Kerala Judicial Service (Mains) 2024

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 O.M.R. answer sheet. Answers marked/written elsewhere will not be evaluated) (15 x 1 mark = 15 marks)

1. A suit was decreed. The appeal filed by the defendant is pending. Another suit filed by the defendant wherein the same matter in issue is directly and substantially in issue is pending. Choose the correct statement. [1 mark]

(A) Since one of the suits is disposed of and only the appeal there from is pending, trial of the second suit cannot be stayed

(B) Whether or not the appeal arose on the previously instituted suit, the suit pending before the trial court can be stayed

(C) If the appeal arose from the subsequently instituted suit, then the trial of the first suit can be stayed

(D) If one of the suits is disposed of and appeal is pending, the proceedings of the appeal is liable to be stayed.

2. There are three plaintiffs in a suit. For a valid verification of the plaint, ... (Choose the correct option) [1 mark]

(A) All three plaintiffs should verify

(B) Plaintiffs' counsel should verify

(C) One of the plaintiffs to verify

(D) All plaintiffs and if any one of them not available, his power of attorney should verify

3. In a suit, the right to begin evidence is ..... [1 mark]

(A) always on the plaintiff

(B) on the defendant, if his plea is one of discharge

(C) on the defendant, if it is a suit for recovery of possession

(D) on the defendant, if the suit is one based on a promissory note

4. If a suit is dismissed for default, the plaintiff cannot bring a fresh suit on the same cause of action subject to limitation, if the suit is dismissed under Order IX Rule ..... of the Code of Civil Procedure, 1908. [1 mark]

(A) 8

(B) 5

(C) 3

(D) 2

5. Judgement-Debtor paid the money payable under a decree, out of court. How is the Judgement-Debtor to get the satisfaction of the decree recorded? [1 mark]

(A) By filing a suit to declare satisfaction within one year

(B) By filing an application to certify payment within one month

(C) By filing a statement when the Decree Holder files an Execution Petition
(D) By obtaining a written receipt from the Decree Holder

6. When the deposition of a witness was read over to him, an objection was raised by the witness regarding the correctness of a statement. What shall be the course to be adopted by the Munsiff? [1 mark]
(A) Correct the deposition
(B) Allow the counsel concerned to put fresh questions regarding the aspect and record that part of the deposition afresh
(C) Make a memorandum regarding the objection raised and record the remarks of the Munsiff
(D) No such objection shall be entertained

7. Munsiff rejected an application for a certified copy of a document already marked as an exhibit at the trial of the suit on the ground that objection regarding admissibility of that document is yet to be decided. Decide. [1 mark]
(A) Admissibility or otherwise of a document in evidence is not a matter to be considered by the Court while issuing the certified copy
(B) Munsiff is correct
(C) Munsiff shall first decide admissibility of the exhibit and then decide whether or not to issue a certified copy
(D) Certified copy of such a document cannot be given to a party to the suit

8. Local limits of the jurisdiction of a Munsiff's Court is decided by the ..... [1 mark]
(A) District Court in consultation with the High Court
(B) High Court
(C) State Government
(D) State Government in consultation with the High Court

9. What is the maximum period for which an undertrial prisoner, who is facing accusation for having committed an offence punishable with imprisonment for life can be detained under the Bharatiya Nagarik Suraksha Sanhita (BNSS) before he can be released on bail? [1 mark]
(A) 1/2 of the maximum period of imprisonment
(B) 1/3rd of the maximum period of imprisonment
(C) 1/4th of the maximum period of imprisonment
(D) None of the above

10. Which of the following does not amount to FIR?
i) A statement given to the police officer after the commencement of the investigation.
ii) A statement recorded by the Station House Officer based on personal knowledge on receiving original information.
iii) A complaint made orally or in writing to the magistrate.
iv) Information given first in point of time to the police. [1 mark]
(A) Statement (i) and (iii)
(B) Statement (ii) and (iii)
(C) Statement (iii) and (iv)
(D) Statement (ii) and (iv)

11. While computing the period of 15 days mentioned in Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the following days shall be included:
(i) Date of arrest of the accused
(ii) The date of FIR
(iii) The date on which remand was made
(iv) The day on which the accused is ordered to be produced. [1 mark]
(A) (i) and (ii)
(B) (iii) and (iv)
(C) (i) and (iii)
(D) (ii) and (iv)

12. An arrest is made by a private person of a person who commits a non-bailable and cognizable offence in his presence. The arrested person shall be made over to the police officer or the nearest Police Station within....., [1 mark]
(A) 24 hours
(B) 8 hours
(C) 6 hours
(D) forthwith

13. In a case exclusively triable by a Magistrate, what is the time frame fixed under the Bharatiya Nagarik Suraksha Sanhita, 2023, for framing a charge from the date of first hearing on charge. [1 mark]
(A) No time is fixed
(B) 15 days
(C) 45 days
(D) 60 days

