Delhi Judicial Service (Mains) 2015

Paper 3: Civil Law II · compulsory paper

Part A

1. Bansi (Plaintiff), in possession of House No. P-53, Seelampur, Delhi (suit property), has filed a civil suit on 05.01.2016 against Ramesh seeking a declaration that he (Plaintiff) is the owner of the suit property and for injunction against any interference in his possession, use or enjoyment thereof. The suit is contested by Ramesh (Defendant) on the basis of a registered sale deed executed by the plaintiff on 31.12.2010 transferring the suit property for consideration of Rs. ten lacs in his favour. In the pleadings, the following facts are admitted:

(i) The Plaintiff had purchased the suit property for consideration of Rupees eight lacs from its erstwhile owner in the year 2009.

(ii) On 31.12.2010, the plaintiff, in possession of the suit property, executed the sale deed relied upon by the defendant.

(iii) On 31.12.2010, simultaneous to the sale deed, the plaintiff also executed a rent-note, indicating the lease money to be Rupees ten thousand per month, in respect of the suit property in favour of the defendant.

(iv) The plaintiff issued cheques for amounts of Rupees ten thousand each on 01.02.2011 and 01.03.2011, both of which, when presented by the defendant, were returned dishonoured for want of sufficient funds.

(v) The defendant instituted a suit under Order 37 of the Code of Civil Procedure, 1908 (CPC), on 01.06.2011 against the plaintiff pleading that he is the owner and landlord, seeking recovery of rental on the basis of the two cheques. The said suit (former suit) was contested by the plaintiff, inter alia, on the pleadings that the sale deed and the rent note were sham documents and that the true and correct facts were that he, being in urgent need of money for renovation of the newly acquired house, had raised a loan of Rupees ten lacs from the defendant and that the said documents were executed only as a security.

(vi) The civil court decreed the suit, inter alia, holding that the defendant is the owner and landlord of the property qua the plaintiff.

The defendant, in the suit for declaration and injunction, moves an application under Order 7 Rule 11 CPC raising the following issues:

(a) The suit is barred by the principle of res judicata in view of the decision in the former suit;

(b) The plaintiff cannot lead oral evidence contrary to the written contracts in the nature of the sale deed and rent note, the execution whereof is admitted, in view of the bar contained in Section 92 of the Indian Evidence Act.

The plaintiff urges that the principle of res judicata and the bar of Section 92 of the Indian Evidence Act, 1872 do not apply in the present case. Decide.

2. Ramlal filed a partition suit against his father Nanak and two brothers, namely Kishori and Kannihya, in respect of joint family property comprising four houses (i.e. ‘P’, ‘Q’, ‘R’ and ‘S’). All three defendants appeared and filed their respective written statements. However, thereafter Kishori stopped appearing and was proceeded ex-parte. During the further proceedings, before the trial

commenced, the parties that were contesting filed an application for compromise along with a compromise deed, inter alia, declaring as under:

(a) That property 'P' belonged exclusively to Ramlal, the others having no claim or concern with or interest in it.

(b) That property 'Q' belonged exclusively to Nanak, the others having no claim or concern with or interest in it.

(c) That property 'R' belonged exclusively to Kishori, the others having no claim or concern with or interest in it.

(d) That property 'S' belonged exclusively to Kannihya, the others having no claim or concern with or interest in it.

(e) That the parties are in separate and exclusive possession of the properties respectively belonging to them and further that they have obtained separate and exclusive possession of the properties respectively allotted to their shares.

The trial court, after recording the statements of the said parties, was satisfied and accepted the petition of compromise, and passed a compromise decree on 03.04.1964, treating Kishori as ex-parte.

Kishori later filed an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (CPC) through his son and special attorney Sudama, on which notices were issued. However, before effective proceedings could take place on the said application, Kishori died.

No steps were taken in terms of Order 22 CPC and the said proceedings were closed. In the year 1973, Sudama, son of late Kishori, brought a fresh suit for partition, also seeking a declaration that the earlier decree had been obtained by fraud, also contending that no proceedings had been initiated for any follow up on the decree based on compromise.

The defendants in the above mentioned suit of Sudama, namely Ramlal, Nanak and Kannihya, contested this suit contending that the partition had been effected in terms of the compromise decree, attaining finality. The arguments raised by Sudama are: 1. The compromise decree was non est as Kishori was not a party thereto; 2. The parties to the first suit had not brought any application for a final decree of partition to be passed; and 3. That with no execution application having been moved, the compromise decree has not given effect to any partition.

