Delhi Judicial Service (Mains) 2022

Paper 2: Civil Law I · compulsory paper

Duration: 3 hours · Maximum Marks: 200

Important Instructions: (i) Please read the questions carefully and answer them as directed. (ii) 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. (iii) The answer to each question should begin on a fresh page. (iv) Support each of your answers with reasons, relevant legal provisions and principles and also relevant case laws. (v) 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.

Part I: Write short notes on any four out of the following six questions (4 x 10 = 40 Marks)

1. Whether a bequest of a property under a will would amount to transfer of property under Section 5 of the Transfer of Property Act, 1882? Explain. 10 Marks

2. "Property in the goods and risk in respect of them go together". Are there any exception to the principle? Explain with the help of case law. 10 Marks

3. What are the rights of an unpaid seller? Distinguish between the unpaid seller's right of lien and right of stoppage in transit. Support your answer with the help of examples. 10 Marks

4. What is heritable property under Muslim Law? Compare the same with Hindu Law in reference to ancestral property of Joint Hindu Family. 10 Marks

5. An Owner of a plot of land is building a four storeyed house within the jurisdiction of South Delhi Municipal Corporation (SDMC). During the course of construction, the building is sealed in pursuance of the Orders passed by the Commissioner, SDMC. The owner disputes it and states that the construction is in accordance with the Building Bye-Laws and the building plans sanctioned by SDMC. What are the remedies available to the Owner? 10 Marks

6. What are the different modes of Talaq under the Muslim Law? Which is considered to be the best or a good Talaq? 10 Marks

Part II: Attempt any two out of the following three questions (2 x 20 = 40 Marks)

7. Proof of loss is a sine qua non for claiming "liquidated damages". On proof of damages, the person complaining of breach is entitled, whether or not actual loss is proved only reasonable compensation not exceeding the amount so named in the contract as liquidated damages or penalty. Explain with the help of relevant case laws. Whether proof of actual loss is necessary in case of public utility projects like construction of a road or a project related to environmental protection? Discuss. 20 Marks

8. What are the broad principles governing grant of "anti-suit injunction"? Explain with the help of relevant case laws. 20 Marks

9. Whether a property can be equitably mortgaged by depositing of documents which may not be title deeds or registered documents of title but the documents of allotment of land by a cooperative society or a local government authority? Support your answer with the help of relevant provisions of law and case laws. 20 Marks

Part III: Attempt any four out of the following six questions (4 x 30 = 120 Marks)

10. There is a double-storey shop in an up-market in Delhi which is let out by the landlord 'L' to the tenant 'T' sometime in the year 1955 on a monthly rent of INR 500/-. An eviction petition under Section 14(1)(b) of the Delhi Rent Control Act, 1958 is filed by the landlord against the tenant on the ground that the tenant has sub-let the property and/or parted with possession of part of the premises by sub-letting a part of the first floor by letting out three small cabins to three Medical Practitioners (MPs). The landlord alleged that the three MPs had a separate MTNL connection in their cabins. Each of the three cabins had a door which could be locked. A local commissioner was appointed at the request of the landlord who stated in his report that at the time of inspection the cabins were not having any doors but there was a possibility of the doors having been fixed on the cabins. Landlord has established the existence of separate MTNL connections in the name of three MPs in the cabin.

30 Marks

During evidence, it is established by the tenant that the keys of the main door/shutter always remained with him. It was he (the tenant) who used to open the main shutter of the shop in the morning and close the same in the evening. It was pleaded and established by the tenant that he was running a chemist shop in the tenancy premises. The tenant alleged that the MPs have been permitted to use the premises with his permission in order to promote the tenant's business of sale of medicines. The landlord has set up a case that parting with possession of part of the premises on proved facts is established. The tenant has submitted that since he has established his control over the premises and the MPs could use the premises only with his permission after he had opened the shop, there cannot be any question of parting with possession.

The Rent Controller dismissed the eviction petition holding that the MPs were not in exclusive possession and the payment of rent by the alleged sub-tenants was not established by the landlord.

The landlord has filed an appeal before the Rent Control Tribunal with the averments that once presence of third persons was established, it was for the tenant to prove that there was no monetary consideration. Decide the appeal with the help of relevant case laws.

