Madhya Pradesh Civil Judge (Mains) 2014

Judgment Writing · compulsory paper

Fourth Question Paper · Time Allowed – 3:00 Hours · Maximum Marks – 100

Instructions

1. All questions are compulsory. Answer to all the Questions must be given in one language either in Hindi or in English. In case of any ambiguity between English and Hindi version of the question, the English version shall prevail.
2. Write your Roll No. in the space provided on the first page of Answer-Book or Supplementary Sheet. Writing of his/her own Name or Roll No. or any mark of identification in any form or any Number or Name or Mark, by which the Answer Book of a candidate may be distinguished/identified from others, in any place of the Answer Book not provided for, is strictly prohibited and shall, in addition to other grounds, entail cancellation of his/her candidature.
3. Writing of all answers must be clear & legible. If the writing of Answer Book written by any candidate is not clear or is illegible in view of Valuer/Valuers then the valuation of such Answer Book may not be done.

Settlement of Issues

1. Settle the issues on the basis of the pleadings given here under [10 marks]

PLAINTIFF'S PLEADINGS :- Plaintiff 'A' filed a suit against defendants 'B', 'C' & 'D' for possession with pleadings that the suit land Survey No. 67/1, area 2.47 acres situated at Village veerpura Tahsil and District Rajgarh (M.P.) belongs to 'A' Who is the bhumiswami of that land. 'B' is the real brother of plaintiff. During 1997-98 'A' had given the suit land to the defendant for cultivation only for one year. In 1999 when 'A; demanded his possession back the defendant 'B' refused and filed an application under section 190/110 of M.P. Land Revenue code for mutation of the-land in his favour. Initially the plaintiff appeared in the proceeding before Tahsildar and filed his objection but later on he was told by Tahsildar that the proceedings have been closed. The plaintiff later on came to know that the suit land was mutated by Tahsildar in favour of 'B'. 'A' then filed an appeal before S.D.O. which was dismissed on 04.09.2002 being time barred. The plaintiff was thus forced to file the suit for restoration of possession on the basis of the title. During pendency of suit the plaintiff came to know that 'B' has sold out the suit land to defendant 'C' & 'D' on 15.11.2002 and so the plaintiff made them the party in the suit and also prayed for a relief of cancellation of sale deed.

WRITTEN STATEMENT :- The defendants filed a joint written statement and denied the plaint averments. According to them, the plaintiff had given the suit land to the defendant 'B' on shikmi in 1995 and since then 'B' has been in possession till 2002, the date of sale deed. A valid order was passed by Tahsildar in favour of defendant no.1 holding that 'B' has become occupancy tenant and thereafter he had become Bhumiswani by operation of law. The suit property has been validly sold by defendant 'B' to defendants no. 2 to 3 ('C' & 'D"). The plaintiff has not sought the relief of declaration and thus his suit is not maintainable. The defendants 'C' and 'D' are bonafide purchasers for the price. It has been prayed that the suit be dismissed. A plea of limitation has also been taken in the written statement that the suit of plaintiff is time barred.

Framing of Charges

2. Frame a charge/charges on the basis of allegations given here under.- [10 marks]

PROSECUTION CASE / ALLEGATIONS -

As per case of prosecution on 01.01.2015 at about 5 O'clock in the evening, 'A" and his father 'B' were coming from agricultural land to their house by bullock cart. On reaching from approach road to main road 'H', both stepped down from the bullock cart and while they were crossing the road for drinking water, the alleged offending bus bearing registration no. C-1, driven by the accused 'F' in rash and negligent manner came there from wrong side, dashed 'B'. Resultantly 'B' sustained fatal injuries and succumbed to injuries on the spot. His son 'A" lodged FIR against driver 'F' at police station 'G'.

