Kerala Judicial Service Mains 2016 · Question papers

Paper IV · compulsory paper

Marks: 100 · Duration: 3 hours

Part I

Answer all the questions. Answers to the questions in this Part should be marked only in the OMR Answer Sheet. Answers marked/written elsewhere will not be valued. (15 × 1 = 15 marks)

1. Which of the following is neither a decree nor a deemed Decree? 1 marks

A. an order under Sec.144 CPC directing restitution.
B. an order under Order-VII Rule-11 CPC rejecting a plaint.
C. an order under Order-IX Rule-8 CPC dismissing a suit for default.
D. an order under Order-XXI Rule-98 CPC dismissing an application to remove obstruction.

2. A counter-claim cannot be entertained unless it is for any ascertained sum of money. A counter-claim can be entertained even if it is in respect of a cause of action accrued to the defendant after the filing of the suit. 1 marks

A. Both the above statements are correct.
B. Both statements are wrong.
C. The first statement is correct, but the second one is wrong.
D. The second statement is correct, but the first one is wrong.

3. A caveat shall remain in force from the date of its lodging for a maximum period of 1 marks

A. 90 days
B. 75 days”
C. 60 days
D. 30 days

4. Identify the wrong statement. 1 marks

A. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect.of the cause of action.
B. Where a plaintiff omits, except with the leave of the court, to sue in respect of any portion of his claim, he shall not afterwards sue in respect of the portion so omitted.
C. A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs.
D. If a person entitled to more than one relief in respect of the ‘Same cause of action omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

5. Which court is the Principal Civil Court of original jurisdiction? 1 marks

A. Court of Small Causes
B. District Court

C. Munsiff's Court
D. Court of Subordinate Judge

6. Choose the correct statement. 1 marks

A. An attachment under a precept shall not continue for more than three months unless, by order, the period of attachment is extended within the said three months.
B. A woman shall not be arrested or detained in civil prison in execution of any decree.
C. On the application of the decree-holder the court may order execution of the decree by appointing a receiver.
D. A warrant for the arrest of a judgment-debtor shall not be issued by the court unless his means to pay the decree-debt is proved by the decree-holder.

7. Mark the original document which shall not be marked as an exhibit. 1 marks

A. Book-IV produced by any Sub-Registrar.
B. Banker's Book produced by any bank.
C. Any document produced from the custody of the Speaker ofa Legislative Assembly.
D. Any document produced by the Registrar-General of a High Court.

8. Police Officers superior in rank to an officer in charge of a Police station:- 1 marks

A. cannot investigate a crime
B. cannot file the final report under Section 173(2) Cr.P.C.
C. cannot exercise all the powers of the officer in charge of a Police Station
D. can exercise all the powers of an officer in charge of a Police station

9. Fora successful claim under Section 85(3) Cr.P.C. To get delivery of a property attached:- 1 marks

A. the person has to approach the court within three years of the attachment
B. the person has to approach the court within two years of the attachment '
C. the person has to approach the court within one year of the attachment
D. the person can approach the court at any time after the attachment

10. Which of the following is not correct? Before commitment of a case instituted otherwise than on a police report, to the Court of Session, the Magistrate:- 1 marks

A. shall issue process under Section 204 Cr.P.C.
B. shall comply with Section 207 Cr.P.C.
C. shall furnish to the accused statements and confessions, if any recorded.
D. shall furnish to the accused statements recorded under Section 200 or Section 202 Cr.P.C.

11. Which one of the following is correct? 1 marks

A. a complaint against Police Officer cannot be forwarded for investigation to an officer in charge of a police station under Section 156(3) Cr.P.C.

B. a complaint against Police Officer can be referred to an officer in charge of a police station under Section 202 Cr.P.C.
C. a complaint against Police Officer shall not be referred to an officer in charge of a police station under Section 202 Cr.P.C.
D. None of the above is correct.

12. Which of the following is not correct? A Magistrate can order delivery of property under Section 457 Cr.P.C., 1 marks

A. when such property is produced before court during an inquiry or trial
B. respecting the custody and production of such property
C. to the person entitled to the possession thereof
D. when such property is not produced before court during an inquiry or trial

13. Which of the following is an irregularity which vitiates proceedings, if a Magistrate not empowered by law to do any of the following things does it erroneously in good faith:- 1 marks

A. takes cognizance of an offence under Sec.190(1)(a) Cr.P.C.
B. takes cognizance of an offence under Sec.190(1)(b) Cr.P.C
C. takes cognizance of an offence under Sec.190(1)(c) Cr.P.C.
D. tenders pardon under Sec.306 Cr.P.C.

