



FACULTY OF JURIDICAL SCIENCES

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NAME OF FACULTY: Mr. Rahul Singh

Lecture-1



Pleading

Introduction

Pleadings are the backbone of legal profession. It is the foundation stone on which case of a party stands. The case of a party must be set out in the pleadings. Moreover, the relief cannot be claimed on the grounds which are not contained in the pleadings. The immaterial or vague or ambiguous matter should be avoided and pleadings should be properly framed.

In *Devki Nandan v. Murlidhar*, it was held that a finding cannot be sustained which is based on no pleading and no evidence. Pleadings are those materials or essential facts which are necessary to be averred in order to put forward a cause or to establish a defence in a judicial proceeding. It is the backbone of the suit upon which the entire edifice of the suit rests. It includes allegations and counter allegations made by one party and denied by the other. Etymologically, it means a formal statement to propound the cause of action or set up a defence against the case of the plaintiff.

According to Mogha, "Pleadings are statements in writing drawn up and filed by each party to a case, stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer."

Drafting in its general connotation means, putting one's own ideas in writing. Drafting of any matter is an art. Drafting of legal matters requires greater skills and efficiencies. It requires thorough knowledge of law, procedure, settled judicial principles, besides proficiency in English Language. A perfect drafting of matters in relation to Suits, Applications, Complaints, Writ petition, Appeals, Revision, Reviews and other such matters connected therewith shall obviously leads to good result in terms of money, time, energies and expectation of not only the learned members of the Bench, but also the Bar as well as the parties to the litigation. It creates a congenial atmosphere where the glory of the judiciary and the Law grows to sky-heights. So in the case with regard to the drafting of Deed of Conveyancing. "Drafting, Pleadings and Conveyancing" (DPC) is made as a compulsory practical subject study forming part of the curriculum of the Law Course in India. It

envisages, inter alia, drafting of Civil Pleadings; Criminal complaints and other proceeding; Writ Petition, Appeal Civil, Criminal and Writ; Revisions-Civil and Criminal, Reviews, Writ Appeals-Civil and Criminal, and also Special Leave Petition; Contempt Petition, Interlocutory Applications, etc. A student who acquires the requisite knowledge, perfection and proficiency in drafting of these matters, shall undoubtedly become a perfect legal professional. He will be an asset in the legal world. For one, words 'plaints' and 'complaints' are nearly synonymous. In both, the expression of grievance is predominant. Verily, when a suitor files a statement of grievance, he is the plaintiff and he files a 'complaint' containing allegations and claims remedy. As days passed, we have taken up the word 'Plaint' for the Civil Court and the word 'Complaint' for the Criminal Court. Order 6, R. 1 of Civil Procedure Code (C.P.C.) defines 'pleading'. It means either a plaint or a written statement.

Legal Provision of Pleading

Order VI of the Code of Civil Procedure, 1908 deals with pleadings in general. Rule 1 defines pleading, while Rule 2 lays down the fundamental principles of pleadings. Rules 3 to 13 require the parties to supply necessary particulars. Rules 14 and 15 provide for signing and verification of pleadings. Rule 16 empowers a Court to strike out unnecessary pleadings. Rules 17 and 18 contain provisions relating to amendment of pleadings.

As per Rule 1 of Order VI of the Code of Civil Procedure, 1908, pleading is defined as plaint or written statement. It is important to know here the meaning of plaint and written statement. Plaint is the statement of the plaintiff containing grievances in order to initiate an action in a court of law. It helps the court to determine the real nature of the suit. Written statement is the statement or defence of the defendant by which he either admits the claim of the plaintiff or denies the allegations or averments made by the plaintiff in his plaint.

Object and Importance of Pleadings

The object of pleadings are –

- (i) to bring the parties to definite issues;
- (ii) to prevent surprise and miscarriage of justice;

(iii) to avoid unnecessary expense and trouble;

(iv) to save public time;

(v) to eradicate irrelevancy; and

(vi) to assist the Court.

Importance of pleading cannot be underestimated.

