Madhya Pradesh Civil Judge (Mains) 2018

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, 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 :- In the present case plaintiff has sought ejectment against defendant on the ground that defendant is in possession of two rooms & one kitchen in capacity of tenant of plaintiff and plaintiff is in need of tenanted premise for his own use. This house is situated at “C” scheme Jabalpur and plaintiff is residing in the same house alongwith his family and whereas defendant is also tenant in a segment of such house paying rent @ Rs. 1000/- per month.

WRITTEN STATEMENT :- The defendant has pleaded accommodation available to the plaintiff is sufficient for him. Plaintiff wants to eject the defendant as the rents have been increased in vicinity and Plaintiff wants to get the undue advantage. Defendant is tenant in premise since 1968 and making regular timely payment of rent. The notice of ejectment given by plaintiff is illegal.

FRAMING OF CHARGES

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

PROSECUTION CASE / ALLEGATIONS – The prosecution case is that 'A' lives in a residential blocks of H.E.L Colony Bhopal. On 01-05-2017, after his dinner at 10:00 p.m., 'A' locked his house and went to attend a marriage in the adjacent colony. After marriage ceremony was over 'A' returned back to his house at 03:00 a.m. and found that someone had broken the lock of his house and removed his new Hero bicycle frame no H-5394. 'A' rushed to police station and lodged First Information report. During investigation sub-inspector 'B' came to know from 'C' that on the date of incident in mid night 'D' was noticed near to house of 'A'. 'D' was taken into custody and he had given a memorandum statement that the bicycle is in his possession kept by him inside his room. Sub inspector 'B' prepared the memorandum, signed by accused 'D' and witnesses 'E' and 'F'. In consequences of information received from 'D', Hero bicycle No H-5394 was recovered from his room in presence of accused 'D' and witnesses 'E' and 'F'. Seizure memo was prepared by S.I. 'B' and bicycle was sent to Executive

Magistrate for get the same identified. Identification parade was conducted and 'A' identified the bicycle as his own.

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 :- [1] Plaintiff filed the suit for specific performance with the averments that the defendant is owner of agriculture land measuring 3 acre bearing survey No 109 situated at Manda tehsil Hujur Dist. Rewa. Defendant was in need of money as plaintiff entered in an agreement to sale dated 24 April, 2013 with the defendant. [2] Total sale consideration agreed was 10 lac's per acre. Plaintiff had made the payment of Rs. 20 lac's in advance to the defendant at time of agreement and it was agreed between them that the defendant will execute sale deed in favour of plaintiff on or before 26/11/2013 expenditure borne by plaintiff whereas plaintiff shall pay rest consideration amount to defendent at the time of registration. It was further agreed between the Parties that if plaintiff fails to purchase the land in question, the advance given by plaintiff would be forfeited and in case the defendant is fails to execute sale deed in favour of plaintiff, defendant will return the advance amount 20 lac's and further Rs. 5 lac's shall be given to plaintiff by defendent. It is further agreed that the possession shall be delivered at the time of registration. It is further agreed that agreement will having binding effect on the legal heirs and successors and assigns of parties. The agreement further stipulated a condition that defendant will execute sale deed of land free from any dispute and lien etc. In case of any dispute, the time of limitation to perform agreement will not take effect and defendant shall executed sale deed in favour of plaintiff within 6 month from the settlement of such dispute. [3] In month of Oct, 2013 plaintiff asked defendant to execute sale deed as he was ready to pay rest consideration amount but defendant does not pay any heed to the request of plaintiff . On 3rd Nov 2013, the plaintiff met with defendant and asked him to execute sale but defendant ignored his request. Plaintiff also came to know that there is a litigation between defendant and his brother in Revenue Court, in which brother of defendant has challenged mutation of disputed land in the name of defendant. Finally litigation ended in August 2016 in favour of defendant. The plaintiff asked to defendent to execute sale deed in his favour but defendant refused to do so. Thereafter, the plaintiff served a notice through his counsel and asked defendant to be present in registrar office on 28th Dec, 2016 to receive his rest amount and execute sale deed. [4] Plaintiff went with consideration amount in office of registrar on 28/12/2016 and was remained available there till 5 O'clock but defendant did not turned. [5] Plaintiff has claimed reliefs to issue direction to defendant to receive remaining amount and execute sale deed in favour of plaintiff and he also be directed to bear the cost of litigation. In alternative relief to return Rs. 20 lac's alongwith interest and adequate damage also has claimed by plaintiff.

