

MHTH170005712008



ORDER BELOW EXHIBIT 148 IN R.C.S.NO.1700090/2008
Kamruddin Suleman Shaikh & Others Vs. Daud Suleman Shaikh.
CNRNO.MHTH170005712008

1] Present Application is preferred on behalf of the Defendants praying that, the following additional issue be framed:

“Does the Plaintiff prove that the suit is filed within limitation?”

2] It is submitted that, the said issue is required to be framed in view of para 1 of the written statement (Exhibit 8) and also the evidence adduced. That, it is necessary to frame the said issue before the trial Court as it is a pertinent issue which is necessary to be decided.

3] The present Application is vehemently opposed by Ld. Advocate for the Plaintiff by submitting (Exh.153) that, appropriate issues are already framed at Exhibit 10 and evidence is adduced by both sides and case was at the stage of final arguments. That, the present application is belatedly filed. That, the suit is within limitation. There is no need to frame the additional issue. Hence, it is prayed that, the present application may kindly be rejected.

4] Heard Ld. Advocate Shri. U.G.Gharat and Ld. Advocate Shri. N.H.Tarade for the respective sides. Perused record.

5] The law relating to framing of issues is settled. The relevant provisions are reproduced hereinbelow for reference :-

Order XIV of the Code of Civil Procedure :-

“Settlement of issues and determination of suit on issues of law or on issues agreed upon:

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 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 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. (emphasis supplied)

...

3. 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.
(emphasis supplied)

...

5. Power to amend and strike out, issues.—

(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced. (emphasis supplied)

Provisions from the CIVIL MANUAL :-

Para 89. Issues should be framed by the Presiding Judge on the date fixed for the purpose. They indicate the points in controversy, on which the parties are to go to trial and give them notice of the matters which they are required to establish by adducing evidence or otherwise. No trial is likely to be satisfactory unless the issues are complete and precise. It should be observed that a party has to produce evidence in support of the issues, which he is bound to prove (Order XVIII, Rules 2 and 3) and that the Judgment of the

Court shall record its findings on the issues (Order XX Rules). These provisions should make it plain that an essential preliminary to a satisfactory trial is the settlement of full and precise issues. A judicious use of the provisions of Rule I or Order X and sub-rule (5) of Rule I of Order XIV may be found of help for collecting material necessary for framing issues in seriously contested cases.

The duty of framing issues under the law must be performed by the Court and the presiding judge should not leave it to the parties or lawyers to frame the issues but should apply his own mind to the subject. There is, however, no reason why the Court should not take suggestions from the parties as to the issues to be framed.

(emphasis supplied)

Para 90:- In framing issues, the Court should proceed as follows :

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

(b) Every issue of fact shall be so framed as to indicate on whom the burden of proof lies.

(c) Every issue of law shall be so framed as to indicate the precise question of law to be decided.

Note :When the claim or any portion of it is alleged to be barred by any law, the issue shall also state the Act, section or rule or other provision under which it is so barred.

(d) When the question is whether a certain section of law applies, the issue should be framed in the words of that section, e.g., if the question is whether a transfer should be set aside under Section 54 of the Provincial Insolvency Act, the issue should not be "Is the transfer bogus and fraudulent."

(e) Issues should be self-contained. The framing of issues, such as "Is the sale liable to be set aside for the reasons stated by the defendant in his written statement, dated....." should be avoided.

(f) Every issue should form a single question and, as far as possible, should not be put in an alternative form.

(g) No proposition of fact which is not itself a material proposition, but is relevant only as tending to prove a material proposition, shall be made the subject of an issue.

(h) No question regarding admissibility of evidence shall be made the subject of an issue.

(emphasis supplied)

6] The law regarding framing of issues is very clear and the relevant law is reproduced hereinabove. Issues are required to be framed regarding material proposition that is asserted by one party and denied by the other party and regarding material facts which

need to be adjudicated upon.

7] The present suit is filed for partition and separate possession. The Schedule of the Limitation Act deals with prescribed time for filing of suits, the same may be considered for deciding the issue of limitation. It appears that, at para 1 of the Written Statement, the Defendant has specifically raised contention that the suit not filed within limitation. This is a mixed question of fact and law. The said issue was not framed by the Ld. Predecessor. Being a trial Court, the truth finding exercise envisages that all issues are addressed. It is necessary that the issue of limitation be considered and adjudicated upon. Opportunity shall be given to both sides to clarify the evidence on their behalf.

8] In the present case, for the reasons given hereinabove, it appears that, proposed issue can be considered a material issue. Onus shall be on both sides to prove their assertion. In these circumstances,

ORDER

1. Vide Order 14 Rule 5 of the Code of Civil Procedure, Application is allowed.
2. Additional issue 3A be framed as *“Does the Plaintiff prove that the suit is filed within limitation? Does the Defendant prove that the suit is not within limitation?”*
3. Costs on Applicant.

Place: Palghar
Date: 26/02/2026

(Smt. P.S.G. Chalkar)
2nd Jt. Civil Judge Junior Division,
Palghar.

CERTIFICATE

I affirm that, the contents of this P.D.F. file Judgment/order are same, word to word, as per the original Judgment/order.

Name of Stenographer	---	Suraj S. Saddiwal Stenographer (Gr-3)
Court	---	2 nd Jt.CJJD & JMFC Palghar.
Date	---	26/02/2026
Order signed by the Presiding Officer on	---	26/02/2026
Order uploaded on	---	27/02/2026