Kerala Judicial Service Mains 2013 · Question papers

Paper IV · compulsory paper

Marks: 100 · Duration: 3 hours

Part I

Answer all questions. (15 × 1 = 15 marks)

(1) The authority empowered to fix scales of monthly allowances payable for the subsistence of judgment-debtors is [1 mark]

(A) the court which passed the decree
(B) the State Government
(C) the Central Government
(D) the High Court

(2) Which of the following is not common to res judicata and res sub judice? [1 mark]

(A) Issue must be directly and subsequently in issue
(B) Does not affect the institution of the suits
(C) Parties must be litigating under the same title
(D) Applies only to the subsequently instituted suit

(3) Mark the odd one [1 mark]

(A) Sale without fixing upset price
(B) Sale conducted not in the presence of the Judge
(C) Sale without attachment
(D) Sale without proclamation

(4) If an application to sue as an indigent person does not disclose any cause of action, the court shall

(A) dismiss it [1 mark]
(B) return it
(C) reject it
(D) allow amendment

(5) In which of the following cases leave of the court is necessary? [1 mark]

(A) To compromise a suit in which the plaintiff is a minor
(B) To sue as the next friend of a minor
(C) When a plaintiff opts to abandon the suit on his attaining majority
(D) When a decree in favour of a minor is sought to be executed

(6) A final decree effecting a partition of partnership assets is engrossed on [1 mark]

(A) revenue stamp paper
(B) court fee stamp paper
(C) non-judicial stamp paper
(D) plain paper

(7) The time between which sale of immovable property shall be held in court auction is [1 mark]

(A) 11.00 am and 12 noon
(B) 1.45 pm and 3.15 pm

(C) 2.15 pm and 3.30 pm
(D) 2.00pm and 5.00 p.m

(8) The ministerial officers of a civil court shall perform the duties imposed on them by [1 mark]
(A) the High Court
(B) the State Government
(C) the District Judge
(D) the Presiding Officer of the Court

(9) The offence which is triable only by a Judicial Magistrate of the First Class is the offence under section [1 mark]
(A) 312 IPC
(B) 325 IPC
(C) 354A IPC
(D) 380 IPC

(10) In a complaint case the Magistrate takes cognizance of the offence when he [1 mark]
(A) issues process to the accused
(B) decides to record the sworn statement of the complainant
(C) records the plea of the accused
(D) frames charge against the accused

(11) What persons may not be charged jointly? [1 mark]
(A) Persons accused of the same offence committed in the course of the same transaction
(B) Persons accused of an offence and persons accused of attempt to commit it
(C) Persons accused of different offences committed by them jointly within the period of 12 months
(D) Persons accused of different offences committed in the course of the same transaction

(12) Choose the wrong statement [1 mark]
(A) Warrant case includes a case relating to an offence punishable with imprisonment for a term of two years and above
(B) Police report means a report filed under section 173 (2) of the Cr.P.C
(C) Judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath
(D) Notification means a notification published in the official gazette

(13) Which is the document a copy of which may be given to a stranger to the proceedings without the orders of the court? [1 mark]
(A) Deposition of a witness
(B) Document exhibited in evidence
(C) Judgment
(D) Court charge

(14) An accused detained in a hospital is not in a position to be moved and produced before the Magistrate. What shall the Magistrate do to extend the period of remand? [1 mark]
(A) He shall call for a report from the police and order extension of the remand
(B) He shall order extension of the remand when the accused is produced before the court after discharge from the hospital

(C) He shall call for a report from the doctor and order extension of the remand
(D) He shall see the accused at the hospital and order extension of the remand

(15) In which of the following cases the court need not frame a formal charge? [1 mark]
(A) Sec.384 IPC
(B) Sec.338 IPC
(C) Sec.324 IPC
(D) Sec.332 IPC

Part II

Answer any 11 questions. Answers shall not exceed 160 words (1½ pages). If more than 11 questions are answered the first 11 answers alone will be evaluated. (11 × 5 = 55 marks)

(16) Briefly explain the procedure in an application for passing a final decree in a partition suit? [5 marks]

(17) Write notes on a) Admission and marking of documents in civil cases b) Return of documents in civil cases [5 marks]