11. H marries W in the year 1996. Out of the wedlock a daughter D is born in the year 1997. In the year 2014, W leaves matrimonial home along with D on the ground that the husband has been treating her with cruelty. W is employed as a teacher in a public school getting a salary of INR 50,000/- per month. Since the time W left the matrimonial home, she is staying with her parents in a DDA flat. In the year 2016, W files a petition under Section 18 read with Section 20(3) of the Hindu Adoption & Maintenance Act, 1956 to claim maintenance at the rate of INR 5,00,000/- per month for herself and daughter D of the parties. D has studied engineering and during the pendency of the maintenance petition, in the year 2020 she is engaged to a doctor working in a reputed government hospital. An application is moved by W to claim expenses for the marriage of the daughter amounting to INR 1.25 crores. W has established that H who is 80% shareholder of a private limited hospitality company (Bloom) is owning a resort with 5-star facilities and having 52 cottages at Manali. Rest 20% shares in the company are held by close family members of H. W has also established that H owns two high valued cars including a BMW. The company Bloom also owns four luxury cars. Bloom had a net profit of over INR 2 crores during the last 3 years and over INR 1.5 crores during two previous years before that.

30 Marks

On facts, it is established before the Court that W was justified in leaving the matrimonial home on account of physical abuse and cruelty meted out to her by H. What are the relevant factors for

determining the admissibility and extent of maintenance to the wife and unmarried daughter? Whether the wife is also entitled to any amount towards the marriage expenses of daughter D? If so, how much? Decide with the help of relevant case laws.

12. An owner of a land executed an agreement to sell with X for a total sales consideration of INR 56,000/- in the year 1986. X paid INR 25,000/- as part of sales consideration at the time of execution of the agreement to sell. The Sale Deed was agreed to be executed within 2 years. Meanwhile, at the instance of the owner, the period of two years was extended twice. Last such extension was granted in the year 1991. A further sum of INR 15,000/- was paid by X towards sales consideration at the time of second extension. At that time, balance sale consideration of INR 16,000/- was also agreed to be paid at the time of execution of the Sale Deed. However, in the year 1994, the owner sold the land to P and also executed the Sale Deed despite receiving INR 40000/- from X towards sales consideration. P is closely related to X and is aware of the agreement to sell between the owner and X. X files a suit for specific performance against the owner as well as P. Both the trial court as well as the first Appellate Court decreed the suit in favour of X, however, the Second Appellate Court reversed the concurrent finding of the Courts below on the ground that there was no specific averment in the plaint as required under Section 16(c) of the Specific Relief Act, 1963 and that the relief of specific performance is discretionary in nature. X approaches the Apex Court stating that his readiness and willingness to perform his part of the contract was writ large from the payment of the substantial part of the sale consideration and his conduct. Decide, taking into consideration the relevant provisions of the Specific Relief Act, 1963 and the case laws. 30 Marks

13. Sohanlal owns a parking space adjacent to a 5-star hotel where Rohan parks his car for a nominal fee. Rohan is issued a parking slip with an "owner's risk" clause. Rohan's car is stolen from the parking space. Since the car is insured, the insurance company settles Rohan's claim and in turn Rohan executes a Power of Attorney (POA) and a letter of subrogation in favour of the Insurance Company. They both file a suit against Sohanlal seeking payment of the value of the car and compensation during the period Rohan remained without a car. Discuss the liability of Sohanlal. 30 Marks

Would it make any difference if Rohan had given his car for valet parking to the hotel staff who had ultimately parked it in the parking space owned by Sohanlal. While handing over the car for valet parking, Rohan was handed over a parking slip stating that the parking would be at the 'guest's own risk'. The suit for recovery of value of the car and compensation is jointly filed by the Insurance Company and Rohan against the Hotel. What would be the liability, if any, of the hotel? Refer to the relevant case laws.

