Kerala Judicial Service Mains 2017 · 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 one among the following is correct?
(a) Term Legal representative is wider than the term legal heir.
(b) Term legal heir is wider than legal representative.
(c) Term legal representative is always synonymous with the term legal heir
(d) Terms legal heir and legal representative are defined in the CPC.

2. Are the powers under section 386 Cr.P.C, exercisable by all appellate courts ?
(a) Yes.
(b) section 386 (a) Cr.P.C. can be exercised by High Court only.
(c) section 386 (b) Cr.P.C. can be exercised by High Court only
(d) None of the above.

3. Which one among the following regarding the "Mesne Profit" under CPC is incorrect ?
(a) It includes profit which a person in wrongful possession actually received.
(b) It includes profit which a person in wrongful possession might have with ordinary diligence received.
(c) It includes interest on such profit also.
(d) It includes the profit due to improvements made by the person in wrongful possession also.

4. In a proceeding before the Special Court, accused filed an application for statutory bail under section 167(2) Cr.P.C., contending that the prosecution failed to lay final report within the statutory period. Before the expiry of statutory period, prosecutor had filed an application for extension of period for filing charge sheet, invoking the enabling provision under the special statue. Which application should be taken first ?.
(a) Application for extension of time
(b) Application for statutory bail.
(c) Both should be taken up simultaneously.
(d) None of the above.

5. An order of a Single Judge of High Court under section 407 Cr.P.C. refusing to transfer a case from a criminal court to another criminal court is challenged before the Division Bench. Is it sustainable ?
(a) Yes.
(b) No; since it is not an order exercised under the original jurisdiction of the Court
(c) Yes ,since the order is one passed under the original jurisdiction of the court.
(d) None of the above.

6. Which one among the following is not the correct ingredient of res judicata?
(a) Matter in issue in one suit must be directly and specifically in issue in the other suit.
(b) Both suits must be between same parties or between parties under whom they or one of them claim, litigating under same title.

(c) The suits must be before competent courts.
(d) Former suit must have been heard and finally decided by the Court.

7. What are the materials to be relied on by magistrate under section 239 of Cr.P.C. to discharge the accused?
(a) The police report only.
(b) The police report and documents sent with it under sec.173 Cr.P.C.
(c) The documents produced by police and documents placed by accused.
(d) None of the above.

8. What is the limit of the pecuniary jurisdiction of a Munsiff Court. ?
(a) Upto Rs. 5 Lakhs.
(b) Does not exceed Rs. 10 Lakhs.
(c) Upto Rs. 15 Lakhs.
(d) Does not exceed Rs. 20 Lakhs.

9. What is the maximum compensation that can be ordered under C.P.C.by the court to a plaintiff who obtains arrest, attachment or injunction on insufficient grounds.
(a) Rs.10,000/-.
(b) Rs. 20,000/-
(c) Rs.50,000/-
(d) Rs. 75,000/-.

10. What is the appellate civil jurisdiction of District Court.
(a) Appeals from decrees and order of Munsiff's Courts.
(b) Appeals from decrees and orders of Munsiff Court and sub Courts.
(c) Appeals from decrees and orders of Munsiffs Courts and Interlocutory orders of sub Curt.
(d) Appeals from decrees and order of Munsiff's courts and all decrees and orders of sub court, where subject matter does not exceed Rs. 20 Lakhs.

11. In a proceeding under section 138 of Negotiable Instruments Act, the court imposed a sentence of imprisonment for one month and fine of Rs. 1 Lakh and ordered it to be paid as compensation under section 357(3) CrP.C. Is it proper ?
(a) Correct, in the light of Section 357 (3) CrP.C.
(b) Correct, since it is in accordance with Section 357(1) Cr.P.C.
(c) No. Since court has chosen to impose fine, it has no power to order compensation under section 357(3) CrP.C.
(d) None of the above.

12. What is a committal warrant under the Criminal Rules of Practice?
(a) Warrant for committal to jail prepared when a person is sentenced to a term of imprisonment.
(b) Order issued in a procedure of committal to Sessions Court.
(c) Warrant of arrest.
(d) None of above.

13. Plaint can be returned, in which among the following circumstances?
(a) Where it does not disclose a cause of action.
(b) Where suit appears to be barred by any law.

