding Judge while framing issues. {See : **Ramrameshwari Devi v. Nirmala Devi**²}

(10) Reverting to the facts of case, admittedly, in this case original defendants did not file their defence either in the first hearing of the suit or any point of time thereof, therefore, there was no requirement to frame issue by trial Court while deciding the suit, as such, both the courts below are absolutely justified in deciding the suit without framing issue in view of provisions contained in Order 14 Rule 6 of the CPC, exception

¹ (2009) 17 SCC 796

² (2011) 8 SCC 249

of which cannot be taken by the plaintiff, I do not find any substance in the second appeal warranting interference under Section 100 of the CPC. Substantial question of law is answered accordingly in favour of defendants and against the plaintiffs.

(11) Consequently, the second appeal, being devoid of merit, is liable to be and is hereby dismissed leaving the parties to bear their own costs.

(12) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