14. L an owner of agricultural land passed away in the year 1951. As the only son of L, G inherited his entire property. G had three sons. In the year 1964, G effected a partition by way of court decree and divided his property equally amongst his three sons. G passed away on 15-07-1970. One of G's son, being D, had only one son viz., A, who was born in the year 1985 through his first wife. D purportedly sold his entire share of property to H vide 2 registered Sale Deeds dated 01-09-1999 for an ostensible sale consideration of INR 4,87,500/-. On 21-9-1999, the two Sale Deeds were sent by the Sub-Registrar to the Collector for action under Section 47-A of the Stamp Act, 1999 as the Sale Deeds were undervalued. Before the Collector, both D & H admitted that no sale consideration was exchanged for the Sale Deeds and the amount was mentioned only for the purpose of registration. D got married to H

in 1999 and subsequently in the year 2000, the Collector held that the two Sale Deeds were executed without any monetary transaction. 30 Marks

On becoming major, in the year 2004, A filed a suit against his father, D and H for declaration that the suit property was coparcenary property and hence the two Sale Deeds executed by his father D in favour of H were illegal, null and void. A also prayed for a permanent injunction restraining H from further alienating, transferring or creating a charge over the property. During the pendency of the suit, H sold the suit property to P vide a Sale Deed dated 30-10-2007. In the year 2011, the suit was decreed in the favour of A. It was held that the suit property was ancestral coparcenary property of D. H failed to prove that D had sold the property for either legal necessity of the family or for the benefit of the estate. Consequently, the Sale Deeds executed by D in favour of H were declared illegal, null and void.

Now, H along with P has challenged this decision stating that A has no locus to institute the suit, since the coparcenary property ceased to exist after G partitioned the property between his three sons in 1964. A contention has also been raised that A had no right to challenge the Sale Deeds executed in 1999 on the ground that the sale consideration had not been paid, since only the executant i.e., D could have made such a challenge. Decide, whether the suit property was coparcenary property or self-acquired property of D? What is the validity of the Sale Deeds executed by D in favour of H in the year 1999 and the subsequent Sale Deed executed by H in the year 2007 in favour of P? Refer to the relevant provisions and the case laws.

15. W, a Muslim purchased 2 plots of land in the year 1960 and constructed a house on it. In the year 1967, the house (suit property) was mortgaged by W in favour of J for a sum of INR 11,000/-. After 3 years of execution of mortgage, not being able to pay to J, W executed a registered Sale Deed dated 21.12.1970 in favour of J for a consideration of INR 30,000/-. In the year 1978, S, son of W, filed a suit against J for declaration that the mortgage deed dated 21.11.1967 and the Sale Deed dated 21.12.1970 in favour of J is void and consequently sought cancellation of Sale Deed. In the alternative, S also claimed for redemption of the mortgage, in case, the mortgage is held to be valid. It is the case of S that the suit property was gifted to him by W through an Oral Gift Deed dated 30.09.1970 and he was put in possession. On the very same day, a Will was also executed by W in favour of N (step-mother of S) in respect of certain other properties which clearly mentions about the oral gift. S also averred that the Sale Deed was executed by W under undue influence and the consideration was also inadequate.

30 Marks

During evidence, it is established by J that W had sold the suit property for consideration of INR 30,000 and executed the Sale Deed, post which, she had continually exercised her ownership. In fact, based on the registered Sale Deed, J had been filing eviction petitions against various tenants. One such eviction suit was filed by J against S and N also, which was decreed in her favour and against S and N. The appeal filed by S and N against eviction order was also dismissed. J also averred that the suit for declaration was barred by limitation. The suit property was mutated in the name of J after 4 years of execution of Sale Deed. During evidence, S had admitted the fact regarding eviction order and mutation of J's name in the municipal records. The Trial Court, thus, dismissed the suit for declaration holding that the mortgage deed was legal and valid. It was also held that the Sale Deed was executed on payment of due consideration and cannot be assailed on the ground of undue influence or inadequate consideration. The suit for declaration

was also found to be barred by limitation. In regard to Will, the Trial Court held that Will cannot be accepted since it does not bear the signature of the scribe and was not registered.

The decision of the Trial Court was appealed by S. The First Appellate Court rejected the findings and overturned the decision of the Trial Court. It was held that there was no necessity for W to mortgage or sell the suit property for such inadequate consideration and J had failed to discharge the burden cast on her of proving that the Sale Deed was validly executed. It was further held that the Oral Gift and the Will have been duly proved. The High Court affirmed the findings of the First Appellate Court. The High Court also held that S is entitled to redeem the mortgage and directed him to pay INR 11,000/- for redemption of mortgage and also ordered delivery of possession. Decide:

a. Whether the High Court and the First Appellate Court were right in accepting the case of S that W orally gifted the suit property to him and also executed the Will on 30.09.1970 in favour of N and rejected the Sale Deed dated 21.12.1970?

b. Whether the High Court was right in granting the alternative relief of redemption of mortgage deed?