(c) If it is not presented in the Proper court.
(d) Where the suit is under valued and it is not corrected in spite of notice.

14. What shall be the ordinary place of enquiry and trial of any offence.
(a) In the court within whose jurisdiction accused is residing..
(b) In the court within whose jurisdiction, offence was committed.
(c) In the court within whose jurisdiction accused was apprehended.
(d) None of the above.

15. Concept of autrifois convict and autrifois acquit is incorporated in
(a) Section 248 of Cr.P.C.
(b) Section 232 of Cr.P.C.
(c) Section 235 of CrP.C
(d) Section 300 of Cr.P.c

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. Answers to the questions in this Part should be written in the Common Answer Book. (11 × 5 = 55 marks.)

16. What are the procedure contemplated under the CPC relating to arrest and detention of a judgment debtor ?

17. What are the options available to a Magistrate who receives a complaint under section 190(a) of Cr.P.C.? What are the procedure to be followed ?

18. Discuss the irregularities that may vitiate proceedings under section 461 CrP.C.

19. Explain the scope of garnishee proceedings under the CPC ?

20. What are the powers of a criminal court for ordering custody and disposal of property pending trial and after conclusion of trial?

21. Plaintiff filed a suit for injunction. Defendant raised a counter claim claiming possession. Suit was decreed holding that the plaintiff was in possession. Counter claim was dismissed. Two appeals were preferred. They were consolidated and by a single judgment both appeals were dismissed. Defendant filed a single second appeal challenging judgment in both appeals paying separate court fee. Is it maintainable ? Explain with reasons.

22. Write notes on the process of recording of confession of an accused as provided under the Cr.P.C.and Criminal Rules of Practice.

23. Write short notes on the following topics under the Criminal Rules of Practice.
(a) Calender statement.
(b) Procedure to be followed under Rules 15 and 16 of Criminal Rules of Practice in the case of an absconding accused.

24. In a suit, the defendant was set ex parte and suit was decreed. Defendant filed an application to set aside ex parte decree under Order 9 Rule 13 CPC and also filed an appeal against ex parte decree invoking section 96 CPC. Are both reliefs mutually exclusive ? What is the legal position ?

25. What are the procedure under the Civil Rules of Practice for the production and inspection of records in the custody of another court?

26. Write Short notes on :
(a) Deposit of money for purchase of Non Judicial stamp paper for final decree and consequence of failure to deposit, under Civil Rules of Practice.
(b) Procedure for delivery of property to decree holder in execution, under Civil Rules of Practice.

27. What are the powers of a Magistrate to order further investigation under section 173 (8) CrP.C.? Can it be ordered at the request of parties after filing of final report ?

28. How is a suit instituted by an indigent person dealt with by the court, till adjudication of indigency?

29. Discuss the scope of an application under Order 21 Rule 90 CPC.

30. What is the provision relating to appointment of receivers and the duties of receiver. ?

Part III

Answer both the questions. Answers to the questions in this part should be written in the common answer book. (15 × 2 = 30 marks.)

31. Write an interlocutory order (name of the Court alone to be indicated. Other details in the cause title and appendix are not necessary)

I.A.No.681 of 2018 in O.S.No.51 of 2018

Parties

Raju S/o.Narayanan Plaintiff/Petitioner

Ramakrishnan S/o. Krishnan Defendant/Respondent

Affidavit in support of the interlocutory application for prohibitory and mandatory injunction, filed by the petitioner

I am the owner in possession of 20 cents of land in survey No.31/2 of Kumaranelloor Village, which is described as the plaint schedule property. The property belonged to my father, who had extensive lands. I acquired the plaint schedule property from my father by settlement deed executed by the father during his life time as document No.128/08 of SRO, Kumaranelloor. I am in possession of the above property since the date of execution of the settlement deed. I have constructed a residential building therein in the year 2010 and is residing with family there. It is bounded by walls on all sides except the northern side, which was bounded by fence. The defendant/respondent is residing on the northern side of the plaint schedule property. He started residing there in the year 2015. Inside the petition schedule property and within the property of the petitioner, there was an old jackfruit tree. Respondent herein used to raise unnecessary claims regarding the boundary. On 03.02.2018, respondent herein along with few local persons came to the spot, demolished the fence and cut and removed the jack tree. Even though I objected to it, they threatened me using weapons. A complaint was laid before the local police, who did not enquire into it. Hence, the present suit was filed on 06.02.2018 seeking reliefs in the nature of prohibitory injunction restraining the defendant from trespassing into the plaint schedule property and from cutting and removing any trees, collecting the usufructs or in any manner interfering with the peaceful enjoyment and possession of the petition schedule property by the petitioner. Petitioner hence seeks prohibitory injunction and also further direction to the respondents to restore the fence on the northern boundary to its original position.