(18) a) What is the procedure to be followed in returning a plaint for presentation before the proper court? b) In the judgment after trial a court found that the suit was barred by the law of limitation. In view of that finding the court observed that the other issues did not arise for consideration. Comment [5 marks]

(19) a) Write a note on appointment of receivers, their duties and enforcement of their duties b) An advocate appointed for local inspection files a report containing his inferences and conclusions only. Comment [5 marks]

(20) a) Write a note on denial in written statement of the allegations in the plaint b) When a suit was taken up for trial, the defendant who was present in the court did not take part in the trial. The Munsiff recorded the evidence of the plaintiff and decreed the suit. The defendant filed an application under Or.9 r.13 of CPC. The Munsiff dismissed it in limine holding that the judgment was on merits. Comment [5 marks]

(21) What is the procedure prescribed in CPC for arrest and detention of judgment-debtor in execution of a money decree? [5 marks]

(22) a) The purchaser of an immovable property in a court auction failed to deposit 25% of the bid amount. The court granted him adjournment to deposit the amount. Comment b) An immovable property was sold in court auction in execution of a decree on 1.1.2012. The court confirmed the sale on 1.7.2012. The purchaser executed a sale deed in respect of the property in favour of a stranger on 1.2.2012. It is contended that on the date of execution of the sale deed the purchaser in court auction had no title as the sale was confirmed only on 1.7.2012. Decide [5 marks]

(23) a) The plaintiff moved an application for attachment before judgment of an immovable property. The Munsiff passed the following order "Attach and report". Comment b) The first order in an application for temporary injunction reads thus "Issue injunction as prayed for, and notice". Comment [5 marks]

(24) What is the procedure to be followed by a Magistrate when an accused has absconded? [5 marks]

(25) Describe the mode of recording confession? [5 marks]

(26) Write notes on a) Forfeiture of bond under the Cr.P.C b) Disposal of property under sections 451 and 452 Cr.P.C [5 marks]

(27) a) A Magistrate awarded a sentence of fine of ten thousand rupees and directed the accused to pay twenty thousand rupees as compensation to the victim Comment and discuss the provision of law b) A Magistrate awarded a sentence of fine of five thousand rupees and directed to undergo simple imprisonment for one month in default of payment of fine Since the accused failed to remit the amount the Magistrate immediately sent the accused to jail. Comment [5 marks]

(28) Write notes on a) Power of the court to examine the accused b) Discharge of accused by Magistrate [5 marks]

(29) a) A Magistrate forwarded for enquiry under section 202 Cr.P.C a complaint alleging the offence under section 376 IPC. Comment b) A Magistrate started trial of a case involving the offence under section 323 IPC as a warrant case. In the course of the trial he converted it into a summons case. Discuss the legal provisions relating to it [5 marks]

(30) Write notes on a) Examination of witnesses by police b) Use in evidence of statements given to the police by witnesses [5 marks]

Part III

Answer both questions. (15 × 2 = 30 marks)

(31) Write judgment (Name of the court alone to be indicated. Other details in the cause title and ' appendix are not necessary O.S.No.300/2013 (Filed on 20.5.2013

Parties

Plaintiff - Rajan Defendant — Govindan

Plaint

The plaintiff is a businessman. He owns two jewellery shops and three textile shops in Kochi. His monthly income is ten lakh rupees. The defendant is doing some business. He is a good friend of the plaintiff. The defendant had a setback in his business in the year 2008. On 21.9.2008 he approached the plaintiff for a loan of fifteen lakh rupees. At that time that much amount was not readily available with the plaintiff at his house. Therefore he was unable to give fifteen lakh rupees as loan. However, he offered to lend five lakh rupees. The defendant borrowed the said amount from the plaintiff on that day and executed a promissory note. Although in the promissory note the rate of interest is shown as 12% per annum, it was orally agreed that the defendant would pay interest at the rate of 18% per annum if the liability was not discharged within one year. On 20.6.2011 the defendant came to the house of the plaintiff and requested for some more time to discharge the liability. On that day the defendant made an endorsement on the back of the promissory note that he would pay the amount of five lakh rupees with interest at the agreed rate at the earliest. But he failed to discharge the liability. On 7.4.2013 the plaintiff caused the issuance of a lawyer's notice demanding the principal amount with interest at the rate of 18 % The defendant received the notice but did not discharge the liability. Nor did he send any reply. The plaintiff is entitled to a decree for Rs.9,51,000/-; the split up being (i) the principal amount — Rs.5,00,000/-, (ii) interest for five years from 21.9.2008 to the date of suit — Rs.4,50,000/- and (iii) notice charge — Rs.1,000/- A decree may be granted to the plaintiff for Rs.9,51,000/- with interest thereon at 18 % per annum from the date of suit till realization and with costs