14. What is the period of limitation for taking cognizance of an offence under Section 326 IPC. 1 marks

A. six months
B. one year
C. three years
D. no period of limitation.

15. In computing the period of remand of 15 days mentioned in Section 167(2) Cr.P.C:- 1 marks

A. the day on which the remand order is made and the day on which the accused is ordered to be produced before court shall be excluded
B. the day on which the remand order is made and the day on which the accused is ordered to be produced before court shall be included
C. the day on which the remand order is made alone shall be included
D. the day on which the accused is ordered to be produced before court, alone shall be included

Part II

Answer any 11 questions. Answers shall not exceed 160 words (1½ page). If more than 11 questions are answered the first 11 answers alone will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book. (11 × 5 = 55 marks)

16. A plaint was rejected for non-payment of balance court fee. Another suit was abandoned by the plaintiff, resulting in its dismissal. Is there any difference in the

matter of filing a fresh suit on the same cause of action in the above instances? Discuss the relevant provisions. 5 marks

17. Under Order 26 of the CPC what is the significance of a commission report? Is the statement that any number of commissioners can be deputed to collect evidence in respect of a disputed fact correct? Explain. 5 marks

18. Explain the concepts: (i) Pecuniary jurisdiction. Gi) Territorial Jurisdiction. (iii) Jurisdiction relating to the subject matter. What is the effect of a decree passed disregarding each one of them? -~6- ; 5 marks

19. What are the rules regulating return of documents admitted in evidence in a civil case? 5 marks

20. What are the reasons for which a civil court can order detention of a judgment-debtor in prison in execution of a decree for payment of money? 5 marks

21. Write a note on substituted service of summons. 5 marks

22. (i) What is the effect of a private alienation of property after its attachment in execution of a decree? (ii) Describe the mode of publishing a proclamation of sale of an immovable property in execution of a decree. 5 marks

23. Discuss the power of a Criminal Court or Magistrate under Sections 451 and 452 Cr.P.C. 5 marks

24. Who can exercise the power under Section 173(8) Cr.P.C.? Cana Magistrate order the exercise of such a power? 5 marks

25. Discuss the nature of powers to be exercised by a Magistrate under Sections 156(3) and 190 Cr.P.C. 5 marks

26. Discuss the powers of a Magistrate to discharge an accused and also to frame charges. 5 marks

27. Discuss the nature of powers to be exercised by a Magistrate under Sections 200 and 202 Cr.P.C. 5 marks

28. Discuss the provisions relating to withdrawal from the prosecution. 5 marks

29. Explain the mode of recording confessions as per the Criminal Rules of Practice, Kerala. 5 marks

30. What is a committal warrant? What should be its contents? 5 marks

Part III

Answer both the questions. Answers to the questions in this Part should be written in the Common Answer Book. (2 × 15 = 30 marks)

31. Write judgment. 15 marks

(Name of the court alone to be indicated. Other details in the cause title and appendix are not necessary)

O.S.No.221/2015

Parties

Plaintiff - Elizabeth Defendant - Joseph

Plaint . The plaintiff is the sister of the defendant. They are the children of Varghese and Mary. The plaint schedule property belonged to Varghese. He purchased it under a deed registered as document No.20/1985. of SRO, Vaikom. Varghese died in 2005. Mary predeceased him. The property devolved upon the plaintiff and the defendant. The plaintiff requested to partition the suit property, but the defendant was not amenable. Plaintiff is entitled to get the plaint schedule property partitioned for separation of her one-half share. The plaint schedule property is a coconut garden measuring 50 cents. The plaintiff was getting her due share of profits till two years ago. This Hon'ble Court may be pleased to direct partition of the plaint schedule property. The plaintiff may be allotted her share separately with share of profits.

Written statement All the allegation in the plaint except those which are expressly admitted hereunder are denied. The suit is not maintainable in law or on facts. The suit is barred by the law of limitation. The suit is bad for non-joinder of necessary parties. It is true that the plaint schedule property was acquired by the father of the parties in the year 1985. The property was in the exclusive possession and enjoyment of Varghese. The plaintiff was given in marriage by Varghese. At that time Varghese sold a property belonging to him for two lakh rupees and paid dowry. Hence Varghese wanted the defendant alone to succeed to his estate. Therefore Varghese executed a will on 09.09.2005. He bequeathed the entire suit property to the defendant. Therefore the plaintiff is not entitled to

any share in the plaint schedule property. It is false to allege that she was getting share of profits till two years ago. The suit deserves to be dismissed with costs and compensatory costs.

Evidence

PW1 is examined and Ext Al is marked on the side of the plaintiff. DWs 1 & 2 are examined and Exts B1 & B2 are marked on the side of the defendant.

Ext Al Certified copy of sale deed No.20/1985 of SRO, Vaikom.

Ext B1 Original of Ext Al.

Ext B2 Unregistered will dated 09.09.2005. It recites as follows: I own only one property which was purchased by me under sale deed No.20/1985 of SRO, Vaikom. I bequeath it to my son Joseph. (The document is signed and attested)

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 My relationship with my father was never strained. I used to visit him every month. I do not know whether he had sold any property at the time of my marriage to give dowry. I do not remember whether any dowry was paid. I did not deny in my plaint the will relied on by the defendant. I was not aware that the defendant was

propounding any will. I deny that my uncle showed me the will after the death of my father. I do not know Thomas and Cherian. I deny that my father had a friend by name Thomas and a friend by name Cherian. I know Thomas and Cherian. They are the friends of the defendant. I was getting my share of income till two years before the suit. I do not remember the exact amount I received. I received it only once. The signature shown to me is not that of my father (Will shown to the witness). My father was

bedridden for about three months. He had Alzheimer's disease. He was not in a position to recognise anybody for about one year before his death. I deny that my father was healthy.

