Madhya Pradesh Civil Judge (Mains) 2017

Judgment Writing · compulsory paper

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

Instructions

1. All questions are compulsory. Answer to all 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 Number or any mark of identification in any form in any place of the Answer Book not provided for, by which the Answer Book of a candidate may be distinguished/identified from others. Do not write any name in the place of name of Court while settling issue, framming charges and writing Judgment. Use XYZ in the place of name of Presiding Officer. It is strictly prohibited and shall, in addition to other grounds, entail cancellation of his/her candidature.
3. Candidate shall start answering of next question from the next page. 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 filed suit for declaration, injunction and alternatively for recovery of Rs 150000/-against "A" "B" "C". Plaintiff case is "A" & "B" are real brother, son of Deviya Chamar. Plaintiff and defendants are residents of same village Unchehra. Land Survey No 945, area 11 decimal, situated in the same village, was recorded in name of defendants "A" & "B" in the revenue khasras and they were in possession of the land. This land is adjoining to his land survey No 951. Defendants "A" & "B" sold the land survey No 945 in the year 1995 by way of registered sale deed in lieu of Rs 51000 consideration and had delivered possession to plaintiff since then plaintiff is in possession. Plaintiff constructed two rooms on part of the land and is residing with his family. Cost of the construction is around Rs 1,00,000.

It is further pleaded that plaintiff filed an application for mutation in Court of Tehsildar which was registered as case No 2 a 6/95-96. Defendant "C" objected that land does not belong to Deviya Chamar but it belongs to Deviya Kalar. "A" &"B" falsely made an entry in khasra in collusion with Patwari as Deviya Chamar instead of Deviya Kalar. Tehsildar refused mutation and dismissed application. Plaintiff filed appeal but appeal was also dismissed by SDO.

In best of plaintiff's knowledge there was no person as Deviya Kalar in the village. Plaintiff attempted to contract with "A" & "B" but they refused to meet and not ready to return his money. Plaintiff also gave notice to "C" through his counsel and asked where about of Deviya Kalar and also asked to return his sale consideration and cost of the construction. He is ready to return land at their expenses but "C" did not answer the notice which was received by him on date 20 Aug 2009.

Hence suit is filed with the prayer to declare that plaintiff is owner and in possession of land. Defendant "C" be restrain not to interfere with plaintiff's possession alternatively defendant may be

ordered to return Rs 1,50,000 with interest.

WRITTEN STATEMENT :-

"A & "B:" did not participated in Court. They remained exparty.

Defendant "C" filed his WS and refuted the plaint averments. He pleaded that land survey No 945 was in name of Deviya Kalar before 1994. In the year between 1994-95 when the roster of Khasra Panchsala changed "A" & "B" and plaintiff with the collusion of Patwari Halka Lal Man Sukla made an false entry in the name of Deviya Chamar instead of Deviya Kalar. Patwari Lal Man made a report to Teshildar that Deviya Chamar had already died so survey No 945 should be recorded in the name of his son A" & "B" who passed order accordingly without giving any notice to "C" whereas "C" was in possession.

It is further pleaded that owner of the land survey No 945 was Deviya Kalar who died issue less and was residing with defendant "C". Plaintiff was neither in possession nor constructed house on the land, in fact house was constructed by Deviya Kalar and "C" is in exclusive possession of the house. Plaintiff is next neighbour of "C". This fact was well known to him that Deviya Kalar had died issueless, therefore, he planned conspiracy with "A" & "B" and Patwari Halka and replaced the word "Kalar" with "Chamar"

It is further pleaded that suit for declaration is not maintainable without claiming relief of possession. Plaintiff is not entitle for any money from "C" neither he had payed any money to "C" neither before getting registry he consulted "C". Therefore, he is not entitled for any relief against answering defendant.

Framing of Charges

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

PROSECUTION CASE / ALLEGATIONS -

Ram Lal lodged first information report in police station, Shahjehanabad, Bhopal at 1:00 P.M. on 15/07/2017 stating that in the morning today at about 10:00 A.M. he was coming to his house from District Court Bhopal, a place about 4 Kms away from police station. Two person Shyam Lal and Banshi Lal obstructed his way, hurled abusive words Mother and Sister on him and gave him severe beating by lathis, as a result of which he suffered injuries on his head and forearm of his right hand. He fell down and became unconscious. Sitaram known passer-by took him to his house. On regaining consciousness he has come to report. On the story narrated by the injured Ram Lal an offence was registered on Crime Number 150/2017. Station incharge of the police station send him for medical examination to Hamidia Hospital Bhopal where he was medically examined and prepared MLC Report was prepared. In X-ray examination of injuries fracture in right Ulna bone was found.

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' is the owner of House no. 110 situated at X District Jabalpur. He purchased this house from his aunt "M on 12th April, 2005 through a registered sale-deed for a consideration of Rs. 1,50,000/-. At present, he is living as a tenant in 'M"s another house and he has no other house of his own in the town. At the time of purchase, the defendant 'B' was residing on the

ground-floor of the house on a monthly rent of Rs. 750/-. On 30th July, 2005 he and 'M' gave a notice to the defendant directing him to pay rent to him in view of the sale but the defendant failed to comply with the direction. Ultimately, the plaintiff, by his notice dated 14th May, 2006, terminated the tenancy and demanded arrears of rent and also "asked the defendant to vacate the accommodation as it was required for his own residence'. However, the defendant, in his reply dated 20th May, 2006, denied the title of the plaintiff and refused to pay any rent to him saying that the so-called saledeed is a sham document prepared for the purpose of his eviction. Hence, the suit was filed on 2nd September, 2006 for eviction on the grounds mentioned in Section 12[1][a][c] and [e] of the M.P. Accommodation Control Act, 1961 and for recovery of arrears of rent.

