Delhi Judicial Service (Mains) 2018

Paper 3: Civil Law II · compulsory paper

Time Allowed: 3 Hours. Max Marks: 200. Held on 10.02.2019.

Instructions: (i) Please read the questions carefully and answer them as directed. (ii) All questions are compulsory, unless specified. (iii) You are allowed 15 minutes time before the examination begins, during which you should read the question paper and, if you wish, highlight and/or make notes on the question paper. However, you are not allowed, under any circumstances, to open the answer sheet and start writing during this time. (iv) Support each of your answers with reasons, relevant legal provisions and legal principles. Length of the answer would not determine the marks. (v) Bare Acts will be provided by this Court in the examination hall for use by you. (vi) Even if you do not know the answer, it is advisable to attempt as much, as the test is not only of the knowledge of law but also of analytical reasoning.

Q. No. 1. Ram Singh was in occupation of a house belonging to Kehar Singh. In January, 2016 Kehar Singh filed a suit for possession alleging that Ram Singh was a trespasser in his house. The suit was contested by Ram Singh whose defence was, that he had become owner of the house by virtue of a sale deed executed by Kehar Singh in his favour, which fact was denied by Kehar Singh. 10 Marks

The suit was fixed for hearing on 17th April, 2016 before the District Judge, Delhi. On that date, Kehar Singh did not appear before the Court in the case. However, Ram Singh had appeared on that date in the Court.

The suit for possession filed by Kehar Singh was dismissed in default due to his non-appearance.

On 10th October, 2016, Ram Singh died leaving behind his widow Smt. Prem Kumari. In November, 2016, Kehar Singh filed a fresh suit against Smt. Prem Kumari alleging that she is in illegal possession of the house owned by him and prayed that a decree for possession be passed in his favour and against Smt. Prem Kumari.

Advise Smt. Prem Kumari, if the suit for possession filed against her by Ram Singh is maintainable or not. Give reasons quoting the relevant legal provisions.

Q. No. 2. Naresh Kumar is residing at Mumbai, Raj Kumar at Jaipur and Surender Kumar at Delhi. All three go together to Srinagar for holidays. While at Srinagar, Raj Kumar and Naresh Kumar execute a joint promissory note payable on demand in favour of Surender Kumar for money borrowed from Surender Kumar. 10 Marks

Surender Kumar files a suit for recovery on the basis of the promissory note at Srinagar against Naresh Kumar and Raj Kumar. They both in their written statement take a preliminary objection to the jurisdiction of the court at Srinagar to try the suit by asserting that the defendants do not reside at Srinagar.

Decide the objection with reasons.

Q. No. 3. Plaintiff- Ramesh Chand files an application under Order 39 Rules 1 and 2 of Code of Civil Procedure before the Trial Court. Defendant- Prem Kumar opposes that application. The trial court dismissed the application of Ramesh Chand. Being aggrieved, Ramesh Chand files an appeal before the Appellate Court. However, counsel for Ramesh Chand after some arguments withdraws his appeal. Consequently, the appeal filed by Ramesh Chand is dismissed as withdrawn. 10 Marks

Thereafter, Ramesh Chand files an application under Order 47 Rule 1 of Code of Civil Procedure before the Trial Court for review of the order of dismissal of his application under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

Prem Kumar takes a preliminary objection, that once Ramesh Chand has availed the remedy of appeal and had withdrawn the same, the trial court cannot review its order.

Decide.

Q. No. 4. 'X' applies for execution of a decree for possession against 'Y'. During the pendency of the said execution, 'Y' dies on 21st January, 2000. 'X' applies on 21st July, 2000 for substitution of legal representatives of 'Y' in the execution. 10 Marks

Whether the application for substitution of legal representatives is within time? Give reasons.

Q. No. 5. A sues B for specific performance of an agreement to sell by B to A of immovable property. It is the case of A, that: 20 Marks

(i) a written agreement to sell was executed;

(ii) though the same recorded that it was prepared in duplicate with one copy to be retained by each party but only a photocopy of the agreement to sell was given to A and both originals were retained by B;

(iii) that A, at the time of agreement to sell had given earnest money in cash to B and receipt whereof was acknowledged by B in one of the clauses in the written agreement to sell; and

(iv) that B was refusing to perform his part of the agreement to sell.

B denies that any agreement to sell was entered into with A or that any amount by way of earnest money was paid by A to B in cash. B also files an application under Order VII Rule 11 of the CPC for rejection of the plaint and / or summary dismissal of the suit on the ground that since, according to A, there was a written agreement to sell and no written agreement to sell was produced and only a photocopy was produced, the suit was not maintainable in law.

Decide specifically with reference to maintainability of the suit.

Q. No. 6. A files a suit against B for partition of immovable property owned by the father of the parties who has since died. B contests the suit claiming that the father has left a registered Will bequeathing the property exclusively to B. 20 Marks

Issues are framed and parties relegated to evidence. B besides himself examines only the official from the office of the Sub-Registrar with which the will was registered and the Advocate who claimed to have drafted the Will. While the official from the office of the Sub-Registrar produces the record of the office of the Sub-Registrar having a copy of the Will, the Advocate deposes that the father of the parties had approached him in his office for drafting the Will and that he had drafted the Will as per the instructions given by the father of the parties and handed over the typed document to the father of the parties. During the testimony of the official from the office of the Sub-Registrar, an exhibit mark is put on the original Will produced by B, subject to objection of the counsel for A.