Re-examination I would have denied the will in my plaint had I been aware of it.

DW 1 (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 . Thomas is not my friend. He was very close to my father. Cherian is no more. He too was not my friend, but my father's friend. I am 50 years old. Thomas is 52 years old. Cherian died last year at the age of 51 years. My father died at the age of 91 years. I did not witness the execution of Ext B2. It was attested by Thomas and Cherian. I did not see them attest the will. Neither my father nor the attestors told me anything about the will. It was given to me by my uncle Abraham one week after the death of my father. I assert that the signature in Ext B2 is that of my father. I deny that I fabricated Ext B2. I deny that it does not contain the signature of my father. My father died on 12.09.2005. I never paid the plaintiff any amount as share of profits. There was no occasion for that as there was no request for it. The plaintiff's marriage was in 1990.

Re-examination My father was keeping company with persons of all age.

DW 2 (Thomas)

Examination-in-chief I know Varghese. My house is 1 km away from his house. This document shown to me (Ext B2 shown) contains my signature. It contains the signature of Varghese and Cherian. Myself and Cherian attested Ext B2 will executed by Varghese. We signed it in the presence of Varghese. Cross-examination Defendant is a very good friend of mine. Cherian was also our friend. Varghese knew me very well as a friend of the defendant. I attested the will in the presence of Varghese. The defendant was also present at that time. Did you see Varghese sign the will (Q) No (A) Did he tell you that the signature was his (Q) No (A) The defendant told me that the signature was put by his father. The condition of Varghese at that time was bad. He was lying on the bed. He did not talk to me. He was not in a position to speak. Was he suffering from Alzheimer's disease (Q) I do not know (A) Was he healthy (Q) I do not know (A) Varghese did not live more than a week after the execution of the will.

Re-examination Nil

32. (a) Write an order on the following Crl.M.P. 15 marks

While CW1 was walking along a lonely road by dusk, with a bag containing an amount of Rs.2,00,000/- arranged by him for the marriage of his daughter, the accused suddenly approached him with a knife and demanded the bag by putting CW1 in fear. CW1, who became frightened, handed over the bag to the accused. When the accused moved away with the bag, CW1 made a hue and cry, which attracted the attention of the public. The accused was caught red handed. The police registered the case, conducted and completed the investigation and filed the final report alleging an offence punishable under Section 387 IPC. The police produced the bag and the amount of Rs.2,00,000/- before court.

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CW1, who is in dire need of the money for the marriage of his daughter approaches the court, for getting the custody of the amount pending trial. The accused does not forward any claim over the

amount. The prosecution opposes the petition on the ground that the said currency notes are required for identification during trial.

(b) An extract of the report filed by the Police under Section 173(2) Cr.P.C. is given below. Frame charges in English.

ഈ കേസിലെ പ്രതി ഗഞ്ചാവ് കച്ചവടം നടത്തി വന്ന വിവരം ഒന്നാം സാക്ഷി പോലീസിൽ അറിയിച്ചതിലുള്ള വിരോധം നിമിത്തം ഒന്നാം സാക്ഷിയ്ക്ക് ദേഹോപദ്രവവും ഗുരുതര പരുക്കും ഏൽപ്പിക്കണമെന്നുള്ള ഉദ്ദേശ്യത്തോടും കരുതലോടും കൂടി 01.01.2016-ൽ വൈകിട്ട് 6 മണിയ്ക്ക് പ്രതി അപകടകരമായ ആയുധമായ ഒരു ഇരുമ്പുവടി കൈവശം വെച്ച്, കണയന്നൂർ താലൂക്കിൽ എറണാകുളം വില്ലേജിൽ രാജാജി റോഡിൽ നിന്നും ഒരു കിലോമീറ്റർ തെക്കു മാറി അമ്പാടി റോഡിന്റെ തെക്കു വശം വടക്ക് ദർശനമായി സ്ഥിതി ചെയ്യുന്ന ഒന്നാം സാക്ഷി വക ചരുവിള വീടിന്റെ മുൻവശം വടക്കേ മുറ്റത്ത് അതിക്രമിച്ച് കയറി ഒന്നാം സാക്ഷിയെ തടഞ്ഞുനിറുത്തി പ്രതി തന്റെ കൈയിലിരുന്ന ഇരുമ്പുവടി കൊണ്ട് ഒന്നടിച്ച് ഒന്നാം സാക്ഷിയുടെ വലതു കൈയുടെ എല്ല് പൊട്ടുന്നതിന് ഇടയാക്കി കുറ്റം ചെയ്തിരിക്കുന്നു.