Delhi Judicial Service (Mains) 2017

Paper 3: Civil Law II · compulsory paper

Time allowed: 3 hours. Maximum marks: 200. All questions are compulsory, unless specified. Support each of your answers with reasons, relevant legal provisions and legal principles.

1. Before you is a petition for review. The review petitioner 'A' was one of the defendants in a suit for partition filed by his brother 'B'. 'A' did not come to contest the suit. A preliminary decree defining the shares of the parties was passed on 31.12.2009. Thereafter, 'B' applied for a final decree for partition by metes & bounds. 'A' was pursuing a probate case setting up a Will from his father, the common ancestor of the parties. During the proceedings for the final decree, 'A' on 01.12.2010 files the review petition, now under consideration, on the following ground: (50 marks)

"Since the probate case was pending, 'A' was advised, there was no gain in contesting the suit for partition and hence he did not contest the suit. Now that he has obtained probate of the Will of his father on 01.09.2009, he has been advised to seek review of the preliminary decree as the shares of the parties as per the Will are quite different from the shares declared by the preliminary decree. The preliminary decree is an error and so the same be reviewed by exercise of the court's inherent power."

Along with the review petition, 'A' also files an application for condoning the delay stating that during the period of December 2009 and December 2010, he remained sick for several months and could not seek legal advise at the appropriate time. He also pleads that apart from court's power for review, he has also invoked the inherent power of the court for which there is no limitation.

'B' on being served with a notice from the Court opposes the prayer for review as well as the prayer for condonation of delay.

Decide:-

(i) What is the period of limitation for filing a review petition?

(ii) Has 'A' made out sufficient ground for condoning the delay in filing the review petition?

(iii) Can the Court consider the review petition in exercise of its inherent power?

(iv) Assuming that you condone the delay, how will you decide the review petition and on what grounds?

[Note: Probate is a process for proving the validity of a Will]

2. On 01.01.2018, the plaintiff files a suit for recovery of Rs. 20,00,000/- alleging that on 01.01.2014, he had paid the defendant a sum of Rs. 1,80,00,000/- against which the defendant till 01.06.2014 has supplied goods worth Rs. 1,60,00,000/- only. The plaintiff also alleges that the defendant acknowledged the dues by writing a letter on 01.01.2016, whereby a fresh period of limitation commenced with effect from 01.01.2016. The defendant admits having written the letter but disputes that it was an acknowledgement of debt. The letter is as under: (20 marks)

"On checking our accounts we find that you did pay us Rs. 1,80,00,000/- against which we have already delivered goods worth Rs. 1,60,00,000/-. However, nothing is payable to you since you owe a sum of Rs. 30,00,000/- towards the rent of the godown used by you for storing the goods sold to you."

State/Decide:-

(i) The provisions which the plaintiff can rely upon for seeking extension of the period of limitation? What are the minimum primary mandatory conditions for application of those provisions?

(ii) Whether the suit is within limitation?

3. 'X' sues 'Y' for partition and possession of the suit property which was owned by their father 'Z'. 'Y' disputes that 'X' was a son of 'Z' since 'X' was born five months after the dissolution of marriage of 'Z' and his wife, who was the mother of both the parties. (40 marks)

State/Decide:-

(i) What is the law regarding presumption of legitimacy?

(ii) On what grounds, the legitimacy of 'X' can be challenged?

(iii) Will you allow an application filed by 'Y' for DNA test to prove that 'X' is not the real brother of 'Y'?

(iv) Distinguish between 'may presume', 'shall presume' and 'conclusive proof'.

4. The plaintiff has filed a suit for recovery of Rs. 50,000/- against the defendant alleging that the defendant had taken a loan from the plaintiff and the principal amount together with interest now comes to Rs. 50,000/-. While presenting the plaint the plaintiff makes an application praying that simultaneously with the summons, an order of attachment of the defendant's property, being an urban piece of land, be also issued. For the prayer for attachment, the plaintiff makes the following allegations: (30 marks)

a. The defendant is not a man of means.

b. He owns a plot of land within the jurisdiction of the court.

c. The plot of land owned by the defendant is the only property from which the amount of the decree, when passed, can be recovered and if the defendant sells away the plot, there will be no means of recovering the decretal amount.

Decide:

(i) Will you allow the application for issuance of an order of attachment?

(ii) Assuming that you decide to issue an order of attachment. Prepare a draft order.

(iii) The Court has passed an order of attachment before judgment. Subsequently, the suit is decreed. Before the plaintiff/decree-holder applies for execution, the defendant/judgment-debtor sells the attached property. What remedy does the plaintiff/decree-holder have?

5. Plaintiff 'K' sues the defendant 'M' for specific performance of an agreement to sell. 'K' produces and proves the agreement which is a registered document, saying that 'M' having received Rs. 40,000/- towards part payment of the suit property has failed and neglected to execute the actual sale deed when 'K' offered the balance price, being Rs. 10,000/- and requested 'M' to execute and register the sale deed. 'M' does not dispute his signature on the agreement produced by 'K'. However, 'M' pleads that the document was executed under undue influence as 'M' had borrowed money from 'K' for the treatment of his father requiring an open heart surgery and being unable to pay back the loan on repeated demands, on the direction of 'K', 'M' had executed the agreement on the understanding that the agreement would be cancelled when 'M' pays the dues under the loan which he is willing to pay

now. Further 'M' pleads that the amount still due under the loan agreement was Rs. 9,000/- only while the actual value of the suit property was not less than Rs. 70,000/-. 'M' also produces documents of the loan transaction and the demand letters from 'K'. 'M' also pleads that 'K' committed fraud by giving him a false assurance that the document would never be acted upon and would be returned to 'M'.

(30 marks)

Decide:

(i) Is the plea of 'M' hit by Section 92 of the Indian Evidence Act?

(ii) Suppose the court allows the defendant to prove the defence, how are the parties to share the burden of proof?

(iii) (a) Does an agreement to sell under law require registration? (b) What is the evidentiary value of an unregistered document which by law is required to be registered?

6. Answer each question in about 150 words:- (30 marks)

(i) Distinguish between order, judgment and decree. Does an appeal lie against an order of injunction passed under Order XXXIX Rule 1 CPC?

(ii) What is meant by the terms 'interrogatories', 'discovery' and 'production'? How do these processes help in adjudication of disputes in civil cases?

(iii) Distinguish between the concepts of res judicata and relinquishment of a part of a claim.