Counter affidavit filed by the respondent.

I deny the entire allegations in the plaint as well as in the affidavit in support of the interlocutory application for injunction. The lie of the property is admitted. Respondent herein is residing on the northern side of the petition schedule property. It is incorrect to say that the petitioner herein is in complete possession of 20 cents of property comprised in the settlement deed. Even though, a document purported to assign 20 cents of land to the petitioner was executed by his father, the father did not have right over the entire 20 cents of land. Petitioner was never in possession of the entire extent of land covered by the above document. Property was not well defined on the northern side. In fact, petitioner herein was trying to trespass into the respondent's property and to claim right over his property having the extent of 10 cents. In the last week of January 2018, petitioner cut and removed the jackfruit tree from his property and sold it to strangers. There was a portion of the fence constructed which was not in accordance with the actual boundary. Respondent has always objected to it. Respondent has not demolished the fence or any portion of it. Hence, petitioner is not entitled for the extent of land as claimed. No relief is liable to be granted to him.

The documents produced on the side of petitioner.

1. Ext.A1 - Settlement deed No . I28/08 of SRO, Kumaranelloor

2. Ext.A2 - The tax receipt issued by the concerned authority dated 06.01.2018.

Documents produced on the side of the respondent.

1. Ext.B1 - Title deed in favour of the respondent dated 30.05.2015 for an extent of 10 cents.

2. Ext.B2 - Tax receipt evidencing the payment of land tax in March 2018.

Commission Report

The Commissioner visited the petitioner's property on 06.02.2018, pursuant to the orders of this Court. Petition schedule property has an approximate extent of 20 cents. At the time of inspection, petitioner and his family members were present. The respondent was absent.

There is a residential building in the petition schedule property. It was stated by the petitioner that the respondent is residing on the northern side of the property of the petitioner. His land appeared to be approximately 10 cents. There is a residential building in that property also. Petition schedule property is bounded on all three sides except the northern side. Remnants of an old fence could be seen at both the ends of northern boundary. The property was not seen well demarcated in between the petition schedule property and the neighbouring property. However, it appears that, from the remnants of the fence that, at one point of time, the fence existed separating both the properties. The cut and removed bottom portion of a reasonably sized jackfruit tree could be seen on the northern side of the petition schedule property. It seems to have been cut and removed within a period of less than one month from the date of inspection of the petition schedule property.

32. Write judgment on the following facts.

C.C.No.23 of 2017

X Chitties and Finances Ltd - Complainant

Subramaniam - Accused

Complaint filed under section 138 of the Negotiable Instruments Act.

The complainant is a company registered under the Companies Act in the year 2001 and has been conducting financial transactions, money lending, chitties and also gold loan transactions. The.

complainant has obtained necessary license under the Money Lenders Act for the purpose of conducting money lending and also registration under the Chitties Act for conducting chitties. The company has its head office at Bangalore and a branch office in the city of Thiruvananthapuram. On 05.08.2017, accused herein came to the branch office of the complainant at Thiruvananthapuram and availed a loan of Rs.1,00,000/-. He executed and delivered a cheque for a sum of Rs.1,00,000/- on the same day undertaking to repay the amount with interest within three months and in case of default, to repay the money with interest. Since the amount was not repaid within the stipulated time, it was presented for collection in a bank on " 02.12.2017. It was returned dishonoured on 03.12.2017, on ground of insufficiency of funds. Hence, notice was issued dated 20.12.2017 calling upon the accused to repay the money with interest. He issued a reply contending that, on 05.08.2017, he had not availed any loan from the complainant. It was further stated that, in November 2014, the wife of the accused had joined three chitties and had bid two of them in September, 2015. At the time of availing the chitty amount, a blank signed cheque was entrusted by the accused as a security. The : wife has been repaying the entire amount without default. However, - to claim unconscionable profit, the complainant had filled up the cheque and has presented it for collection. The cheque is not supported by any consideration and hence, he has not committed the offence punishable under section 138 of the Negotiable Instruments Act. Since the amount was not repaid, the complaint is filed.. It is requested that summons may be issued to accused and after trial, he may be convicted for offence under section 138 of the NI Act and order payment of compensation.

