Kerala Judicial Service Mains 2007 · Question papers

Paper II · compulsory paper

Total marks: 200 · Time: 3 hours

I. Answer any three of the following questions: 15 marks

(1) What are the conditions to be satisfied for invoking the principle of constructive res judicata?

(2) What is framing of issues? What materials is the Court required to take into consideration while framing issues in a suit?

(3) Discuss the procedure regarding amendment of pleadings and the consequence of failure to effect the amendments.

(4) What are the different modes of execution of decrees?

(5) What are the different modes of alternate dispute resolution?

II. Answer any two of the following questions: 15 marks

(1) After deciding to return the plaint on the ground that it has no jurisdiction to entertain the same, can the Court pass an interim order to be in force until the plaintiff is able to approach the appropriate forum, by invoking its inherent power? Give reasons.

(2) The judgment debtor filed an application under Order XXI Rule 90 of the Code of Civil Procedure to set aside the sale. That application was dismissed for default. The judgment debtor then filed an application to set aside the dismissal and to restore the application to set aside the sale. The decree holder opposed the application contending that Order IX Rule 9 has no application and, therefore, the application for restoration is not maintainable. Write a brief order on the maintainability of the application.

(3)(a) Under what circumstances and provision of law can trial of suit be stayed?

(b) There are two suits pending between the same parties in relation to the same subject matter. One of the parties contends that the trial of the earlier of the suits should be stayed till the later of the suits is finally disposed of. The opposite party contends that the two suits should be tried jointly and decided by a common judgment. Write a brief order deciding the two contentions.

III. In what all circumstances can a suit be instituted beyond the period prescribed in the Schedule to the Limitation Act? Explain on whom is the burden to show that a suit is or is not barred by limitation. If the defendant/respondent does not raise the plea of limitation in his pleadings, can he be heard on that question? 20 marks

IV. Answer any three questions: 15 marks

(1) When is the right to immovable property extinguished?

(2) What is recurring cause of action?

(3) What is the period of limitation for suit for possession of immovable property based On previous possession and not on title, while in possession of property has been dispossessed, and the starting period of limitation?

(4) What are the different ways of dissolution of a firm?

(5) What is the implied authority of a partner as an agent of the firm? What are the limitations, if any, on his right?

V. Write short notes on the following: 20 marks

(1) Acknowledgment

(2) Benami transactions and sham transactions

(3) Contract of indemnity

(4) Novation of contract

(5) Partnership at will

VI. Answer any three questions: 15 marks

(1) When is time the essence of a contract for sale of immovable property? Give illustration of such a contract.

(2) What are void and voidable contracts? Give one illustration of each.

(3) Explain the distinction between liquidated damages and penalty clauses, with one illustration of each.

(4) Explain the principle of quantum meruit?

(5) What are the general obligations of the parties to a contract?

VII. Answer the following: 15 marks

(A) What is the proper stamp duty for the following documents?

(1) Articles of Association :

(2) Gift Deed

(3) Instrument of partition whereby co-owners of property divide such property in severalty

(B) A document executed in Tamil Nadu and bearing correct stamp duty payable in that State is received subsequently in Kerala where the stamp duty payable on the document (if executed in Kerala) is higher than in Tamil Nadu. Can the document be received in evidence in a Court in Kerala?

VIII. Give your decision on any one of the following disputes: (the write up shall not exceed 250 words) 20 marks

(1) A Christian father who lived in Kottayam District died on 1.5.1951. He left behind him widow, one son and three daughters. All the daughters were given in marriage, during the life time of the father and 'Sthreedhanam' was paid to all of them. The widow (mother of the children) died in 1965. One of the daughters filed civil suit in 1986 for partition of the properties left behind by the father. The defendant-son raised various contentions including limitation and adverse possession besides his exclusive entitlement of the properties of the father. Is the plaintiff entitled to a decree for partition? If not, why? If so, to what extent?

(2) A entered into an agreement with B for conducting a liquor shop for which A advanced Rs. 5 lakhs. B invested the money and carried on the business in the liquor shop for about a month. But the Excise officials confiscated all the articles in the shop and prevented B from carrying on the liquor business for want of permit from the department concerned. When A sued B for return of the money advanced, B raised a contention that the agreement was ab-initio-void. How would you deal with the suit?

IX. Plaintiff obtains a money decree on 10.1.2004 against the defendant who lives abroad. Defendant is informed about the decree and details thereof, by his counsel. On 10.1.2004, the defendant sends a bank draft for the full amount of the decree to the plaintiff. Plaintiff encashes the bank draft on 20.1.2004 and immediately sends a letter to the defendant acknowledging receipt of the full decree amount. On 2.1.2007, plaintiff files execution petition for realisation of the decree amount from the defendant, ignoring the payment made by the bank draft. Defendant contacts his counsel and shows him the letter of acknowledgment and subsequently files objection to the Execution Petition contending that full decree amount was paid as aforesaid. When the Court asks decree holder's counsel about the plaintiffs acknowledgment, the counsel consults plaintiff who is present in Court and conveys to the Court the statement of the decree holder that the plaintiffs acknowledgment is true and genuine. How is the Executing Court to proceed in the matter? Write a brief order referring to the various provisions of law having a bearing on the matter. If the Court is justified in denying relief to the judgment debtor, what is his remedy? 10 marks

X. Answer any three of the following questions: (including at least one from question Nos. 4 and 5) 15 marks

(1) What is the remedy of a person when his suit for possession under Section 6 of the Specific Relief Act is dismissed?

(2) Discuss ‘readiness and willingness to perform the contract according to its true construction’.

(3) Whether a trespasser, who is in possession of land for a number of years, can successfully file a suit for permanent injunction if there is a threat of dispossession by the true owner?

(4) When can cancellation of written instrument be made?

(5) When can Court refuse to pass a declaratory decree? '

XI. What is the Court fee payable on the following type of suits? 10 marks

(1) Partition suit

(2) Suit for specific performance of contract for sale

(3) Suit for recovery of immovable property from a defendant

(4) Suit for redemption of mortgage

(5) Suit for permanent injunction restraining the defendant from conducting a meeting

XII. The subject matter of dispute consists of a tiled house with 6 rooms, 75 cents of land with 15 coconut trees, 15 arecanut trees, 4 mango trees, 3 jack trees and 10 miscellaneous trees. The same is leased by A, the owner to B for a period of one year under a registered lease deed stipulating annual rent and prohibiting B from effecting improvements 15 marks

(a) Is the subject matter ‘Building’ as defined in Kerala Buildings (Lease and Rent Control) Act, 1965?

(b) If A desires to evict B, is he to approach the Land Tribunal or Rent Control Court or the Civil Court? Give reasons.

OR

XIII. (a) What are the various grounds on which an individual landlord of a house can maintain an eviction petition against a tenant under the Kerala Buildings (Lease and Rent Control) Act, 1965?

(b) In respect of which of the grounds, is it mandatory to send a registered notice to the tenant under the provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965?

XIV. Answer the following: 15 marks

(1) What are the pecuniary jurisdiction of the District Court, Subordinate Judge's Court and Munsiff's Court in Original Suits?

(2) When are Judges not required to try suits and appeals?

(3) Discuss the relevant provisions in the Kerala Civil Rules of Practice in regard to the following:

(a) Plaint or Original Petition on behalf of a minor or person under disability

(b) Inspection of books of accounts by parties in a suit for dissolution of partnership

(c) Application for copies of records by persons not parties to the suit or proceedings

(d) Execution of decree against the State if

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