Defendant's Pleadings :- [1] The defedent has denied the contents of pleading of plaintiffs and submitted that the fault is not his part but on the part of plaintiff. He has further submitted that plaintiff had contacted to the defendant in month of Oct 2013 or On 3rd Nov 2013 and asked him to execute sale deed and receive balance amount but defendant did not pay any heed to the request of plaintiff. In fact, the plaintiff had no money as he had never served any notice to defendant. Dispute relating to mutation is not concerned with the plaintiff. The disputed land was in name of defendant and he was ready to perform his part of contract but plaintiff had no money with him. In fact, the

defendant had contected to the plaintiff on 23rd Nov. 2013 and asked him to get registered sale deed in his favour after payment of remaining sale consideration whereas plaintiff said to defendant that value of properties are decreasing. He suffered losses in a deal of land with someone Mr. Anil Singh, and he has no money to pay. As far as concern to the mutation proceedings, it was started on the instance of plaintiff as he had instigated his brother and help him to file frivolous litigation against him which ultimately ended in his favour. Plaintiff had sent a notice dated Dec, 2016 which was duly replied by his counsel. The defendant has also submitted that he has no knowledge that whether plaintiff was present in the office of registrar or not on 28 Dec, 2016. However, it is made clear that plaintiff had no money or he was not interested to get registered sale deed till Jan 2014. He has prayed that Plaintiff is not entitled to any relief. Suit is time barred and is liable to be dismissed with exemplary cost.

Plaintiff's Evidence :- [1] Plaintiff filed documents Ex.P-1 to Ex-P-7 which are certified copies of Khasra Panchsala to support their case in which name of defendant has been recorded as owner. He also filed original agreement to sale and defendant admitted his signature on it. He also has filed notice dated Dec. 2016 and reitriated its contents. [2] PW-2 is witness of agreement to sale who deposed that agreement to sale was written in his presence and parties to the agreement and he had signed the same. Plaintiff had given a cheque for sum of Rs. 20 lac's to defendant. Plaintiff had also filed his bank account pass book which shows that the plaintiff had sufficient money in his account at relevant time. [3] He has filed certified copy of the register maintained at Registrar office which shows that plaintiff was present at Registrar office on 28/12/2016. He has also filed certified copies of mutation proceedings which reveal that the brother of defendant had filed appeal against mutation. It is also reveals by documents that mutation order in favour of defendant was in Ex- parte order. [4] He denied suggestion that at his instigation defendant's brother filed appeal against mutation. He also denied that he had no money. He also denied that he did any land deal with Mr Anil Singh in which he had suffered loss. [5] He has also admitted that he did not send any notice before Dec, 2016, but he explained that he came to know about dispute between defendant and his brother on 5/11/2013 as he had not sent notice and sent only after ended the litigation.

Defendant's Evidence :- Defendant entered in to witness box and in his examination in chief, he has supported his case. He has not filed any documents. He has admitted that plaintiff had given Rs. 20 lac's cheque which was credited in his account. He also has admitted that there was a litigation pending in Tehsil between him and his brother and he also admitted litigation was pending before the date of execution of sale deed in favour of plaintiff. He has also admitted that plaintiff is not known to his brother. In cross examination he admitted that on 23/11/2013 plaintiff was out of station. He also admitted that land price had risen almost twice but denied that it is the reason to not execute sale deed by him.

Arguments of Plaintiff :- Plaintiff was always willing and ready to perform his part. He has argued that he had made maximum part of consideration then why he will not pay rest of the amount. Moreover, his bank account proves that plaintiff had sufficient money to pay. As per contract, in case of any litigation then time mentioned in agreement will not be essence of contract. As the defendant was in litigation with his brother and as per contract after ending of litigation in favour of defendant, he had served notice to defendant within six month. He had served notice and warranted defendant to execute the sale deed, He was also waiting at Registrar office but defendant did not come to execute sale deed.