Decide whether the Will has been proved.

Q. No. 7. A agrees to sell his immovable property situated at Delhi to B for a sale consideration of Rs. 5 lacs and an agreement to sell dated 1st November 2010 on a stamp paper of Rs. 50/- is executed by the parties. A, at the time of the agreement to sell, against receipt of 50% of the sale consideration, put B

into vacant, peaceful, physical possession of the property. B, having been so put in possession, does not pay the balance sale consideration to A and continues in possession of the property. Resultantly, no sale deed is executed by A in favour of B. 20 Marks

A, after nearly seven years of the agreement to sell, institutes a suit for recovery of possession of property from B. B defends the suit, inter alia, pleading that A having put B into possession of the property in pursuance of the agreement to sell, is only entitled to recover the balance sale consideration from B and is not entitled to recover possession of the property from B.

Decide the said objection of B.

Q. No. 8. A institutes a suit for permanent injunction to restrain B from dispossessing him from an immovable property pleading: 20 Marks

(i) that A is in possession of the said property with the permission of C who was the owner of the property;

(ii) that C has died and none has come forward claiming any right to the property;

(iii) that B is a stranger to the property and has no right, title or interest in the property and is not entitled to disturb the possession of A;

B contests the suit pleading that C has left an unregistered Will bequeathing the property to B.

Issues are framed in the suit with one of the issues being with respect to the validity of the Will of C set up by B.

B in his evidence, besides examining himself examines only one other witness, D, who deposes that C had called D to the house of C and informed D that C had signed his Will and also got it signed from E as a witness but was advised that a Will has to have at least two attesting witnesses and wanted D to sign the Will as a witness. D further deposed that he had accordingly signed as a witness.

Decide whether the Will has been proved in accordance with law.

Q. No. 9. A, claiming to be owner of immovable property, sues B for recovery of possession of that property claiming that B, about 20 years prior to the institution of the suit, was permitted as a licensee to occupy the property; the licence of B was terminated one year prior to the institution of the suit but B, despite promises to vacate the property has failed to do so. 20 Marks

B contested the suit pleading that:-

(A) (i) the suit was barred by limitation;

(ii) that A in the plaint itself has admitted the possession of B for nearly 20 years prior to the institution of the suit;

(iii) the suit for possession filed after 20 years was barred by time and B had become owner of the property by prescription;

(B) Alternatively, B pleads that he was inducted into the property as a tenant and his tenancy was protected under the provisions of Delhi Rent Control Act, 1958 and thus civil court did not have the jurisdiction to entertain a suit for recovery of possession of immovable property from a protected tenant.

Decide, whether the suit claim is within time and whether B is to be permitted to lead evidence on both the pleas taken in his written statement.

Q. No. 10. A, a resident of Delhi, institutes a suit on 1st March, 2017 at Mumbai against B, also a resident of Delhi, for compensation for defamation with respect to a poster defaming A having been published by B at Delhi on 15th January, 2017. 20 Marks

The jurisdiction of the court at Mumbai is invoked pleading that a relative of A, who was a resident of Mumbai, on his visit to Delhi on 15th January, 2017 came across the said poster and after returning to Mumbai had telephonically inquired from A on 25th January, 2017 about the contents of the same and further pleading that the cause of action accrued to A at Mumbai.

B in his written statement objects to the territorial jurisdiction of the court at Mumbai and pleads that the jurisdiction of Mumbai Court has been invoked malafide to harass him specially when both A and B were residents of Delhi and the allegedly defamatory publication was also made at Delhi.

A does not file any replication.

One of the issues framed in the suit is on the aspect of territorial jurisdiction. The Mumbai Court though finds B to have defamed A and A entitled to compensation therefor, however dismisses the suit vide judgment dated 1st November, 2018 holding that the court at Mumbai did not have the territorial jurisdiction to entertain the suit.

A thereafter on 7th January, 2019 files a suit for the same relief in the court at Delhi.

Decide whether the suit at Delhi is within limitation.

Q. No. 11. A defendant in an ordinary suit for recovery of money is on the 15th August, 2018 served with summons of the suit for 27th September, 2018 which is declared a public holiday and all cases of which date are by a general notification adjourned for 2nd November, 2018. 20 Marks

On 2nd November, 2018 the Judge is on leave and the suit is adjourned to 10th December, 2018 when the counsel for the defendant appears and files the written statement and furnishes a copy thereof to counsel for the plaintiff. The counsel for the plaintiff states that the written statement cannot be taken on record. The counsel for the defendant states that since on none of the previous dates of hearing the court was in session, the written statement having been filed on the very first effective date of hearing should be taken on record.

Decide.

Q. No. 12. ABC Pvt Limited, a company, institutes a suit for permanent injunction against D claiming that D had taken up employment with the said company about one year back and had agreed to serve the company for a minimum period of three years and had further agreed to during the said period of three years not take up employment with anyone else; however D had submitted resignation to the company and was about to join a competitor of the company. 20 Marks

Permanent injunction was sought by ABC Pvt Limited to restrain D from joining employment with any other company for the period of three years from the date of his appointment with ABC Private Limited, as he had agreed in his letter of appointment.

The suit is accompanied with an application for interim injunction for restraining D from joining employment elsewhere.

Summons of the suit and notice of the application are issued to D who fails to appear on the date for which he has been served and D is proceeded against ex-parte.

The counsel for ABC Pvt. Limited presses the application for interim injunction.

Decide the application for interim injunction.