Karnataka Civil Judge (Mains) 2019 (CJR 24/2018 cycle, held March 2019)

Law Paper II · compulsory paper

Framing of Issues and writing Judgment in Civil Case

Option is given to the candidates to write answers either in English or in Kannada. If there is any discrepancy in the questions in English language and Kannada language, the questions as framed in English language shall prevail.

1. Frame proper issues in the following case. 10 Marks

OS No.102/2013

Plaintiffs: 1) Mahesha H M, 2) Sudheer H M

Vs

Defendant: Nagesha H M

Suit is filed on 12.06.2013

Plaint

1. The defendant is the elder brother of Plaintiff No.1 and 2. The father of the plaintiffs H.M.Anantharamaiah died on 28.10.1968 leaving behind him the plaintiffs and defendant as his legal heirs. The mother of the plaintiffs and defendant Smt.Umavathi died on 30.03.1996. After the death of H.M.Anantharamaih, both the plaintiffs and defendant succeeded to the properties of the deceased. The plaintiffs and defendant are living in joint family and suit properties are their joint family properties. Earlier, the suit item No.1 and 2 properties stood in the name of the father of the plaintiffs and defendant and item No.2 is an agricultural land, even now standing in the name of the father of the plaintiffs and defendant. The suit item No.3 property was purchased in the name of plaintiff No.2 on 23.10.1982 when he was minor by his mother as natural guardian. Suit item No.4 property was allotted by the Municipality in the name of mother of the plaintiffs and possession was delivered to her and after her death, they have succeeded to the said property. The suit item No.6 and 7 properties are standing in the name of plaintiff No.1 and defendant. The plaintiffs are entitled 1/3rd share each in the suit properties. But the defendant did not heed the request of the plaintiffs to partition the suit properties and allot their shares. Now the defendant is trying to alienate the suit properties. Hence, this suit is filed for partition.

2. The cause of action arose on 28.10.1968 and 30.03.1996 within the jurisdiction of this Court.

3. Wherefore, the plaintiffs pray that the Hon'ble Court may be pleased to pass a judgment and decree in favour of the plaintiffs:

(a) For partition of the suit schedule properties and to allot the plaintiffs' 1/3rd share each in the suit schedule properties.

(b) For costs and such other and further reliefs as the Court deems fit to grant in the facts and circumstances of the case.

Written statement of defendant

1. The suit is false, frivolous and not maintainable.

2. The plaintiffs are not entitled for the reliefs claimed in the above suit. The plaintiffs are entitled to claim right in the joint family properties only. But all the properties are not the joint family properties.

3. The defendant has contended that his father was doing vegetable business in the market and after his death, he continued the said business and he suffered loss in the business.

4. The defendant has contended that the plaintiff No.2 has not assisted him in continuing the business. The plaintiff No.2 is residing in suit item No.1 property.

5. The plaintiffs have not included 2 items of properties in the above suit i.e., site No.9 in Sy.No.43 measuring 60 x 40 feet situated at Marenahalli Village and house property bearing No.336/18 situated at Marenahalli Village.

6. The defendant has contended that during the life time of his mother Smt.Umavathi i.e., on 16.03.1990, there was partition in the family by registered partition deed and the properties were allotted to all the family members and question of partitioning the family properties once again does not arise.

Hence, the defendant prayed for dismissal of suit.

2. Frame proper issues in the following case. 10 Marks

OS No.10/2013

Plaintiff: Sharada

Vs

Defendant: Narayan

Suit is filed on 14.04.2013

Plaint

1. The plaintiff has purchased 1 acre 3 guntas of land in Sy.No.130 situated at Megara Village, K.M.Pura Taluk, from Rachaiah under sale deed dated 6.8.1980. Subsequent to the sale, katha of Sy.No.130 had been changed in the name of plaintiff and she had been in possession and enjoyment of the said survey number property. Out of 1 acre 3 guntas of land in Sy.No.130, the plaintiff sold 21 guntas of land to one Kaverappa under sale deed dated 9.10.1995 and 10 guntas of land to one Jaganatha under sale deed dated 16.8.1996 and 5 guntas of land to one C.Ramu under sale deed dated 16.8.1996 and retained 7 guntas of land in Sy.No.130 morefully described in the schedule.