Jacob states, "Pleadings do not only define the issues between the parties for the final decision of the court at the trial, they manifest and exert their importance throughout the whole process of the litigation." Pleadings provide a guide for the proper mode of trial. They demonstrate upon which party the burden of proof lies, and who has the right to open the case. They also determine the range of admissible evidence which the parties should adduce at the trial. They also lay down limit on the relief that can be granted by the Court.

Rules of Pleadings

For the proper understanding of rules of pleadings it may be divided into two heads:-

(A) Fundamental or Basic Rules; and (B) Particular or Other Rules

(A) Fundamental or Basic Rules of Pleadings: -

Sub-rule (1) of Rule 2 of Order VI of the Code of Civil Procedure, 1908, lays down the fundamental principles of pleadings. It reads as under:-
"Every pleading shall contain, and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved."

From the above provision it can be said that following are the fundamental or basic rules of pleadings: -

- (1) Pleadings should state facts and not law;
- (2) The facts stated in pleadings should be material facts;
- (3) Pleadings should not state the evidence; and
- (4) The facts in pleadings should be stated in a concise form.

Now these rules are discussed in details one by one:-

(1) *Pleadings should state facts and not law:-*

The first fundamental rule pleading is that neither provisions of law nor conclusion of mixed law and facts, should be alleged in a pleading. The pleading should be confined to facts only and it is for the judge to draw such interference from those facts as are permissible under the law of which he is bound to take judicial notice. It says that pleadings should state only facts and not law. In the case of *Kedar Lal v. Hari Lal*, it was held that it is the duty of the parties to state only the facts on which they rely upon their claims. It is for the Court to apply the law to the facts pleaded. In the case of *Gouri Dutt Ganesh Lall Firm v. Madho Prasad*, it was held that the law of pleading may be tersely summarized in four words; “Plead facts not law.” In *Ram Prasad v. State of M.P.*, it was held that a mixed question of law and fact, however, should be specifically pleaded. Again in *Union of India v. Sita Ram Jaiswal*, the Court held that a point of law which is required to be substantiated by facts should be pleaded with necessary facts.

(2) *The facts stated in pleadings should be material facts*

It is the second fundamental rule of pleadings. A pleadings shall contain only material facts. Material facts are the entirety of facts which would be necessary to prove to succeed in the suit. Any fact which is not material should be avoided. Slackness in pleadings is unfair both to the court in which they are filed and also to the litigants. Material facts should be pleaded concisely. Here one most important question is arising i.e. what is the meaning of the term “material facts”. This term has not been defined in the Code of Civil Procedure, 1908. But the Court defined this term in many judicial pronouncements. Like in the case of *Union of India v. Sita Ram*, the court said that “material facts” means all facts upon which the plaintiff’s cause of action or the defendant’s defence depends, or in other words, all those facts which must be proved in order to establish the plaintiff’s right to relief claimed in the plaint or the defendant’s defence in the written statement. Again in the case of *Udhav Singh v. Madhav Rao Scindia*, the Supreme Court said that the term material fact means “All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence are material facts.”

Again in *Virender Nath v. Satpal Singh*, the Supreme Court held that:- “The phrase ‘material facts’ may be said to be those facts upon which a party relies for his claim or defence. In other words, ‘material facts’ are facts upon which the plaintiff’s cause of action or the defendant’s defence depends. What particulars could be said to be ‘material facts’ would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by as the party.” In the same case the Supreme Court also said:- “A distinction between ‘material facts’ and ‘particulars’, however, must not be overlooked. ‘Material facts’ are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. ‘Particulars’, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. ‘Particulars’ thus ensure conduct of fair trial and would not take the opposite party by surprise.” The Supreme Court further said that whether a particular fact is or is not a material fact which is required to be pleaded by a party depends on the facts and circumstances of each case.

3) Pleadings should not state the evidence: -

The third fundamental rule of pleading has been laid down by Order 6, rule 2 of the Code of Civil Procedure. It says that pleadings should contain a statement of material facts on which the party relies but not the evidence by which those facts are to be proved.