Written statement

All the allegations in the plaint except those which are expressly admitted hereunder are denied. The suit is not maintainable in law or on facts. The plaintiff was never a friend of the defendant. The

former is a stranger to the latter. There has been no transaction between them. The plaintiff is not a businessman. He is a person without any avocation in life. The shops referred to in the plaint belong to his father. The defendant is doing business but he never had any set back in his business. The defendant did not approach the plaintiff on 21.9.2008 for any loan. Nor did the defendant borrow five lakh rupees from the plaintiff on that day. No promissory note was executed by the defendant in favour of the plaintiff on 21.9.2008. As there was no transaction between the parties, there was no occasion for the defendant to acknowledge any liability. He did not make any endorsement on the back of the alleged promissory note. The defendant received the suit notice. He could not issue reply notice since the suit notice was misplaced. The plaintiff is a greedy person He is an expert in fabricating documents. It is understood that the plaintiff had filed many suits against many persons on the strength of concocted documents and suffered defeat in all courts. The claim of the plaintiff against the defendant is false and vexatious to the knowledge of the plaintiff and therefore he is liable to pay three thousand rupees to the defendant as compensatory costs. The suit document is not supported by consideration. The suit is barred by the law of limitation. The suit deserves to be dismissed with costs

Evidence

PW1 and DW1 are examined Exts A1, A1 (a) & A2 are marked Ext.A1 — Promissory note dated 21.9.2008 J I owe you Rs.5,00,000/-(Five lakh rupees only I shall pay you the same on demand with interest @12% per annum Ext.A1(a) — Endorsement dated 20.6.2011 on the back of Ext.A1 I shall discharge my liability under this promissory note with interest at the agreed rate at the earliest Ext.A2 — Suit notice - It contains almost all the allegations in the plaint

PW1 (Plaintiff)

Filed affidavit in lieu of examination-in-chief reproducing the allegations in the plaint and denying the allegations in the written statement

Cross-examination

The defendant is not a stranger to me. We are friends. I know him for the last about 20 years. I deny that I am speaking falsehood. do not know the details of the business of the defendant. All that I know about his business is that he had a setback in 2008. The defendant told me so when he approached me for the loan He came to me on 21.9.2008 and borrowed the amount on the same day. The amount of five lakh rupees was kept in my house. Usually I do not keep that much money in my house. It must be for some business purpose I had kept that much money in my house on that day. I have three Savings Bank accounts have not produced any document to prove my bank balance. The promissory note is in my handwriting. The defendant signed it in my presence. Ext.A1 (a endorsement is also in my handwriting. That was also signed by the defendant in my presence . I have not stated in the plaint that Exts A1 and A1 (a) are written in my handwriting. There is no particular reason for not stating so. The rate of interest shown in Ext.A1 is only 12%. I have not fabricated any document so far This is the second suit filed by me so far. The other suit was filed against one Hari and it was decreed. I deny that Exts A1 and A1 (a) do not contain the signature of the defendant

Re-examination - Nil

DW1 (Defendant)

Proof affidavit filed. The contentions in the written statement are reiterated and the allegations in the plaint are denied in the proof affidavit