2. The defendant claims that he owns property on the western side of plaint schedule property which is in Sy.No.129. The defendant is trying to encroach upon the suit property and on 2.4.2013, the defendant came with the supporters and tried to assume wrongful possession of the suit schedule property by denying the title of the plaintiff. Hence, the plaintiff filed this suit for declaration and permanent injunction.

3. The cause of action arose on 2.4.2013, within the jurisdiction of this Court.

4. Wherefore, the plaintiff prays that the Hon'ble Court may be pleased to pass a judgment and decree in favour of the plaintiff:

(a) For declaration that the plaintiff is the absolute owner in possession and enjoyment of the suit property.

(b) For permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff.

(c) For costs and such other and further reliefs as the Court deems fit to grant in the facts and circumstances of the case.

Written statement of defendant

1. The suit filed by the plaintiff is false and not maintainable.

2. The defendant submits that Sy.No.130, 142, 160/5 of Megara Village, K.M.Pura Taluk is not phoded. The property bearing Sy.No.130 of Megara Village was purchased by the plaintiff from Rachaiah under sale deed dated 6.8.1980 and all these properties were bounded on East: land of Chowdappa, West: Channel and Megara Village gadi, South: water channel and land in Sy.No.131 and North: Megara tank bund.

3. The plaintiff sold a portion of property under sale deed dated 9.10.1995 to Kaverappa with the boundaries on the East land retained by the plaintiff, West: land of Sy.No.129 sold to Chandrashekar, South: land of Parvathi and North: Megara tank bund. The said Kaverappa sold the said property to one M.Manjesh under sale deed dated 15.6.1997.

4. The defendant has contended that he is a GPA holder of M.Manjesh and he is in possession and enjoyment of the land purchased by M.Manjesh. No lands were retained by the plaintiff either in Sy.No.130 or in any other survey numbers. The property shown in the plaint schedule is fictitious property.

5. Suit valuation is incorrect and court fee paid is insufficient.

Hence, the defendant prays for dismissal of suit.

3. Write a considered Judgment on the basis of oral and documentary evidence by giving valid and cogent reasons 80 Marks

In the Court of Civil Judge, K.M.Pura
OS 25/2006

Plaint

Between:

Rajanna, S/o Venkanna
Aged 55 years
Megara Village
K.M.Pura ---- Plaintiff

Vs

Mahadeva S/o Ramadeva
Aged 60 years
Megara Village
K.M.Pura ---- Defendant

Plaint Under Section 26 and Order VII Rule 1 of the Code of Civil Procedure, 1908

The Plaintiff begs to Submit as under:-

1. The addresses of the parties for the purpose of summons, notices, etc., are as stated in the cause title above.

2. The plaintiff was a tenant under the defendant in possession of residential House bearing No.5 of K.M.Pura.

3. On 25.3.2003, the plaintiff surrendered vacant possession of the above said premises to the defendant. At the time of surrendering possession to the defendant, the defendant has repaid a sum of Rs.20,000/- to the plaintiff out of advance amount of Rs.1,00,000/- received by him under rent advance receipt dated 24.8.2001. On 25.3.2003, the defendant has agreed to pay the balance amount of Rs.80,000/- on monthly installments of Rs.10,000/- each in eight installments and has also agreed to pay the interest at the rate of 12% per annum in case he failed to pay the installments regularly. To this effect, the defendant had executed an acknowledgement of debt on 25.3.2003 and had further executed deed of agreement on 2.4.2003.

4. Subsequently, the defendant had failed and neglected to make the payments inspite of repeated requests, demands and registered notice. Hence the suit.

5. Now the defendant is due to the plaintiff as under:

(a) Balance of rent advance Rs. 80,000/-
(b) Interest @ 12% p.a. Rs. 28,800/-
Total Rs.1,08,800/-

6. The cause of action for the suit arose on the date of acknowledgement of debt and agreement and subsequently within the jurisdiction of this Hon'ble Court. The suit is in time.

