



**ORDER BELOW APPLICATION (EXHIBIT 1)**  
**IN LAND ACQUISITION REFERENCE NO. 97/2021**  
**(SUB-DIVISIONAL OFFICER VS. CHANDRASHEKHAR & OTHS.)**  
**(PASSED ON 01/04/2024)**

1. The dispute as to the apportionment of the compensation amount is referred to the decision of this Court by the competent authority as per Section 3-H(4) of the National Highways Act, 1956 (for short 'Highways Act').
2. The opponent No. 1 has argued this reference finally even before filing his say.
3. The opponent Nos. 4 to 6 have argued this reference finally.
4. The opponent No. 1 has filed his objections by filing say (Exhibit 24). The opponent No. 1 has contended that the land Gat No. 684 situated at village Andhalgaon (for short 'land') is his self acquired property and as such the opponent Nos. 4 to 6 have no right in the land and consequently in respect of the compensation amount.
5. The opponent Nos. 4 to 6 have filed their objections by filing say (Exhibit 23). The opponent Nos. 4 to 6 have contended that the land is the ancestral joint family property of themselves and the opponent No. 1. No partition by metes and bounds is effected in the land and therefore, they are entitled to share the compensation amount.
6. Before proceeding to discuss the merits of the objections, for better appreciation, let me reproduce the relevant statutory provisions under Section 3I of the Highways Act and under Order XIV

Rule 1 and 3 of the Code of Civil Procedure (for short 'C.P.C.').

6.1. Section 3I of the Highways Act reads as under :-

**3I. Competent authority to have certain powers of civil court.-**

The competent authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any court or office;
- (e) issuing commission for examination of witnesses.

6.2. Order XIV, Rule 1 of the C.P.C. reads as under :-

**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 plaintiff 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 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 statements, if any, and after examination under Rule 2 of Order X and after hearing the parties or their pleaders**

**ascertain upon what material proposition 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 defendants at the first hearing of the suit makes no defence.

6.3. Order XIV, Rule 1 of the C.P.C. provides the mode as to how an issue in a suit is to be framed. **Under this provision, each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.** Material propositions are defined as 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; **when, a material proposition of fact or law is affirmed by one party and denied by the other, issues arise.**

6.4. Order XIV, Rule 1 of the C.P.C. further lays down that at the first hearing of the suit, the Court shall after reading the plaint and the written statement, if any, and after such examination of the parties, as may appear necessary, ascertain upon what material propositions of facts or of law the parties are at variance and shall thereupon proceed to frame and record issues on which a right decision of the case appears to depend, and nothing in Order XIV, Rule 1 of the C.P.C. requires the court to frame and record issue where the defendants at the first hearing of the suit make no defence. Order XIV, Rule 1 of the C.P.C. as well is clear that the issues arise on the pleadings of the parties. If the defendant has not made any defence or has not put forward a defence, no issue arises therein.

6.5. Nowhere in the Order XIV of the C.P.C., it is

mentioned that the Court will either repeat the issues or dispose of the issues technically in that sense so as to render justice. On the other hand, if the Court considers all the controversies between the parties either in their specific form for determination or incidentally, perhaps, the real purpose of Order XIV of the C.P.C. can be taken as complete in spirit.

6.6. Order XIV of the C.P.C. is clear in its purport as to manner in which issues are to be framed. Similarly, Chapter VII of the Indian Evidence Act, 1872 stipulates, in clear terms, as regards the existence of burden, on the parties to prove the concerned issues. The need to frame an issue would arise, only when the assertion, made by one party, is denied by the other. If an assertion made by the plaintiffs is not denied by the defendants, such assertion can be taken to have been accepted, by the latter and the necessary for the Court, to frame an issue upon the same does not arise. Instances are not lacking, where any independent assertions made by defendants in a written statement, are contradicted by a plaintiff by filing rejoinder or through other modes of pleadings. Either way, an issue comes to be framed, on the basis of the assertion made by one party, and the denial by the others.

6.7. It is not necessary that on all pleas issues should be framed. Issues are framed on question of law and fact to determine if the plaintiff was entitled to the relief claimed or the suit was liable to be dismissed. The issues to be framed must be confined, as required by Order XIV, Rule 1 of the C.P.C., to material questions of fact or law to *facta probanda* and not to *facta probantia*, that is to say, the evidence by which material questions of fact are proved or disproved. Issues are not to be framed on what may be called subordinate facts or evidentiary matter. Issues are framed for a right decision of the case with an object

to pinpoint the real and substantial points of difference between the parties specifically and unambiguously emerging out of the pleadings. Vague issues, suggested in a mechanical way, should not be framed to keep the door open for astute casuistry as a suit proceeds at different levels leading inevitably to delay. When in the course of pleading, the parties come to a point which is affirmed on one side and denied on the other, they are said to beat issue.

6.8. A Court should decline to frame an issue as to maintainability of a suit in absence of specific averment in the written statement as to how and in what circumstances the same is not maintainable in law.

6.9. Order XIV, Rule 3 of the C.P.C. reads as under :-

**Materials from which issues may be framed :-**

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.

6.10. There can be little doubt that the Court is under a duty to frame issues on matters in controversy between the parties. But where it appears that the points of controversy at the stage of framing issues are limited and do not include the entire ambit of the controversy initially raised in the pleadings, the Court is not bound to frame an issue on points abandoned.

6.11. 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 advocates 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.

7. Admittedly, the opponent No. 4 is the wife of the opponent No. 1 and the opponent Nos. 5 and 6 are their children. The opponent Nos. 1 and 4 to 6 are contesting their alleged rights in respect of receipt of compensation amount by tooth and nail and civil proceedings are pending between them.

8. Thus, there is dispute between the opponent Nos. 1 and 4 to 6 as to Whether the land is their ancestral joint family property and Whether the opponent Nos. 4 to 6 are entitled for compensation amount, prima-facie. Therefore, it is clear that the dispute relates to the question of fact and Law. I am of the opinion that these questions of fact and Law cannot be determined without evidence on record. Moreover, the objections or any part of it cannot be disposed of without deciding the dispute. Hence, relying on the legal principles enumerated (supra), I am inclined to hold that it is necessary to frame issues and give an opportunity to both parties to lead evidence and for that purpose it is necessary to hear them.

9. In the result, I pass the following order.

**ORDER**

The opponent Nos. 1 and 4 to 6 are directed to argue to ascertain upon what material proposition of fact or of law they are at variance and thereupon this Court will proceed to frame and record the issues on which the right decision of the land acquisition reference appears to depend.

(Pronounced in the open Court.)

Date : 01/04/2024.

(M.B.Lambe)  
District Judge-1,  
Pandharpur.

**C E R T I F I C A T E**

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe, District Judge – 1 & Addl. Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 01/04/2024
- (d) Order uploaded on : 03/04/2024