The facts are of two types:-

- (a) *Facta probanda*- the facts required to be proved (material facts); and
- (b) *Facta probantia*- the facts by means of which they are to be proved (particulars or evidence).

The pleadings should contain only facta probanda and not facta probantia. The material facts on which the plaintiff relies for his claim or the defendant relies for his defence are called facta probanda, and they must be stated in the plaint or in the written statement, as the case may be. But the facts or evidence by means of which the material facts are to be proved are called facta probantia and need not be stated in the pleadings.

4. The facts in pleadings should be stated in a concise form:-

It is the fourth and last fundamental rule of pleadings. It says that the statements in pleadings should be stated in a concise and in brief form. In *Virendra Kashinath v. Vinayak N. Joshi*,⁽¹⁵⁾ The words “in a concise form” are definitely suggestive of the fact that brevity should be adhered to while drafting pleadings. Of course, brevity should not be at the cost of excluding necessary facts, but it does not mean niggling in the pleadings. If care is taken in syntactic process, pleadings can be saved from tautology.

(B) Particular or Other Rules of Pleadings: -

- (1) Wherever misrepresentation, fraud, breach of trust, willful default or undue influence are pleaded in the pleadings, particulars with dates and items should be stated.
- (2) The performance of a condition precedent need not be pleaded since it is implied in the pleadings. Non-performance of a condition precedent, however, must be specifically and expressly pleaded.

(3) Generally departure from pleading is not permissible, and except by way of amendment, no party can raise any ground of claim or contain any allegation of fact inconsistent with his previous pleadings.

(4) A bare denial of a contract by the opposite party will be construed only as a denial of factum of a contract and not the legality, validity or enforceability of such contract.

(5) Documents need not be set out at length in the pleadings unless the words therein are material.

(6) Wherever malice, fraudulent intention, knowledge or other condition of the mind of a person is material, it may be alleged in the pleading only as a fact without setting out the circumstances from which it is to be inferred. Such circumstances really constitute evidence in proof of material facts.

(7) Whenever giving of notice to any person is necessary or a condition precedent, pleadings should only state regarding giving of such notice, without setting out the form or precise term of such notice or the circumstances from which it is to be inferred, unless they are material.

(8) Implied contracts or relations between persons may be alleged as a fact, and the series of letters, conversations and the circumstances from which they are to be inferred should be pleaded generally.

(9) Facts which the law presumes in favour of a party or as to which the burden of proof lies upon the other side need not be pleaded.

(10) Every pleading should be signed by the party or one of the parties or by his pleader.

(11) A party to the suit should supply his address. He should also supply address of the opposite party.

(12) Every pleading should be verified on affidavit by the party or by one of the parties or by a person acquainted with the facts of the case.

(13) A Court may order striking out a pleading if it is unnecessary, scandalous, frivolous, vexatious or tends to prejudice, embarrass or delay fair trial of the suit

(14) A Court may allow amendment of pleadings.

(15) Forms in Appendix A of the Code should be used wherever they are applicable. Where they are not applicable, forms of like nature should be used.

(16) Every pleading should be divided into paragraphs, numbered consecutively. Each allegation or averment should be stated in a separate paragraph. Dates, totals and numbers should be written in figures as well as in words.

MCQ

1. “Pleadings are statements in writing drawn up and filed by each party to a case, stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer.”

Identify the author:

A. Mogha

B. Malimath

C. Takwani

D. none of the above

2. In which order provide pleading

A. Order V

B. Order VI

C. Order IV

D. Order VII

3. Pleadings Include

A. Only Written Statement

B. Only Complaint

C. Both A & B

D. None of the Above

4. Object of Pleadings

A. to prevent surprise and miscarriage of justice;

B. to avoid unnecessary expense and trouble;

C. to save public time;

D. All the Above

5. the fundamental or basic rules of pleadings: -

A. Pleadings should state facts and not law;

B. The facts stated in pleadings should be material facts;

C. Pleadings should not state the evidence; and

D. The facts in pleadings should be stated in a concise form.

E. All the Above