Cross-examination

I do not know whether the plaintiff is a businessman or not. I do not know anything about his income. The jewellery shops and textile shops mentioned in the plaint were started by the plaintiff's father Kumaran 30 years ago. Kumaran died 10 years ago. The plaintiff is the only son of Kumaran. The plaintiff has no sisters. Plaintiffs mother predeceased Kumaran How do you know all these details (Q Plaintiff is a friend of mine (A In 2008 my business was dull. I did not borrow any money from the plaintiff. The signature in Ext.A1 is mine. The signature in Ext.A1 (a) is also mine. I do not remember how I happened to sign Exts. A1 & A1 (a). Nothing had been written in Exts A1 & A1 (a) when I signed them. The plaintiff got those documents signed by me when I was busy with some other work. I have not taken such a contention in the written statement. I do not remember on which days my signatures were taken in Exts A1 & A1 (a). I signed those papers not on the same day. I have contended in the written statement that I did not borrow five lakh rupees and did not execute promissory note on 21.9.2008. I did not state in the written statement that I did not borrow the amount or sign the document on any other date Did you orally agree to pay 18 % interest (Q I did not borrow any money to pay interest (A I did receive the notice issued by the plaintiff. gave the said notice to my advocate for the purpose of sending reply. I am not sure whether my lawyer issued reply notice. I have not seen any other document fabricated by the plaintiff. People in the locality say that he is an expert in fabricating documents have no idea whether the plaintiff had filed any other suit against anybody. put it to you that you borrowed five lakh rupees from the plaintiff on 21.9.2008 and executed Ext.A1 promissory note (Q) I deny (A). I deny that acknowledged the liability on 20.6.2011 by making Ext.A1 (a) endorsement on the back of Ext.A1

Re-examination - Nil

[15 marks]

(32) a) Remand report submitted by the Investigating Officer in Crime No.2/2013 of Ernakulam North Police Station This case was registered on the basis of the first information statement recorded by HC 3280 at the District Hospital, Ernakulam at 7.00 pm on 1.1.2013. On getting information from the Hospital the Head Constable met the complainant Sukumari and recorded her statement at ward No.7 of the hospital. The Head Constable came back to the police station and registered the case. The complainant alleged that on 30.12.2012 at about 8.30 pm she was going to her house along a public road, when the accused uttered obscene words and assaulted her with an iron rod which is a deadly weapon. Sukumari sustained a lacerated wound on her forehead and fracture of her right radius. The accused absconded after the incident. He was arrested by me today. He is involved in two other criminal cases. Two witnesses questioned by me have stated that they saw the incident. If the accused is released on bail, there is every chance of his > influencing or threatening the witnesses. He may be remanded to judicial custody for 15 days Sd/- SHO Write an order allowing the bail application moved by the counsel for the accused

(b) Given below is an extract of the report filed by the Police U/s. 173(2) Cr. P. C. Frame a charge in English

"ഈ കേസിലെ പ്രതിയ്ക്ക് ഒന്നാം സാക്ഷി കുമാരൻ പ്രതിയുടെ മകളെ അപമാനിച്ചതിൽ വച്ചുള്ള മുൻവിരോധം നിമിത്തം ടിയാനെ ദേഹോപദ്രവം ഏൽപ്പിക്കണമെന്നുള്ള ഉദ്ദേശത്തോടും, കരുതലോടും കൂടി 1-1-2011ന് വൈകിട്ട് 4 മണിയ്ക്ക് ടി കുമാരൻ കുടുംബമായി താമസിക്കുന്ന കണയന്നൂർ താലൂക്കിൽ എറണാകുളം വില്ലേജിൽ ഷൺമുഖം റോഡിൽനിന്ന് അരകിലോമീറ്റർ തെക്കുമാറിയുള്ള ത്രിവേണി റോഡിന്റെ വടക്കുവശം സ്ഥിതിചെയ്യുന്ന കിഴക്ക് ദർശനമായിരിക്കുന്ന പുത്തൻപുര വീടിന്റെ പിൻവശം വരാന്തയിൽ അതിക്രമിച്ചുകയറി മേൽപ്പടി കുമാരനെ എങ്ങും പോകാൻ അനുവദിക്കാതെ ഷർട്ടിന്റെ

കോളറിൽ കുത്തിപ്പിടിച്ച് തടഞ്ഞുനിർത്തി നെഞ്ചത്ത് ഇടതുവശം കൈകൊണ്ടിടിച്ചു വേദനിപ്പിച്ചും, മൂക്കിന് കൈചുരുട്ടി ഇടിച്ചതിൽവച്ച് മൂക്കിന്റെ അസ്ഥി പൊട്ടുന്നതിനിടയാക്കിയും കുറ്റം ചെയ്തിരിക്കുന്നു."

[15 marks]

De Facto IAS