Madhya Pradesh Civil Judge (Mains) 2019 (Phase I)

Judgment Writing · compulsory paper

Fourth 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

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

PLAINTIFF'S PLEADINGS :-

Plaintiff 'A' filed an eviction suit against 'C' with the pleadings that the shop situated at Hazira, Gwalior (M.P.) (Hereinafter referred as suit shop) was let out to the defendant @ Rs.200/- per month. Later on rent of suit shop was increased twice and presently, the defendant is paying Rs. 650/- as rent to the plaintiff. Earlier, the defendant was doing business of ready-made garments in the suit shop but after death of his wife in the year 2018, he shifted to Surat (Gujarat) & sub-let the suit shop to 'D', which was done without the consent or permission of the plaintiff. The plaintiff requires the suit shop to start business of his son 'B' who is unemployed. Plaintiff 'A' has no suitable alternative accommodation for business of his unemployed son.

WRITTEN STATEMENT :-

The defendant has admitted the factum of tenancy and rent as pleaded in the plaint. However, he has denied the rest of the pleadings of the plaintiff. The defendant has contended in his written statement that plaintiff has filed the present suit with the ulterior motive to increase rent. According to the defendant, it has been written in the rent note that the defendant can operate his garment business himself or through his family member. The defendant has further pleaded that the defendant has shifted and is living in Surat with his elder son, but he has not parted with the possession of the suit shop and he is still in possession of the suit shop through 'D', his nephew. Thus, there is no breach of the rent agreement and of the prevalent law as well. The plaintiff is receiving rent regularly. Thus, the suit is liable to be dismissed. According to the defendant, the enhancement of rent twice is itself a sufficient ground to presume that the plaintiff is not having bonafide requirement of suit accommodation.

FRAMING OF CHARGES

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

PROSECUTION CASE / ALLEGATIONS - On 13.02.2019 the prosecutrix 'P' lodged a F.I.R. in police station Kotwali, Narsinghpur alleging that at about 11.00 P.M. when she was sleeping with her two years old son in her house situated at Koshti Mohalla, Narsinghpur, accused "A" entered into her house using a rope, caught hold of her hand and kissed her. As the prosecutrix screamed, witness "K" reached there. Seeing him, accused pushed aside the complainant and ran away. Meanwhile, some other neighbours also reached there and prosecutrix narrated incident to them also. Next day, her husband came back, then prosecutrix lodged F.I.R. at police station Kotwali, Narsinghpur. The Investigating officer registered the crime No. 20/2019 and after investigation submitted the Charge-sheet.

JUDGMENT/ORDER (CIVIL) WRITING (CJ-II)

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

Plaintiff's Pleadings :-

1. Plaintiff "A" filed a civil suit against "B" for possession of part of agriculture land bearing Khasra no. 213 measuring 10 X 100 sq. yard (Hereinafter called the suit land). The suit land belongs to the plaintiff and is adjacent to land Khasra number 212 situated on east side of suit land, owned by the defendant "B".

2. The defendant "B" took unlawful possession of the suit land i.e. a strip of land measuring 10 X 100 sq. yard bearing khasra number 213. The defendant "B" merged the suit land in his land bearing Khasra number 211 and 212 and enclosed the entire land with barbed wire fencing. The defendant "B" also dug a bore well over the suit land for irrigation of suit land and his land bearing Khasra number 211 and 212 as well.

3. The plaintiff got demarcated the land bearing Khasra number 212 and 213 and thereby ascertained the encroachment of defendant 'B' over the suit land.

4. Consiquently, the plaintiff also served a legal notice to the defendant 'B' to vacate the suit land but the same has been opposed by 'B' the defendant and he has also refused to vacate the suit land.

Defendant's Pleadings :-

1. The defendant 'B' filed written statement and pleaded that he had purchased agriculture land bearing Khasra no. 212 measuring 2.50 acres from 'C' vide registered sale deed dated 11-04-2015 for a consideration of Rs. 300000/- (Three lacs). The land bearing Khasra number 213, owned by the plaintiff, is situated in western side to his land bearing Khasra number 211 and 212.

2. After purchase of the land, defendant 'B' raised barbed wire fencing all around the land bearing Khasra number 211 and 212 alongwith suit land and dug a bore well for irrigation.

3. The defendant 'B' has further pleaded that the vendor 'C' was in possession and cultivating the suit land for more than last 12 years. The defendant bonafidely believed that the area enclosed by barbed wire fencing is part of his land bearing Khasra number 212, which has been purchased by him from 'C'. He is not the trespasser of suit land but a bonafide purchaser by paying adequate and proper consideration, without notice that the suit land is the part of land bearing Khasra number 213 owned by the plaintiff.

4. In the alternative, the defendant 'B' has also pleaded that in case the plaintiff succeeds to prove that the suit land is part of land bearing Khasra number 213, the plaintiff may be directed to compensate him by giving the value of the improvement made by defendant or he be directed to sell out suit land to defendant.

Plaintiff's Evidence :-

The plaintiff examined himself and one Revenue Inspector 'D' to prove his case. The plaintiff proved his pleadings. In crossexamination, the plaintiff denied that the suit land was in possession of the vendor 'C' for more than 12 years.

The Revenue Inspector 'D' has proved Khasra panchsala, demarcation report and map prepared on the basis of demarcation report in which boundaries of Khasra no. 212 & 213 has been shown specifically. 'D' has also deposed that the suit land marked by red ink 10 X 100 sq. yard is a part of khasra number 213 owned by the plaintiff but such land has been fenced and is in possession of 'B'. In cross-examination he has denied the suggestion of the defendant 'B' that the vendor 'C' was in possession of the suit land for the last more than 12 years. The witness has also stated that on the basis of khasra panchsala of preceding five years, there is no entry about the possession of the vendor 'C' over the suit land.

