Chhattisgarh Civil Judge (Mains) 2024

Mains Paper: Judgment Writing and Translation · compulsory paper

Question No. 1 [40 marks]

Read the following carefully and write judgement after framing necessary issues

PLAINTIFF'S PLEADINGS:

i. Plaintiff 'X' filed a suit in 2024 under Order 34 of the Civil Procedure Code, 1908 for foreclosure of mortgage of the first floor of House Number C-1/306, Bhatapara Town, along with a prayer for permanent injunction against alienation of the first floor of the said premises by defendant 'Y'. Plaintiff pleaded that in the year 2020, the defendant was in financial hardship and approached him for a loan of Rs.5,00,000/- which the plaintiff advanced to the defendant in two instalments of Rs. 3,00,000/- and Rs. 2,00,000/-. Plaintiff pleaded that the defendant executed an agreement in favour of plaintiff on 21-07-2020. The agreement stipulated that defendant would return the loan within 11 months and that if the defendant failed to return the loan within 11 months to the plaintiff, then the agreement dated 21-07-2020 would be destroyed as per the terms and conditions of the agreement dated 21-07-2020 and that defendant would mortgage the first floor of the House No. C-1 /306, Bhatapara Town in favour of the plaintiff for a sum of Rs. 5,00,000/-, it has been pleaded that the house had been allotted by the Development Authority in the name of father of the plaintiff and defendant, who gave equal shares of that house to 'M', 'B' and 'Y'. It was further pleaded that on 31-01-2020 the mother ('M') and brother of defendant ('B') executed a Relinquishment Deed in favour of defendant of House No. C-1/306, Bhatapara Town consisting of the Ground Floor, First Floor and Second Floor. The Relinquishment Deed dated 31-01-2020 executed by the "M" and "B" in favour of the defendant was registered on 22-02-2020 at the office of the Sub-Registrar. Plaintiff pleads that on 20-06- 2021, when the plaintiff approached the defendant and demanded his loan amount, the defendant shared his inability in returning the said amount and demanded again 11 months for returning the sum. The plaintiff gave him more time so that he could return the sum.

Plaintiff claims that a document dated 22-07-2022 was executed between the plaintiff and defendant which provided the first floor of the said house is mortgaged to the plaintiff and the original receipt of house allotment was handed over to the plaintiff. He further pleads that on non-payment of mortgage dues, he is entitled to foreclosure of mortgaged property i.e. first floor of the house and for a permanent injunction restraining 'Y' from alienating the property.

DEFENDANT'S PLEADINGS:

ii. Defendant 'Y' has denied the pleadings of the plaintiff and pleaded in his written statement that both 'X' and 'Y' are brothers. 'X' is the elder brother who had already been given share in the property in the form of cash in the year 2005 by their father. Defendant pleaded that 'X' has not discharged any responsibility towards their mother and family and all expenditures were met by the defendant and accordingly, mother ('M') and brother ('B') relinquished their share in the property to the defendant 'Y, Defendant pleaded that the Relinquishment Deed dated 31-01- 2020 was taken away by the plaintiff 'X' from their house unauthorisedly. He further claims that the documents dated 21-07-2020 i.e. agreement and alleged mortgage deed dated 22-07-2022 are forged documents. He pleaded that the plaintiff 'X' wanted a further share in the property and therefore when he learnt that mother 'M' and brother 'B' have relinquished their share in favour of the defendant, he has played the dirty game of

forging the documents. Defendant has denied that he was in financial hardship rather he claimed that he was in possession of three floors and would have sold either of them had he needed money.

PLAINTIFF'S EVIDENCE:

iii. Plaintiff examined himself as a witness (PW-1) and 'C' as a witness (PW-2) who signed the agreement dated 21-07-2020 and mortgage deed dated 22-07-2022. 'C' deposed in his testimony that he has seen the defendant sign the documents dated 21-07-2020 and 22-07- 2022. Plaintiff also produced agreement dated 21-07-2020 (EX-P1) and mortgage deed dated 22- 07-2022 (EX-P2). Plaintiff produced Relinquishment Deed (EX – P3). Plaintiff produced another witness 'D' who deposed that plaintiff approached 'Y' on 20-06-2021 for recovery of Rs. 5,00,000/- and defendant refused to pay the amount.

DEFENDANT'S EVIDENCE:

iv. Defendant produced himself as a witness (DW-1) and also produced 'M' (DW-2) and 'B' (DW-3) as witnesses. Defendant produced original allotment letter (EX-D4). All the witnesses denied that the defendant was having financial hardship in 2020 or anytime before or thereafter. 'M' deposed that the original property document i.e. allotment letter was in her possession right throughout till it produced in the Court as EX-D4. She deposed that when 'Y' and 'B' were not at home in May 2020, 'X' visited the house where they were residing i.e. the first floor of the suit property and searched the house and took away the documents including EX - P3.