Judgment/Order (Civil) Writing (CJ-II)

3. Write a judgment on the basis of pleadings and evidence given here under after framing necessary issues and analyzing the evidence, keeping in mind the provisions of relevant Law / Acts :- [40 marks]

Plaintiff's Pleadings :- Plaintiff 'A' filed a suit against defendant 'B' for recovery of principal amount Rs. 1.60 Lac (One Lac Sixty Thousands) and interest @ 02 rupees percent per month. Plaintiff pleaded that on 03.01.2005 defendant 'B' came to residence of plaintiff 'A" with 'C' and requested for loan to meet out his urgent domestic expenses. 'A', 'C' and 'D' were neighbours and resided in town 'E'. At the guarantee of 'C' the plaintiff lent aforesaid loan to the defendant. The defendant executed promissory note at the residence of plaintiff in the presence of 'C' and 'D'. But according to promise defendant did not return the borrowed amount despite repeated oral demands. Then plaintiff sent a show-cause notice by registered post on 30.07.2007 which was received by defendant. In the response, defendant mentioned in his reply that neither he received any amount nor executed any promissory note as stated in the notice. After receiving reply, plaintiff came to conclusion that defendant was not willing to pay the due amount. Then plaintiff filed Civil Suit for recovery of total amount with interest before the court of Civil Judge Class-II, situated in town 'E'.

Defendant's Pleadings :- The defendant 'B' filed written statement, therein it has been pleaded that neither he received amount nor executed any promissory note as pleaded in the plaint. Defendant specifically pleaded that so called 'C' witness of promissory note entered into the conspiracy with his brother 'F' and prepared a fake promissory note in collusion with his close relative plaintiff 'A'. This fraudulent exercise had been done by aforesaid persons with ulterior motive. Because in the year of 2004 a Civil Suit was filed by the defendant 'B' against the 'F' for permanent injunction which was decided on 22.10.2009 in favour of present defendant. In that previous Civil Suit 'F' filed an agreement for sale therein 'C' was cited as witness. This agreement of sale was declared as forged document in previous Civil Suit. Therefore to take revenge and teach lesson to the defendant all above persons entered into the conspiracy and created forged promissory note.

Plaintiff's Evidence :- Plaintiff produced three witnesses which are plaintiff himself as PW-1, and witnesses 'C'{PW-2) and 'D" (PW-3). Plaintiff also filed promissory note (Ex-P1) notice Ex-P2, Postal receipt with acknowledgment (Ex-P3) and (P-4). During the course of recording of evidence it was found that (Ex-P1) is not a promissory note but it was a bond. That's why before taking into consideration in evidence the same was impounded and after due compliance Ex-P1 was admitted in evidence as a bond. All the three witnesses stated in their statements that defendant executed ExP1 on 03.01.2005 at the residence of plaintiff and also taken one lac sixty thousands rupees in cash and also agreed to pay interest @ 02% p.m.

Defendant's Evidence :- Defendant alone appeared as witness as DW1. He has also filed certified copies of previous Civil Suit 1-A/2004, Plaint (ExD-1), WS(ExD-2), so called agreement for sale (Ex-D3) filed by 'F' brother of 'C' (PW-2) and judgment dated 22.10.2009 (Ex-D4). Defendant proved all these documents by calling original record of Civil Suit 1-A/2004. Defendant stated in his evidence that in previous Suit both 'C' PW-2 and his brother 'F' threatened and tried to dispossess defendant from his agricultural land therefore he had filed a Suit for injunction against 'F', the brother of C (PW-2). Defendant also deposed that in previous Suit 'F' had produced an agreement for sale wherein 'C' PW2 was cited as a witness and also presented as a witness in support of his brother's claim. In previous Suit agreement for sale was declared as fake agreement.

Arguments Plaintiff :- On behalf of the plaintiff it has been argued that plaintiff proved his case by reliable evidence. In previous Civil Suit neither plaintiff nor his witnesses were party so that judgment of previous suit is not binding upon the plaintiff. It also contended that plaintiff produced an independent witness 'D' (PW-3) who is neither relative, nor interested with plaintiff and has no animosity relations with defendant. Therefore plaintiff's Suit should be decreed.