SUMMARY OF THE WRITTEN STATEMENT :- The defendant has taken the suit accommodation on rent from 'M' right from the year 1997, 'M' was trying to evict him and, therefore, she also filed suits in the year 1997 and 2001, which were dismissed on 20th September, 1998 and 06th January, 2002. Thereafter, the said saledeed was brought into existence mala fidely for the purpose of evicting him from the suit accommodation. The plaintiff 'A" has been living with M and also managing her property and business. "The plaintiff has no need of the suit accommodation." As such, the suit is liable to be dismissed with costs.

EVIDENCE FOR PLAINTIFF "A" :- 'A' examined himself and substantially reiterated the pleadings. In support, he also examined "M' and 'S', the attesting witness of the sale-deed. 'M' admitted that she had filed suits for eviction of the defendant but denied the suggestion that the sale-deed is a bogus and sham document. 'S' supported this fact that the plaintiff has no other residential accommodation of his own in Jabalpur.

EVIDENCE FOR DEFENDANT "B" :- 'B' gave his statement wherein he supported the facts pleaded in the written statement. He also producted his neighbor 'D' as a witness and 'D" corroborated this fact that plaintiff is living as a member of family with M.

ARGUMENTS FOR PLAINTIFF "A" :- Under Section 109 of the Transfer of property Act, the plaintiff automatically became landlord in respect of the suit accommodation ie. with effect from the date of execution of the sale-deed by 'M'. Despite being apprised of this fact, 'B' had deliberately denied his title. 'A" has no other accommodation of his own in Jabalpur. Therefore, 'B' is liable to be evicted on the grounds mentioned in 12[1][c] and [e] of the Act.

ARGUMENTS FOR DEFENDANT "B" :- in the circumstances of the case, the sale-deed is appatently bogus and sham document. Section 109 of the Transfer of Property Act applies to genuine transfers only. As such, there was no automatic attornment on the basis of the sale deed. In such a situation, 'B' was not stopped from challenging 'A"s title. 'A"s so-called- need in respect of the suit accommodation is not bona fide as he is residing with M as a member of her family. Since, the defendant has also deposited the amount of arrears of rent and the monthly rent in compliance with provisions of Section 13[1] after raising a dispute under Section 13[3] of the Act, he is entitled to refund of the entire amount so deposited.

Judgment/Order (Criminal) Writing (JMFC)

4. Frame the charge and write a judgement on the basis of the allegations and evidence given hereunder by analysing the evidence, keeping in mind the relevant provisions on the concerning law.

[40 marks]

PROSECUTION CASE :- Prosecution story in brief is that on 14- 12-2016 around 5:00 p.m. the complainant 'A' lodged an F.I.R. at city Kotwali Gwalior stating there in that he resides at Govindpuri Colony Gwalior. On 13-12-2016 around 8:00 p.m. when he was standing on the road outside of his residence, accused B1' and 'B2' came there armed with Lathis and started uttering obscene words to him. When complainant tried to stop them from abusing him, accused persons "B1' and 'B2' attacked him with Lathis. Complainant sustained injuries on his head, back and right arm. When neighbours of the complainant came to save him, accused persons threatened the complainant to kill and fled away.

On the basis of this report Crime No. 312/16 was registered. Complainant was sent for medical examination by the In-charge of the Police Station. As per medical report fractures were found on right ulna bone and left parietal bone of the head of the complainant which are grievous injuries.

During the investigation site map was prepared, accused persons 'B1' and 'B2' were arrested and Lathis were recovered from their possession. After the investigation the charge-sheet was filed in the Court of Judicial Magistrate First Class.

DEFENCE PLEA :- The accused have denied the charge and their defence plea is that they have been falsely implicated on account of previous enmity.

EVIDENCE FOR PROSECUTION :- The prosecution examined as many as six witnesses in support of its case. Complainant 'A' P.W.1 proved the F.I.R., lodged by him. He supported the case of the prosecution and deposed that when he was standing on the road outside of his house, accused persons 'B1' and 'B2' came there armed with Lathis and started uttering obscene words to him. When complainant tried to stop them from abusing him, accused persons "B1" and 'B2' attacked with Lathis. Complainant sustained injuries on his head, back and right arm. When neighbors of the complainant came to save the complainant accused persons threatened to kill him and fled away. He lodged the F.I.R. at city Kotwali Gwalior as per Ex.P-1. He was sent for medical examination to the district hospital, Gwalior. As per his medical report he has fractures on head and right arm. He was admitted to the hospital. Other eye witnesses 'C1' (P.W.2), 'C2' (P.W.3) also supported the prosecution version to the extent as of the P.W.1. Doctor D' (P.W.4) also corroborated the versions of the prosecution by proving his M.L.C. report Ex.P-2, XRay report Ex.P-3 and X-Ray plates Article 'A-1' and 'A-2". In his cross-examination he denied the suggestions of the accused persons that the complainant received the injuries by fall.

Investigation Officer 'E' (P.W.5) and independent witness 'F' (P.W.6) proved the seizer of the Lathis in their deposition.

EVIDENCE FOR DEFENCE :- The Accused 'B1' and 'B2' in their examination under section 313 of Cr.P.C. denied the allegations against them and took a defence of false implication due to enmity. No evidence in defence is given by the accused persons.

ARGUMENTS OF PROSECUTOR :- District Prosecution Officer has argued that the all charges against accused persons 'B1' and B2 are proved beyond any reasonable doubt, hence the accused persons be convicted accordingly and rigorous punishment be imposed.

ARGUMENTS OF DEFENCE COUNSEL :- Accused persons have been falsely implicated due to enmity. Prosecution evidence is doubtful, therefore, accused persons can not be convicted. Hence, they be acquitted.