14. What is the period of limitation under the Bharatiya Nagarik Suraksha Sanhita, 2023, for taking cognizance of an offence which is punishable with imprisonment for a term not exceeding one year?
(A) 6 months [1 mark]
(B) 1 year
(C) 2 year
(D) No limitation

15. A victim is not entitled to prefer an appeal against ..... [1 mark]
(A) acquittal of an accused
(B) convicting for a lesser offence
(C) imposing inadequate compensation
(D) inadequacy of sentence

PART - II

Answer any eleven questions. Answer shall not exceed 160 words (1 1/2 page). If more than eleven questions are answered, the first eleven answers alone will be evaluated. Answers to the questions in this Part should be written in the Common Answer Book. (11 x 5 mark = 55 marks)

16. Is there any difference between a “legal representative” and “legal heir”? Explain. [5 marks]

17. A suit was filed for a prohibitory injunction against trespass. The defendant filed a written statement asserting his possession. The Commissioner’s report prepared pending the suit seemingly

suggested plaintiff's possession over the property. Defendant alleging a subsequent trespass by the plaintiff just before the visit of the Commissioner filed a counter claim seeking recovery of possession on the strength of title. Is the counter claim maintainable? [5 marks]

18. What is an "Interpleader Suit"? [5 marks]

19. What are the endorsements to be made on documents admitted in evidence and rejected as inadmissible? [5 marks]

20. After the passing of the decree in a suit for recovery of possession which was filed by three plaintiffs, one plaintiff died. His legal representative are not available. Can the other decree holders get the decree executed? [5 marks]

21. Is there any difference between "reserve price" and "upset price"? Explain. [5 marks]

22. The decree against a dead person is a nullity. Is there any circumstance in which the plaintiff may be exempted from substituting the legal representatives of a defendant and pronounce judgment against that defendant. [5 marks]

23. Is there any difference between "next friend" and "guardian"? [5 marks]

24. What are the changes brought out in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) in respect of the following aspects: [5 marks]

a) Recording of search and seizure by the police

b) Enquiry, trial or judgment in absentia of proclaimed offender

c) provisions regarding police custody.

25. A crime was registered against 'X' on 22.10.2023 for having committed offences punishable under Sections 323, 324 and 307 of IPC. Final report was laid before the jurisdictional court on 2.7.2024. Which is the procedural law applicable for trial - the Code of Criminal Procedure, 1973 or the Bharatiya Nagarik Suraksha Sanhita, 2023. Explain with reasons. [5 marks]

26. Is the victim/informant of an offence entitled to receive information as regards the progress of investigation of the case in which he is involved. If so, how and when? [5 marks]

27. Under what circumstances, is handcuffing of an accused permissible under the Bharatiya Nagarik Suraksha Sanhita? [5 marks]

28. Under Section 200 of the Cr.P.C, a Magistrate is empowered to take cognizance of the offence on a complaint after examining the complainant and the witnesses, if any. Has any change been incorporated in the corresponding provisions of the Bharatiya Nagarik Suraksha Sanhita? [5 marks]

29. In a case charge sheeted by the police, after the recording of the evidence had commenced, an application was filed by the victim seeking alteration of the charge under Section 216 of the Code of Criminal Procedure. Can the charge be altered? Explain. [5 marks]

30. What is the mode of recording confessions by a Magistrate as stipulated in the Criminal Rules of Practice (Kerala), 1982? [5 marks]

PART - III

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

[While writing Judgment, name of Court alone is to be indicated. Other details in the cause title and appendix are not required.]

31. Write a Judgment based on the following: [15 marks]

Plaintiff is the owner of 10 cents of property. That property is plaint A schedule. Its adjoining southern 20 cents of property belongs to the defendant. That property is plaint B schedule. South of that property is a public road. There exists a pathway at a width of 5 feet along the eastern extremity of plaint B schedule property. That pathway is plaint C schedule. The plaintiff filed a suit on 1.1.2024 seeking a decree of permanent prohibitory injunction.

Plaintiff's plea: He, following his predecessor in interest, has been using plaint C schedule pathway for the last 30 years continuously, peaceably and as of right. He acquired prescriptive easement right along that pathway. The defendant attempted to close down that pathway. Hence, he is entitled to get a decree of permanent prohibitory injunction restraining the defendant from closing down the pathway or from causing obstruction to the plaintiff's usage of the pathway.

Defendant's plea: There is no established and identifiable pathway as described in plaint C schedule. The plaintiff used to walk across plaint B schedule property as a shortcut. Being neighbours the defendant did not object to such a user. The plaintiff has a pathway along the ridges of the paddy fields on the northern side. The plaintiff does not have any right to use plaint C schedule pathway. The suit was filed without bona fides. Suit is to be dismissed.