Evidence of PW1 on behalf of the complainant.

Chief Examination I am the present manager of the complainant company. I am aware of the facts of the case. Accused had availed the loan for a sum of Rs.1,00,000/- on 05.08.2017 and had executed a cheque, on the same day, undertaking to repay the amount with interest, within three months. Ext.P1 is the cheque issued. Since the amount was not repaid within the stipulated time, it was presented for collection on 02.12.2017. It was returned dishonoured on 03.12.2017 on the ground of insufficiency of funds. Ext.P2 is the memo of dishonour issued by the bank. Hence, notice dated 20.12.2017 was issued calling upon the accused to repay the money with interest. It was replied raising false allegations. Ext.P3 is the copy of the lawyer notice and Ext.P4, its reply. All the facts mentioned in the complaint are true to the best of my knowledge as is discernible from the records.

Cross Examination. I am the present branch manager of the company at Thiruvananthapuram. It is true that, I am not the complainant in the complaint. Complaint was signed by the then branch manager. I joined the present branch on 30.01.2018. The cheque was not signed in my presence. I do not know the accused personally. However, I am aware of the entire facts from the records. The cheque was signed in the presence of other officers of the company including PW2. From the records, it is seen that the wife had joined three chitties and had bid two chitties in September 2015. It is not correct to say that the wife has been repaying the amount without any default. Separate notice was sent to her calling upon her to repay the amount due. She did not reply to the notice. It is true that, we have not yet initiated any proceeding against her. I deny the suggestion that Ext.P1 was given at the time of executing the kuri security bond as an additional security. The company never takes blank signed cheques as security. I have not produced any of the records relating to the chitty transaction since it is not related to the present transaction. I am ready and willing to produce it when called for. The documents now shown to me are three passbooks relating to the chitty transaction, joined by the wife

of the accused (marked as Ext.D1 series). I deny the suggestion that the entire amounts were paid. I further deny the suggestion that, I did not produce the records relating to the chitty transaction, since it would show that no amount is due. At the time of availing loans, we never ask for security, except the cheque itself . I deny the suggestion that whatever I have deposed in Court is false. 14

Deposition of DW2.

Chief Examination, I am presently working as the clerk in the complainant bank. I have been working in that Capacity in the Thiruvananthapuram branch for the past 15 years. I know the accused and his wife. On 05.08.2017, accused and his wife came to the Thiruvananthapuram branch of the Complainant and availed a loan for a sum of Rs.1,00,000/- Towards the discharge of the liability, he had executed Ext.P1 cheque. It Was presented for collection and was returned dishonoured evidenced by Ext.P2 dishonour memo. Ext.P3 is the lawyer notice issued on behalf of the company and Ext.P4 is the reply. The claim set up in the complaint is correct. I have seen the execution of the cheque.

Cross examination. I know the accused and his wife from the time when the wife joined the chitty. She bid two chitties which are endorsed in D1(b) and (c) passbooks. Thereafter, she committed default and a lawyer notice was issued to her. I deny the suggestion that accused had never come to our office on 05.08.2017 or any day before that. He had visited the office along with his wife when she came for joining the chitty. Ext.P1 cheque was executed in my presence, I saw Payment of consideration also. In the account books and registers, the payment of consideration of Rs.1,00,000/- was entered by me. deny the Suggestion that Ext.P2 is a blank signed cheque issued at the time of joining the chitty. I admit that the entries in the cheque except the signature are mine (adds). The amount in figures was entered by the accused. All the remaining entries were filled up by him since the accused stated that, he was not very fluent in writing in English. Same pen was used throughout.

No re-examination.

Answer of accused in the section 313 Cr.PC questioning I have not availed any loan. My wife had handed over my signed blank cheque at the time of availing the chitty amount.