Delhi Judicial Service (Mains) 2019

Paper 3: Civil Law II · compulsory paper

Time allowed: 3 hours · Maximum marks: 200

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.

Q1. Vide agreement to sell dated 10.01.2016, executed on a stamp paper of Rs. 100/-, 'A' agrees to sell his house at Vasant Vihar in New Delhi to 'B' for a sale consideration of Rupees twelve crores and 'B' pays a sum of Rupees one crore as advance sale consideration to 'A'. It is agreed between the parties that 'A' shall have the leasehold rights in the land underneath the property converted to freehold and the sale deed shall be executed by 'A' in favour of 'B' within three months of execution of conveyance deed of freehold rights in the land in favour of 'A' against payment of balance sale consideration and delivery of vacant possession of the land. 20 Marks

'B' in July, 2019 institutes a suit for specific performance of agreement of sale against 'A', claiming that the possession of the property was delivered by 'A' to 'B', three months after the date of agreement to sell, in part performance of the said agreement against payment by 'B' to 'A' of Rupees five crores in cash.

'A' contests the suit. Besides filing a written statement, 'A' files an application under Order VII Rule 11 CPC and under Order XV of the CPC for rejection of the plaint / summary dismissal of the suit contending that the plaintiff on the basis of averments in the plaint and agreement to sell in writing is not entitled to the relief of specific performance. It is the plea of 'A' that the suit is barred by time and that 'B' by claiming to be in possession of the property has disentitled himself from the relief.

In the context of the aforesaid facts, analyse:

(a) the law of limitation in a suit for specific performance of an agreement to sell of immovable property;
(b) the need for registration of an agreement of sale of immovable property and the effect of non registration thereof; and
(c) the parameters of Order VII Rule 11 CPC.

Q2. Explain the following in brief: (i) "Meaning of Cause of Action". 10 Marks

Q2. (ii) "Meaning of Suits of Civil Nature". 10 Marks

Q3A. Ramesh Kumar – landlord filed a civil suit for recovery of possession and mesne profits against his tenant Pawan Kumar. The tenant pleaded that he is governed by Rent Control Act and the Civil Court has no jurisdiction to entertain Eviction Suit. 10 Marks

The landlord contended that his earlier eviction petition was rejected by the Rent Controller on the objection of the tenant that it was the Civil Court and not the Rent Controller, which had jurisdiction to entertain eviction suit against him as the Rent Act does not apply to his tenancy.

The landlord pleaded that the earlier judgment of the Rent Controller constituted res-judicata between the parties and the tenant cannot be allowed to approbate and reprobate and is estopped from taking inconsistent pleas in the civil suit.

Decide the pleas of the landlord and the tenant by a reasoned order.

Q3B. Plaintiff filed a suit for recovery against the defendant. The defendant did not file its written statement despite various opportunities granted by the Court. Ultimately, the Court struck off the defence of the defendant. The defendant asserted its right to participate in the proceedings and cross examine the plaintiff and his witnesses, to lead evidence in defence and also to address arguments.

Can the defendant be permitted to do so, decide the above contentions of the defendant with reasons. 10 Marks

Q4A. "What should be the usual contents of a judgment in a civil suit"? 10 Marks

Q4B. "How a money decree can be executed"? 05 Marks

Q4C. "Can an Executing Court go behind the decree"? Give reasons. 05 Marks

Q5. Write in short on:

(a) "Misjoinder of parties" 05 Marks

(b) "Which are the necessary parties to a suit"? 05 Marks

(c) Broad principles governing disposal of application for amendment. 10 Marks

Q6A. Enumerate the essential principles for grant of Temporary Injunctions and quote relevant provision of law in this regard. 10 Marks

Q6B. Two brothers are residing in one house consisting of ground floor only and both are having two rooms each. There is a common courtyard in the house. However, both the brothers are having strained relations with each other. Elder brother wants to construct a partition wall in the common courtyard which is resisted by the younger brother. 10 Marks

The younger brother had to go out for urgent work with his family. In his absence the elder brother along with his wife constructed a wall in the courtyard dividing the house into two portions.