The defendants in the suit assert that they are in exclusive possession of the respective properties, which fell to their share in terms of the partition under the compromise decree, and the same has attained finality. Decide.

3. Gurnam Singh executed a registered Will on 02.01.1943 in favour of his wife Des Rani. According to the terms of the Will, on the demise of Gurnam Singh, his estate comprising a house at Patel Nagar would devolve unto Des Rani, who will be a limited owner during her life time without any right of alienation, and upon her death, the house would devolve unto their only daughter Kulwinder Kaur. Gurnam Singh died on 16.12.1946. Des Rani, during her life time, gifted the property in favour of Gurdeep Singh and executed a registered gift deed on 13.12.1956 and also parted with possession in his favour. Des Rani died on 14.03.1968. After her death, Kulwinder Kaur filed the present suit for possession and injunction against the said Gurdeep Singh in the year 1978.

While the statement of Kulwinder Kaur was being recorded and before she could be tendered for cross-examination, Kulwinder Kaur expired and her legal heirs were brought on the record. During her said deposition, late Kulwinder Kaur brought on record the certified copy of the Will dated 02.01.1943. In the said suit, the legal heirs have relied upon the testimony of Kulwinder Kaur and the certified copy of the said Will.

The counsel for defendants argued that the suit of the plaintiff is liable to be dismissed, inter alia, on the following grounds:

1. Since Kulwinder Kaur died before her testimony could be completed, her testimony, being incomplete and not subjected to cross-examination, cannot be considered at all; and

2. The plaintiffs have not proved the Will dated 02.01.1943 in accordance with the provisions of the Indian Evidence Act.

Per contra, the counsel for the plaintiffs argued that the evidence of Kulwinder Kaur, though not subjected to cross-examination, is admissible in the eyes of law and cannot be discarded. In respect of the Will dated 02.01.1943, the Plaintiff submitted that since the registered Will is more than 30 years old and is being produced from proper custody, under Section 90 of the Indian Evidence Act it should be presumed that the signature and every part of the document is in the handwriting of the person concerned, and that the Will was duly executed. Decide.

Part B

1. A entered into an agreement with B for purchase of an immovable property on 20.12.64. The agreement was got registered. It was agreed that the sale deed was to be executed by B within 03 months of the date of getting due permission for sale from other co-owners. Possession of the suit property was also delivered to A by B.

A died in 1972, whereas B died in 1965. C is the successor in interest of A, whereas E is the successor in interest of B. In 1993 C wanted to sell the suit property to D. D issued a public notice inviting objections, if any, to the intended sale/purchase of the suit property. E filed her objections on 21.11.93. Thereafter C filed a suit against E on 06.04.94 for specific performance of the agreement dated 20.12.64 and for perpetual injunction restraining E from interfering with his possession of the suit property.

It was pleaded by C that the entire sale consideration was paid by A on 20.12.64 itself to B and possession of the suit property was also handed over to A and nothing remained to be done on part of A or his successor in interest. It was further stated that C came to know on 21.11.93 that E was refusing to perform his part of the agreement and therefore he filed the present suit on 06.04.94. The suit was contested by E raising a preliminary objection that the suit for specific performance and injunction was barred by limitation as it was filed after about 30 years of the agreement to sell dated 20.12.64. Decide the preliminary objection.

2. Plaintiff/A was inducted as a tenant in respect of half portion of the suit property on a monthly rent of Rs. 300/- w.e.f. 22.12.70 by the defendant/B. On 24.12.70 the defendant/B executed an Agreement to Sell the suit property to plaintiff/A for a sum of Rs. 3,75,000/-, out of which a sum of Rs. 50,000/- was paid by A to B as part payment on the same day. It was stipulated in the Agreement to Sell that defendant/B will obtain a Tax Clearance Certificate from Income Tax Authorities for sale of the suit property and shall deliver a copy of the certificate to the plaintiff within 12 months from the date of

execution of the agreement dated 24.12.70. It was further agreed that within 03 months thereafter the plaintiff/A shall pay the balance sale consideration, on receipt of which defendant/B shall execute the sale deed in favour of the plaintiff/A.