7. The suit is valued at Rs.1,08,800/- and court fee of Rs.7,241/- is paid on the plaint.

WHEREFORE, the plaintiff prays for a Judgment and decree against the defendant for a sum of Rs.1,08,800/- with court costs and current and future interest at 12% p.a. and to grant such other reliefs as deemed fit in the circumstances of the case in the interest of justice and equity.

Sd/- Advocate of Plaintiff Sd/- Plaintiff
Date: 24.3.2006

Written Statement filed under Order VIII Rule 1 of the Code of Civil Procedure, 1908 on behalf of the defendant

The defendant begs to submit as under:

1. It is true that the plaintiff has vacated and delivered the possession of the premises in question to this defendant. But the further allegation is false. The defendant has refunded the entire advance amount of Rs.1,00,000/- to the plaintiff. Therefore, he is not due to pay any amount to the plaintiff.

2. The defendant had never agreed to pay any amount to the plaintiff nor any interest as alleged in the plaint.

3. The plaintiff had requested the defendant to give a receipt for having delivered possession of the premises. Accordingly, the defendant had agreed and signed the receipts which were in English. The defendant does not know to read or write English language. The plaintiff has obtained the signatures of the defendant by fraud and false representation. Therefore, the documents mentioned in the plaint do not bind the defendant. The plaintiff has misused the innocence and ignorance of the defendant.

4. There is no cause of action for the suit. The suit is not in time and it is barred by limitation.

5. All the other allegations in the plaint which are not specifically traversed herein, are false and denied.

6. The defendant is not liable to pay any amount to the plaintiff. The suit as brought is not maintainable.

7. As the plaintiff has filed the suit knowing it to be false, the defendant may be awarded exemplary costs.

WHEREFORE, the defendant prays that this Hon'ble Court be pleased to dismiss the suit of the plaintiff with exemplary costs in the interest of justice.

Sd/- Advocate for defendant Sd/- Defendant
Date: 29.05.2006

I, the above named defendant do hereby declare that all statement made herein above are all true and correct to the best of my knowledge, belief and information.

K.M.Pura Sd/- Defendant
Date: 29.05.2006

ISSUES

1. Whether the defendant proves that he has refunded the entire advance amount of Rs.1,00,000/- to the plaintiff?

2. Whether the plaintiff proves that the defendant had agreed to pay Rs.80,000/- with interest thereon at 12% per annum to the plaintiff?

3. Whether the defendant proves that the plaintiff had obtained his signatures on the acknowledgment of debt dated 25.3.2003 and agreement dated 2.4.2003 by misrepresentation and fraud?

4. Whether the suit is barred by limitation?

5. Whether the plaintiff is entitled for the reliefs claimed in the suit?

6. What order or decree?

EVIDENCE

PW1:

Affidavit filed by the plaintiff in lieu of examination-in-chief

I, Rajanna S/o Venkanna, aged 55 years, Megara Village, K.M.Pura, do hereby solemnly affirm and states as under:

1. I say that I am the plaintiff in the above suit. I say that the contents of the plaint filed by me may be read as part of the affidavit.

2. I say that I know the defendant, as I was his tenant relating to his residential premises and I had vacated the said house during 2003. I say that on the date, I had surrendered possession of the house to the defendant, he had repaid only a sum of Rs.20,000/-. I say that the defendant was still due to me another sum of Rs.80,000/- and in that behalf the defendant had executed an acknowledgement of debt. I say that the defendant has promised to pay the amount in monthly installments of Rs.10,000/- each, but did not pay even a single installment.

3. I say that the defendant had executed deed of agreement on 2.4.2003. I say that the defendant had agreed to pay interest at the rate of 12% per annum if he fails to pay the amount.

Identified by: Sd/- (Advocate) Sd/- Deponent

Further examination-in-chief by the Advocate for plaintiff:

I have filed affidavit in lieu of chief examination and I have signed the affidavit. The contents of the affidavit are true. I have produced the Rent advance receipt marked as Ex.P1. I have produced an

acknowledgement of debt marked as Ex.P2 and deed of agreement marked as Ex.P3.