PLAINTIFF'S ARGUMENT:

v. Plaintiff argued that he was produced the original documents EX – P1, EX – P2 and EX-P3 and the testimony of witnesses to prove that the mortgage deed EX-P2 was properly executed. Plaintiff argued that as per the terms of the mortgage deed dated 22-07-2002, title document EX – D4 and the allotment letter, was handed over to the plaintiff and therefore it was simple mortgage by deposit of the title deed. He claimed the right to foreclosure of the first floor. He further claimed that since the original property documents were handed over, the defendant has created a simple mortgage and therefore, registration of EX—P2 (mortgage deed) was not mandatory, under Section 59 of the Transfer of Property Act, and under Section 17 of the Registration Act. He has claimed that EX - D4 was misplaced from him and somehow it reached the defendants.

DEFENDANT'S ARGUMENT:

vi. Defendant argued that the case of the plaintiff is based on forged documents, surmises and conjecture. He argued that as per the mortgage deed (EX - P2), the possession of the first floor was handed over to the plaintiff whereas the possession of the first floor, has in-fact been with defendants only. He further argued that the original title deed of the property i.e. allotment letter (EX – D4) was always with the defendant and his family and therefore, there was no question of creation of mortgage by deposit of title deeds. It was further argued that Section 59 of the Transfer of Property Act, contemplates and provide that where the original documents of title of the property are not handed over by the mortgagor to the mortgagee, in such situation registration of the mortgage deed is mandatory under Section 59 of the Transfer of Property Act, and under Section 17 of Registration Act. Defendant argued that the non-registration of the document (EX – P2) would make that document inadmissible. He also argued for handwriting and signature comparison on EX – P1 and EX – P2 by the Court.

Question No. 2 [40 marks]

Frame charges and write judgement on the basis of facts given below.

Shri Purnendu Saxena, a resident of Civil Lines, Jagdalpur, was going to take milk in the morning on date 02-06-2024, at that time, he saw Rameshwar Dayal, who has taken a loan of Rs. two lakh from him and not returning even after repeated reminders. Shri Purnendu Saxena demanded his money from Rameshwar Dayal, thereupon some hot altercation took place between them. Rameshwar Dayal became aggressive and attacked on Purnendu Saxena. Purnendu Saxena defended himself but Rameshwar Dayal became furious and fetched a sharp edged axe (Farsa) from his home and hit Purnendu Saxena on his right leg by it (Farsa). Despite Purnendu Saxena tried to save himself, the Farsa hit him on his right leg, resulted in cutting of last two fingers of his right foot at the place of incident. There was commotion on the spot. Younger brother of Purnendu Saxena, Sudhir and one of his friends, Jyotish also reached on the spot. Purnendu Saxena narrated them the incident. Rameshwar Dayal ran away from the spot leaving the 'Farsa' on the spot. Sudhir and Jyotish took the injured Purnendu Saxena along with his severed fingers of his leg to government hospital. In hospital, Dr. Pranish Rajimwale expressed his inability to replant them.

On the information given by victim Purnendu Saxena, Shri Janmejay, T. I., Police Station, Kotwali, Jagdalpur, recorded the First Information Report (F.I.R.) bearing Crime No. 240/24 as per the Provision of Section 154 of the Cr. P. C. and proceeded for investigation, prepared site map of the spot, seized normal and blood stained soil of the spot, blood-stained Farsa, the full pant wore by Purnendu Saxena at the time of incidence having blood stains, in presence of witnesses, Ramesh and Rajesh, both local residents.

Medical Report of Purnendu Saxena obtained after his medical examination by Dr. Pranish Rajimwale. Seized severed fingers of Purnendu Saxena from Dr. Pranish Rajimwale. Seized blood stained Farsa, soil and blood stained soil, severed fingers of Purnendu Saxena, blood stained Pant of Purnendu Saxena sent for forensic examination, recorded statement of Sudhir and Jyotish and on completion of investigation charge sheet submitted to the Chief Court of Judicial Magistrate, Jagdalpur.

Evidence: Victim Purnendu Saxena and witnesses Sudhir and Jyotish affirmed the incidence in their court evidence. Other formal witnesses, T. I, and seizure witness Ramesh supported and confirmed prosecution case, witness Rajesh became hostile, he expressed his ignorance regarding incidence and fact of seizure.(In forensic report, blood stains of same blood group as of Vicim "B+" found on cloth of victim, Farsa, severed fingers of victim and blood stained soil collected from the spot.) Medical witness Dr. Pranish Rajimwale left his service by the time of his evidence and went somewhere else, hence his evidence could not be recorded. The defence of victim is that of innocence and absence from the place of incidence at the time of so called incidence but no defence witness examined.

Translation passages (English into Hindi and Hindi into English): not available.