Plaintiff's evidence:

PW1 is the plaintiff. He deposed about his title to plaint A schedule property. He testified that he has been using plaint C schedule pathway following his predecessor in interest for more than 30 years. He claims that the usage of the pathway commenced on the date on which his predecessor purchased the property 30 years before. Regarding the pathway along the northern side ridge he deposed that he uses that only sporadically. The attempt of the defendant to close plaint C schedule pathway by erecting a fence one week before instituting the suit was also stated by PW1. His stand was that members of his family and persons coming to his house alone have been using plaint C schedule pathway.

PW2: He sold plaint A schedule property to the plaintiff. He deposed that he had been using both plaint C schedule and the northern ridge to reach his house while he was residing in plaint A schedule.

PW3: Commissioner. He deposed that he inspected the plaint schedule properties and submitted Ext. C1 report along with Ext. C2 rough sketch. He reported and deposed in court that plaint C schedule pathway was in existence. The pathway was a beaten track without definite boundaries. He deposed that it was old, but could not say its age. Availability of a ridge across the paddy field on the northern side of plaint A schedule property was also reported by PW3.

DW1: Defendant. He deposed in terms of the written statement.

Documents proved:

Ext. P1 - Plaintiff's title deed - sale deed dated 5.10.2009

Ext. P2 - Tax paid receipt for plaint A schedule property

Ext. C1 - Commission Report

Ext. C2 - Rough Sketch

Ext. B1 - 3 photographs showing existence of a pathway along the ridge, reaching the northern boundary of plaint A schedule property.

32. On 24.12.2001, at about 4:30 a.m., the accused drove a van through Cherkala-Kasaragod public road from East to West. Upon reaching Panarkulam, the van collided head-on with a jeep coming in the opposite direction on the northern side of the road. [15 marks]

The collision caused severe injuries to six passengers in the jeep, five of whom later succumbed to their injuries. The accused was charged under Sections 279, 337, 338, and 304A of the Indian Penal Code.

The accused pleaded not guilty to the charges.

In order to prove its case, the prosecution examined PW1 to PW24. Exhibits P1 to P22 were exhibited and marked. After the close of the prosecution evidence, the incriminating materials were put to the accused under Section 313(1)(b) of the Cr.P.C. The accused denied all incriminating evidence and claimed that he was not the driver but only a passenger. He further stated that the jeep driver was driving the vehicle in a rash and negligent manner and that had led to the accident.

The prosecution relied on the oral evidence tendered by PW1, PW3, PW12, and PW23 and the documents marked as Exhibits P15, P16, P17, and P21 to prove its case. On the side of the defence, the accused examined a witness as DW1, who stated that he was also a passenger in the van and the accused was a co-passenger.

PW1, an injured passenger in the van, stated in his evidence that on 24.12.2001, at around 4:30 a.m., he was traveling with his relatives and when the van reached the Panarkulam, the van collided head-on with the jeep. He stated that the accident resulted in injuries to six passengers travelling in the Jeep, five of whom died. During cross-examination, he stated that he had lost consciousness immediately after the collision and therefore could not identify the driver of the van.

PW3, a passenger in the van, stated that the incident occurred in the early morning of 24.12.2001 in Cherkala. He and his friends were traveling from Thiruvananthapuram to Mookambika temple in the van. PW3 identified the accused as the driver of the van. However, during cross examination, he stated that he had no previous acquaintance with the accused. It was also brought out that no test identification parade had been conducted.

PW23, a passenger in the jeep, was seated in the back seat. She stated that she had occasion to witness the van coming from the opposite direction and dashing on the jeep. She identified the accused as the driver of the van at the time of the accident, stating she had a clear view of the driver from her position in the jeep. However, during cross examination, it was brought out that the incident had occurred in the early hours and there was no sufficient light in and around the scene of occurrence.

PW1 stated in his evidence that the van veered towards the northern side of the road and collided with the Jeep. He stated that the jeep was on the extreme left side of the road, which was the correct side for the jeep driver. The front of the van hit the front of the jeep, causing the accident. PW3 and PW23 corroborated PW1's account.

PW12, the Joint RTO, inspected both vehicles and issued test certificates, which were marked as Exts. P15 and P16. PW12 stated before court that the braking systems of both vehicles were functional and the vehicles had no mechanical defects.

Ext. P21 mahazar and Ext. P17 site sketch indicated that the road at the accident site was straight with no visible obstructions on either side that would have impeded the vision of the driver of the offending

vehicle.

It was brought out during cross examination of the investigating officer that he had failed to collect and produce before court the trip sheet of the van. The owner of the van was given up by the prosecution. The defence had taken up a contention that independent occurrence witness though available was not examined.

Write a judgment based on the above facts.