Defendant's Evidence :-

The defendant 'B' has examined himself and the vendor 'C'. The defendant proved his pleadings. He also placed on record and exhibited sale deed dated 11-04-2015 executed by 'C' in favour of the defendant.

In cross-examination he has admitted that the land bearing Khasra number 212 area 2.50 acres purchased by him from vender 'C' was neither measured nor demarcated by the vendor before selling it.

The vendor 'C' has stated that he was cultivating the suit land along with his own land bearing Khasra number 212 for the last more than 12 years but neither the plaintiff nor his deceased father ever objected for the same.

In cross-examination, 'C' has admitted that there is no entry in Khasra of the preceding five years regarding his possession on the suit land. He has also admitted that the plaintiff had informed him about the initiation of demarcation proceedings. He has also admitted that the actual area of land bearing khasra number 212 possessed by him was determined only after the demarcation of land at the instance of the plaintiff.

Arguments of Plaintiff :-

The counsel for the plaintiff has argued that the plaintiff has proved his case that the defendant encroached over the suit land illegally and raised barbed wire fencing. He has also argued that plaintiff is entitled to a decree of possession of suit land against the defendant. The defendant did not act in good faith in raising wire fencing and digging bore well. The defendant is not in bonafide possession of the suit land. The Counsel for the plaintiff has also argued that the defendant has not challenged the demarcation report of the revenue officer by filing an appeal.

Arguments of Defendant :-

The counsel for the defendant argued that the defendant has acted in good faith in raising the barbed wire fencing under the belief that the suit land is part of land bearing Khasra number 212 purchased by him from 'C'. He has also argued that in case the plaintiff succeeds in proving that the suit land is a part of the land bearing Khasra number 213 and the defendant is to be evicted from the same, the plaintiff may be directed to compensate the defendant by giving the value of the improvement made by him or he be directed to sell out suit land to the defendant.

JUDGMENT/ORDER (CRIMINAL) WRITING (JMFC)

Q. 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 nutshell is that in the night of 2nd July 2018 at about 08.15, complainant Ramesh who is a lame, reached his home at Kandeli Narsinghpur, and found accused Manu and Ballu having liquor in front of gate of his home. Ramesh warned them not to consume liquor. Accused Manu and Ballu used filthy language about his mother and sister and also said that a lame cannot do anything to them. Ramesh entered his house and requested both the accused not to consume liquor as that was his prayer time, thereafter both the accused entered in to the house of Ramesh and thrashed him with kick and fists. Manu picked up a stick and gave a stick blow to Ramesh resulting injury to little finger of his left hand. On screaming of Ramesh, Rahees and Ramlal came there and rescued him. Thereafter, both the accused went away from the spot and Ramlal took injured Ramesh to Police Station Kotwali, Narsinghpur on his bicycle where Ramesh lodged a complaint against the accused persons.

The injured Ramesh was medically examined on the instance of police station Kotwali, in District hospital, Narsinghpur. As per medical report, three injuries i.e. on right cheek, back and little finger of left hand caused by hard & blunt object within 24 hours of examination were found on the body of Ramesh. X-ray was advised for the injury of little finger of left hand, in which fracture was reported by Radiologist on examination of X-ray film. Investigating officer prepared a spot map on 3rd July 2018 and recorded the statements of witnesses. Investigating Officer arrested both the accused on 5th July 2018 and prepared memo of arrest and seized a stick of Babool from accused Manu in the presence of witnesses. Completing investigation a charge sheet was filed in the court.

Defence Plea :- Both the accused advanced defence that the complainant has grudge with them because they did not lend money to him. The accused persons took a defence that complainant Ramesh fell down due to deformity in his leg and he has lodged a false complaint against them to get monetary benefits in the name of injuries.

Evidence for prosecution :- Complainant Ramesh (P.W.1) stated that, in the night of 2nd July 2018 at about 08.15, complainant Ramesh who is a lame, reached his home at Kandeli Narsinghpur, and found accused Manu and Ballu having liquor in front of gate of his home. Ramesh warned them not to consume liquor. Accused Manu and Ballu start abusing for his mother and sister and said a lame cannot do anything to them. Ramesh entered his house. Thereafter, both the accused also entered in the house of Ramesh and beat him with kicks and fists. Manu picked up a stick lying nearby and gave a stick blow to Ramesh and he got injuries in the little finger of left hand. The complainant went to police station Kotwali, Narsinghpur and lodged a complaint exhibit P-1.

Dr. Manoj Shrivastava (P.W.2) stated that the injuries on the body of Ramesh (P.W.1) may be caused by hard and blunt object inflicted within 24 hours of examination and a fracture of little

finger of left hand was found.

Evidence for defence :- Accused persons examined his neighbour Shyam (D.W.1) who deposed that Ramesh has also lodged same type of complaints with the similar type of allegations against two another persons and compounded the same after getting money. On refusing to advance money to complainant, he has filed present false report against them.

Arguments of Prosecutor :- Prosecution case is supported with medical evidence. There is no ground in existance to disbelieve the testimony of victim. So, both the accused are liable to be convicted under section 294, 452 and 325 of Indian Penal Code.

Arguments of Defence Counsel : - No independent witness from the locality has been examined by prosecution. As per opinion of Dr. Manoj Shrivastava (P.W.2) the injuries found on body of Ramesh may be inflicted due to falling down. Their defence is proved to the preponderance of probability. So, they are entitled to be exonerated from the charges with which they are subjected to the trial.