He had done his best but escalation of price made the defendant's intention dishonest. Neither suit is barred by limitation nor defendant be permitted to refute the agreement to sale.

Arguments Defendant :- Plaintiff was never given any notice within stipulated period of contract. Time was the essence of the contract. Suit is barred by limitation. It is further argued that agreement to sale makes a provision that in case of the defendant will not execute sale deed in favour of plaintiff then he will return Rs. 25 lac's to the plaintiff, therefore, defendant cannot be compel to execute sale deed.

JUDGMENT/ORDER (CRIMINAL) WRITING (JMFC)

4. Frame the charge and write a judgment on the basis of the allegations and evidence given hereunder by analyzing the evidence, keeping in mind the relevant provisions on the concerning law. [40 marks]

Prosecution Case :- Prosecution story in brief, around 04:00 PM complainant 'A' came at P.S. Nagalwadi District Barwani and stated that on 14.11.2016 at about 03:45 PM., his brother 'D' came outside her house situated near middle school and demanded money. On refusal to give money, 'A' abused and used filthy words for her mother and sisters and caused razor blade injuries on her hand from which blood was oozing out. She also stated that 'D' also threatened to cause her death. Her mother 'B' and neighbor C had intervened. On the bases of her statement, ASI 'H' recorded First Information Report U/s 294, 323 and 506 IPC against 'D'. Thereafter, investigation was conducted and during investigation 'A' was sent for medical examination. Razor blade was seized from 'D'. On chemical examination, presence of human blood was confirmed on razor blade. In medical examination incised wound of simple nature was found over right hand of 'A'. Statement of 'A' was recorded u/s 161 Cr.P.C. After completion of investigation charge sheet was filed.

Defence Plea :- Accused 'D' on was charged and pleaded not guilty and claimed him innocent.

Evidence for prosecution :- Evidence was adduced on behalf of Prosecution which substantially supported the case of prosecution. In court 'A' stated that on 14.11.2016 at about 03:45 PM., she was sitting outside her house along with her mother 'B' and neighbor 'C' . At the same time, accused 'D' came and demanded money from her and on refusal he uttered some filthy words and caused razor blade injury on her right hand. Blood was oozzing out of injury. 'B' and 'C' intervened and took her to P.S. Barwani. She admitted her signature on F.I.R. [P-1] and site spot map [P-2]. In her cross examination, she has admitted that she has taken Rs. 10,000/- loan form her brother which she has not re- paid yet also that no injury was caused on her left hand. She has denied false implication of 'D' in order to avoid repayment of loan amount. Mother 'B' deposed that she was inside her home, on hearing hue and cry of her daughter she came out and saw blood on her daughter's hand and whereas 'D' was escaping from the spot. Neighbour 'C' did not supported prosecution case and he was declared hostile. 'Doctor also supported the case of prosecution and deposed during medical examination he found an incised bound of .3x.5 inches on right hand of 'A"and multiple superficial incised wound over left forearm caused by Sharp edge object. As per doctor, injuries may be caused by sharp cutting object within 6 Hour of his examination for which his MLC report is EX P-3. In his class examination he has denied the suggestion that injuries found on body of injured were self inflicted. I.O. 'H' has supported F.I.R. and incident site map [P-2] and seizer of razor blade.

Evidence for defence :- The accused 'D' in his examination of 313 Cr.P.C. denied allegations against him and took a defense that in order to evade payment of loan money Rs. 10,000/- her sister has falsely implicated him.

Arguments of Prosecutor :- The prosecution has argued that the prosecution has proved its case beyond any reasonable doubt and charges against the accused have been proved. Hence accused is liable to be convicted.

Arguments of Defence Counsel :- On behalf of accused, it has been argued that there is no eye witness of incident. The testimony of complainant is doubtful. On account of loan transaction he has falsely been implicated. Hence be acquitted.

De Facto IAS