Cross Examination by Advocate for defendant:

I had paid Rs.1,00,000/- to the defendant. I do not remember whether I have made payment by cash or cheque. It is false to suggest that I had vacated the house of defendant after giving him lot of trouble. It is false to suggest that after some well wishers intervened and prevailed upon me, I had vacated the house. It is false to suggest that the defendant had refunded the entire sum of Rs.1,00,000/- to me when I had vacated the house. It is false to suggest that since I was compelled to vacate the house, I have created Ex.P2 and Ex.P3 with an intention to wreak vengeance on the defendant. It is false to suggest that I took signatures of the defendant to Ex.P2 and P3 by misrepresenting that it was only a receipt for having obtained possession of his house from me and that I had played fraud on him. I do not know whether the defendant knows to read and write English.

Re-examination: Nil

R.O.I & A.C. Sd/- Civil Judge

DW1:

Affidavit in lieu of examination-in-chief filed by the Defendant

I, Mahadeva S/o Ramadeva, aged 60 years, Megara Village, K.M.Pura, do hereby solemnly state and affirms on oath as follows:

1. I say that I know the plaintiff. I say that he had taken my house on lease. I say that he had paid an advance of Rs.1,00,000/-.

2. I say that I had leased out the house to the plaintiff about five years back. I was then in a rented house. I had vacated the same due to the pressure of my landlord. Therefore, I had asked the plaintiff to vacate my house. Plaintiff vacated my house three years back and I have been residing therein since three years. I had vacated my rented house four days prior to plaintiff vacating my house.

3. I say that a day prior to plaintiff vacating my house, I had refunded the sum of Rs.1,00,000/- to him.

4. I say that I cannot read or write English. I had not entered into any agreement with plaintiff, though Ex.P3 purports to be an agreement and it bears my signature. I was asked to sign in token of my having got back possession of the house from the plaintiff. The contents of the alleged agreement were not read over and explained to me.

5. I say that as the suit is filed with vengeance knowing it to be false, the same may be dismissed with exemplary costs.

Identified by: Sd/- (Advocate) Sd/- Deponent

Further examination-in-chief by the Advocate for defendant:

I have filed affidavit in lieu of chief examination and I have signed the said affidavit. The contents of the affidavit are true.

Cross examination by the Advocates for Plaintiff:

Now I see the advance receipt dated 24.8.2001 which is Ex.P1. It bears my signature as per Ex.P1(a). I have document to show the payment of Rs.1,00,000/- to the plaintiff as I had received the rent advance from my own tenant relating to my newly constructed third floor. It is true that Ex.P2 dated 25.3.2003 bears my signature, but I did not undertake to pay any balance of Rs.80,000/- there under.

It is false to suggest that I had entered into deed of agreement with plaintiff as per Ex.P3. But it bears my signature which is at Ex.P3(a). I do not have a copy of Ex.P3. I do not know any of the attestors of Ex.P3. It is false to say that I had refused to accept the legal notice. My address on the cover, which is now marked as Ex.P4 is correct. It is false to suggest that I am due to pay Rs.80,000/- to the plaintiff towards rent advance and Rs.28,800/- towards interest thereon.

Re-examination: Nil

R.O.I & A.C. Sd/- Civil Judge

DW2:

Affidavit in lieu of examination-in-chief filed by the witness

I, Marappa S/o Devappa, aged 41 years, residing at Shankarapura, do hereby solemnly state and affirm on oath as follows:

1. I say that I know the plaintiff. I was purchasing cement from the shop of plaintiff.

2. I say that on 2.4.2003, I had visited my daughter's house at Megara Village and had stayed over night. On that day, I was proceeding to market at about 7.00 p.m. As I was passing by the side of the shop of plaintiff, I was called by the plaintiff. He had told me that he had taken the house of defendant on rent and he had vacated it. I asked the plaintiff as to what was the rent advance. Plaintiff told me that he had paid rent advance of Rs.1,00,000/-. He also told me that he had received the said rent advance and that he had to vacate the house. Thereafter he took me to the house of the defendant in occupation of the plaintiff and immediately vacated the house. Then, at the instance of plaintiff, I got written a "Karar" through some one and attested it. Plaintiff handed over the key of the house to the defendant. Then I proceeded to market.