Arguments Defendant :- On behalf of the defendant it has been argued that there was no introduction or any kind of relation of defendant with the plaintiff. There was no need to'take loan such a huge amount from the plaintiff. Without previous introduction why plaintiff had given loan to defendant without any mortgage or security ? Because of previous litigation there was no occasion that 'C' PW-2 became the - guarantor of the aforesaid loan. Defendant advocate has drawn attention of this court to compare admitted signature of Defendant on Ex-D1 plaint of previous Suit with disputed signature as shown on ExP-1 both are squarely different from each other. He also requested court to compare signature under Section 73 of Evidence Act.

Judgment/Order (Criminal) Writing (JMFC)

4. Frame the charge and write a judgment on the basis of the allegations and evidence given here under by analyzing the evidence, keeping in mind the relevant provisions on the concerning law.

[40 marks]

Prosecution Case :-

Truck bearing registration No. MP20 AB-845 belonged to one Mohanpal (P.W. 1). On 21.1.2013 the truck developed a mechanical defect. It was, therefore, parked at village Dumna by the driver of the Truck. On the following day, a window of the truck was found open. On checking "diesel pump", "self starter" and "tools Kit" were found stolen from the truck. A First Information report Ex. P1 was, therefore, lodged to the police by PW. 1 Mohanpal on the basis of which a case for the offence under Section 379, Indian Penal Code, came to be registered. In the First Information report Mohanpal expressed suspicion against accused Kishan Das, since he was the driver of the Truck.

During the course of investigation the Kishan Das and his brother Ram Das were arrested. Whilst in custody the two accused made a disclosure statement under Section 27 of the Evidence Act before the Head Constable in the presence of PW. 2 Chet Ram and one Bhagat Ram leading to the recovery of "diesel pump", "self starter" and the "tools Kit" from the house of accused Kishan Das.

The police, after completion of investigation submitted the charge-sheet against both the accused for offence under Section 379 read with Section 34, Indian Penal Code.

Defence Plea :-

The accused persons denied the charge. Their defence was that they have been falsely implicated.

Evidence for prosecution :-

The prosecution in support of its case examined three witnesses in all. There was no eye-witness of the theft. Mohanpal (P.W. 1) proved the FIR Ex. P-1 lodged by him. He also proved the theft of aforesaid articles from his truck. He also deposed that accused Kishan Das was the driver of the Truck.

Chet Ram was examined as PW 2. He is silent with regard to the making of the disclosure statement Ex. P 2 by the two accused. Another witness to disclosure statement Ex.P-2 was Bhagat Ram but he was not examined by the prosecution. Head Constable Shyam Lal PW. 3 deposed that both the accused while in custody on 21.01.2013 made a joint disclosure statement Ex. P 2 in the presence of PW. 2 Chet Ram and Bhagat Ram. He also proved the recovery of "diesel pump", "Self starter" and "tools Kit" in pursuance of such disclosure statement.

Evidence for defence :-

On behalf of the accused persons no witness was examined in defence.

Arguments of Prosecutor :-

As per the prosecution both the accused while in custody on 21.1.2013 made a joint disclosure statement Ex. P 2 before Head Constable Shyam Lal (PW.3) in the presence of Chet Ram (PW.2) and one Bhagat Ram and in pursuance of the joint statement, recovery of "diesel pump", "Self starter" and "tools Kit" was made from both the accused. Therefore, on the basis of disclosure statements and‘recovery of the articles, offence under Section 379 of the IPC was duly proved against both the accused.

Arguments of Defence Counsel :-

On behalf of the accused it was contended that the joint disclosure statement said to have been made by the two accused is not admissible in evidence and no reliance can be placed upon any recoveries alleged to have been made in pursuance of such joint statement. Therefore, accused should be acquitted.