On 05.11.77 the plaintiff/A filed a suit for specific performance of the agreement dated 24.12.70, alleging that he had written a letter dated 29.12.71 to the defendant/B enquiring about the necessary Tax Clearance Certificate. On failure of defendant/B to reply to the said letter, plaintiff/A had issued a legal notice dated 16.11.72 reiterating his readiness to tender the balance consideration and asking the defendant/B to fulfil his part of the obligation and execute the sale deed. The defendant/B vide notice dated 18.09.77 terminated the tenancy of plaintiff/A qua half portion of the suit property. It was a specific plea of the plaintiff/A that the suit for specific performance of the agreement to sell dated 24.12.70 could not be instituted earlier, as defendant/B was all along residing in London.

Denying the claims of plaintiff/A, the defendant/B contended that the suit was liable to be dismissed as barred by limitation.

The defendant/B admitted the execution of the Agreement to Sell dated 24.12.70 but claimed that the plaintiff/A was not entitled to any relief, as he had himself breached conditions of the Agreement. As regards the plea of plaintiff/A that defendant/B was not in India from Dec. 1970 till Sept. 1977, the defendant/B claimed that he was in India during the following periods:

1. From 19.12.70 to 30.12.70
2. From 18.08.71 to 13.09.71
3. From 31.10.72 to 12.11.72
4. From 04.09.77 to 03.10.77

Quoting relevant provisions of the Limitation Act, give your findings with detailed reasons, as to whether the suit of plaintiff/A is barred by limitation or not.

3. L filed a suit for declaration and injunction against M claiming that under a family settlement he was given a plot of agricultural land and a residential house, both part of ancestral property. He was in possession of both the land as well as the residential house. However, now M is refusing to admit the claim of L to the agricultural land and the residential house, negating the family settlement, and is threatening to dispossess L, both from the agricultural land and the residential house.

On service of summons, M appeared and filed his written statement admitting the entire claim set up by L and gave a statement before the court that a consent decree in favour of L may be passed in terms of the relief claimed by him. The suit was accordingly decreed vide judgment dated 24.11.80 in favour of L.

Thereafter another suit was filed by N, son of M, claiming that the judgment and the decree dated 24.11.80 were obtained by L and M in collusion with each other and that there was no family settlement whatsoever. The agricultural land and residential house being ancestral property, M could not have gifted the same to L. Further, the decree dated 24.11.80 amounted to a gift of the suit property by M to L and could have been made only through a duly stamped and registered document. The decree, being neither registered nor stamped, could not be acted upon.

During trial, it was proved that there was no family settlement, wherein the agricultural land and residential house were given to L, and that the suit property, i.e. the agricultural land and house, were

part of the self-acquired property of M.

Decide the suit filed by N in view of the plea raised by him that the decree passed vide judgment dated 24.11.80, not being registered and stamped, could not be acted upon.

4. A, as guardian/father of B, entered into an oral agreement with C for sale of his house/suit property on 28.02.06 for a sum of Rs. 1,80,000/-. The sale deed was agreed to be executed and registered on the same day. C purchased the stamp papers, paid the entire sale consideration and was handed over possession of the suit property by A and B on the same day. They also executed the sale deed in favour of C, which was taken to the office of the Sub Registrar on the same day, i.e. 28.02.06. The sale deed, however, could not be registered. It is the plea of C that the Sub Registrar informed them that there was an order of attachment against the suit property and that A and B had promised C that they would get the attachment removed and get the sale deed registered at the earliest. On failure of A and B to get the sale deed registered, C issued a legal notice to A and B on 05.02.07, whereafter A and B tried to dispossess C from the suit property.

C filed a suit seeking a direction to A and B to execute a fresh sale deed and prayed for the relief of permanent injunction restraining A and B from disturbing the possession of C.

In defence, A and B claimed that they had taken a loan of Rs. 1,75,000/- from C and had executed an agreement to sell (not a sale deed) in favour of C on her insistence. C had fraudulently got the sale deed prepared and therefore A and B had refused to get it registered.

In evidence, C tendered the unregistered sale deed in support of her case, which was refused to be admitted in evidence by the trial court on the ground that it was an unregistered document. C challenged the order invoking Section 49 of The Registration Act, 1908.

Decide whether the sale deed could have been admitted in evidence or not.

5. Write short notes on the following:

(i) Effect of acknowledgment/part payment on computation of limitation.

(ii) Limitation in case of a suit with an application for leave to sue as pauper.

(iii) Effect of death of a person on or before accrual of right to sue/be sued.

(iv) The persons authorised to present a document for registration.

(v) The period within which a document can be presented for registration.