3. I say that I do not know to read or write English. The contents of Ex.P3 are not true. The contents were not read over and explained to me at the time I had signed the same.

Further examination-in-chief by the Advocate for defendant:

I have filed affidavit in lieu of chief examination and I have signed the said affidavit. The contents of the affidavit is true.

Cross examination by the Advocates for Plaintiff:

I know the defendant since 10 to 12 years. He was working in a ready made cloth shop in K.M.Pura. Some person had written Ex.P3. Some 2 or 3 other persons were also present there then. I do not know their names. I did not ask the plaintiff or the scribe of Ex.P3 to read and explain its contents to me. The key was handed over in my presence. I signed Ex.P3 in the house of defendant which was in occupation of plaintiff. I do not know the names of others who had signed Ex.P3 in my presence. In my presence, nothing was paid by the plaintiff to the defendant nor anything by the defendant to the plaintiff.

Re-examination: Nil

R.O.I & A.C. Sd/- Civil Judge

DOCUMENTS

Ex.P1: Rent Advance Receipt

I, Mahadeva S/o Ramadeva being the owner of House No.5 of K.M.Pura had agreed to lease out the said premises to Rajanna S/o Venkanna on a monthly rent of Rs.10,000/-(Rupees ten thousand only)

Now I have received a sum of Rs.1,00,000/- towards rent advance/security deposit which shall not carry any interest, except in case of non-refund of the same immediately, in which case, it shall carry interest at 12% per annum.

Place: K.M.Pura Sd/- Mahadeva
Date: 24.8.2001

Ex.P2: Acknowledgement of debt

This the 25th day of March 2003, I Mahadeva S/o Ramadeva have repaid Rs.20,000/- (Rupees twenty thousand only) out of rent advance amount of Rs.1,00,000/- paid by Rajanna S/o Venkanna under Rent Advance receipt dated 24.08.2001. The balance of Rs.80,000/- (Rupees eighty thousand only) will be paid at Rs.10,000/- per month in eight installments. I hereby bind myself for the balance amount of Rs.80,000/-.

I have taken possession of House No.5, K.M.Pura and I have received the rent of the premises up to date.

Sd/- Mahadeva

Witnesses: 1) Basappa 2) Narayanappa

Ex.P3: Deed of Agreement

This deed of agreement is executed on this the 2nd day of April 2003 between Sri Mahadeva S/o Ramadeva, aged 57 years, Megara Village, K.M.Pura hereinafter called as 1st party, which shall mean and include his legal representatives, executors and assignees on the one part and Sri Rajanna S/o Venkanna, aged 52 years, Megara Village, K.M.Pura hereinafter called as 2nd Party, which shall mean and include his heirs legal representatives, executors and assignees on the other part present as follows:-

Whereas the 1st party is the lawful owner and landlord of House No.5, K.M.Pura and 2nd party is the tenant in respect of the said premises, who had paid rent advance of Rs.1,00,000/- to the 1st party in respect of said premises. 1st party landlord has repaid a sum of Rs.20,000/- (Rupees twenty thousand only) by cash on 25.3.2003 to the 2nd party and agrees to pay the balance rent advance of Rs.80,000/- (Rupees eighty thousand only) in eight equal installments on 1st of every calendar month without fail. The 1st party further agrees to pay interest at 12% per annum in case of default of any one of the monthly installments.

In witness whereof 1st party and 2nd party have set their hands to the deed of agreement at K.M.Pura on this 2nd day of April 2003.

Sd/- (Mahadeva) Sd/- (Rajanna)

Witnesses: 1) Narayanappa 2) Marappa

Ex.P4

Registered postal envelope containing the address of defendant which was returned to plaintiff's Advocate with an endorsement of "refused".

Ex.P5

Copy of the demand notice dated 5.1.2006 got sent by the Plaintiff to the defendant demanding the balance rent advance of Rs.80,000/- with interest at 12% per annum and Advocate's fee of Rs.1,000/-.

DOCUMENTS FOR DEFENDANT - Nil