On return, the younger brother demolished the common wall which was again reconstructed forcibly by the elder brother. The younger brother again tried to demolish the wall. In the meanwhile, the elder brother obtained an ex-parte injunction from the Court restraining the younger brother from demolishing the wall.

A few days later, the elder brother had gone out along with his family and in his absence, the younger brother and his major son demolished the wall in violation of the ex-parte injunction granted by the Court.

On return, the elder brother filed an application under Order XXXIX Rule 2A CPC against the younger brother and his major son.

Whether the major son of younger brother is liable under Order XXXIX Rule 2A of the CPC?

Q7A. "In each case the best available evidence should be produced". Elaborate with at least four illustrations. 10 Marks

Q7B. Write in brief on: "Grant of leave to defend under Order XXXVII of the CPC" 10 Marks

Q8A. "If a party sleeps over his right and does not seek redress in a Court of law for its enforcement within the period of limitation prescribed therefor, a Court will not enforce it though the legal right is there and is not extinguished". 10 Marks

However, Section 5 of the Limitation Act, 1963 provides for "extension of prescribed period in certain cases", provided the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Illustrate at least five examples of "sufficient cause" as per above Section.

Q8B. 'A' purchased the suit property from 'B' on the basis of registered general power of attorney and agreement to sell, after paying entire sale consideration to 'B'. 10 Marks

Later on, 'C' wanted to dispossess 'A' from the suit property on the basis of false documents executed by 'B' in favour of 'C'. A lodged an FIR against 'C'.

In the meanwhile 'C' on the basis of forged documents filed a suit for possession against 'A'. 'A' raises a preliminary objection that the suit of 'C' is not maintainable, as 'C' had not filed any documents on record regarding ownership of the suit property.

'C' in order to meet the objection of 'A' files an application under Order VIII Rule 1A of CPC seeking permission to file the documents alleged to have been executed in his favour. The application was resisted by 'A' on the ground, that 'C' has simply stated in the application that the documents which are to be filed were not in power and possession in the entire pleading. 'C' has not explained in whose possession these documents were lying and how all of a sudden these documents came into his possession.

Decide the application giving reasons.

Q9A. What is the effect of non registration of a document which requires compulsory registration under the Registration Act, 1908? 05 Marks

Q9B. Whether following documents requires compulsory registration: 10 Marks (4 x 2.5)

(i) Adoption Deed
(ii) Will
(iii) Gift Deed
(iv) Lease Deed

Q9C. Plaintiff filed a suit for recovery of an amount against a defendant in the year 2001. The defendant filed its written statement in the year 2002. On the pleadings of the parties, in all five issues were framed. Issue number (1) was framed with regard to "court fee and jurisdiction". 05 Marks

Both parties never pressed that issue number (1) be treated as a preliminary issue.

The parties led their respective evidence.

When the suit was fixed before the Civil Court for final arguments, the defendant filed an application for deciding the issue number (1) in the first instance before hearing the final arguments.

Will such application be maintainable or not at the stage of the final arguments? Decide with reasons.

Q10. In 1982, Smt. Rajrani – Plaintiff filed a suit for possession against Smt. Kamla Devi – Defendant. The summons were duly served upon the defendant. Despite service, the defendant did not appear in the Court nor she contested the suit. Accordingly, the defendant was proceeded ex-parte. 20 Marks

The Civil Court vide its judgment dated 30.08.1983 decreed the suit ex-parte in favour of the plaintiff.

Thereafter, plaintiff filed an application for execution of the decree in the year 1986 and notice of the same was issued to the defendant. It transpired that the defendant had already died in the year 1984. Accordingly, plaintiff filed an application under Order XXII Rule 4 CPC for bringing the legal heirs of defendant on record.

There were two legal heirs of the defendant who instead of filing reply to application under Order XXII Rule 4 CPC of the plaintiff filed an application under Order IX Rule 13 CPC for setting aside the ex-parte decree passed against the deceased defendant.

The plaintiff in its reply took an objection that since the defendant had been duly served in her lifetime with the summons and had not chosen not to appear or contest the suit, as such the application Order IX Rule 13 CPC filed by the legal heirs of the respondent is barred by limitation and is liable to be dismissed.

In view of the above facts, decide the application under Order IX Rule 13 CPC with detailed reasons.