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

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 own or any 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 PLEADING : - Plaintiff's Case is that he entered into an agreement with the defendant to purchase a plot measuring 40 x 20 = 800 Sq feet situated at village A for consideration of Rs. 25,000/- (Twenty Five Thousand) on 8th November 2007.The plot is surrounded by main road in the North, by a lane in the South, by house of "C" in the East, and by house of "D" in the West. The defendant was in possession and title-holder of the said plot. The defendant received sum of Rs. 5,000 /- (Five Thousand) as an advance and executed an agreement on 8-11-2007 in presence of witnesses. It was agreed upon that the defendant would execute a registered sale deed by 8-1-2008 after receiving balance consideration of Rs. 20,000/- (Twenty Thousand) from plaintiff.

The defendant did not execute the sale deed till 8-1-2008 and did not get the plot measured. Plaintiff served a notice dated 26-1 -2008 on the defendant for execution of registered sale deed after measurement of the plot, but the defendant failed to perform his part of the contract. The defendant has tried to grab the amount of consideration paid by the plaintiff. Thus the suit for specific performance of contract valued at Rs. 20,000/- (Twenty Thousand) was filed.

WRITTEN STATEMENT : - The defendant denied the case of plaintiff on the ground that there was no condition for measurement of disputed plot prior to execution of registered sale deed, as the plot was already measured and details were given in agreement dated 8-11-2007. Defendant's contention is that he was present at Registrar's office on 8-1-2008 along with his documents of title. Defendant had already given notice to the plaintiff, to remain present before Registrar's office, prior to 8-1-2008 but the plaintiff did not appear before Registrar on 8-1-2008. He also did not pay the balance amount of consideration. Thus the defendant has performed his part of the contract. The allegation regarding defendant's intention, to grab advance money, paid to him by the plaintiff

is false. Plaintiff has under valued the suit as the agreement was for a consideration of Rs. 25,000 (Twenty Five Thousand). The suit is liable to be dismissed with cost.

FRAMING OF CHARGES

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

PROSECUTION CASE / ALLEGATIONS -

The prosecution case in brief is that complainant 'C', a bank manager, on date 26/01/2021 submitted a written application at city Kotwali Bhopal in which it was mentioned that on 25/01/2021, at about 7:00 PM in the evening, when he was coming back from his office, suddenly accused 'A' and 'B' because of previous enmity with 'C' came to beat him with lathis. Accused 'B' asked 'A' to beat 'C' with Lathi. However, on B's instigation, 'A' slapped 'C' and also assaulted him with lathi, because of which 'C' sustained two injuries. In the medical examination, one fracture was found over his left hand, and another simple injury was also found over the face of the complainant.

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

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

Plaintiff's Pleadings :-

1. Plaintiff 'P' have filed a suit for declaration of ownership and also for the recovery of possession of the land bearing survey no 1011, area 8 acres, situated in village Bareli, District Raisen, M.P (hereinafter referred to as the "suit property") against his cousin brother Defendant 'D'.

2. According to plaintiffs, suit property is the ancestral property of his father 'F'. Late 'F', his father was the owner as well as possession holder of the suit property. After the death of Plaintiff's father in year 2011 , Plaintiff being the only legal heir of the deceased 'F', became the owner of the suit property. But defendant 'D' in collusion with revenue officers, with intention to usurp the suit property, got mutated his name over the suit property through a forged Will and dispossessed the plaintiff forcefully.

3. That the cause of action arose when the plaintiff got to know about the mutation proceedings during Diwali festival on 25-11-2011 and also when defendant dispossessed plaintiff from the suit property on 20-12-2011. Therefore, plaintiff had to file this civil suit for declaration of title with consequential relief for recovery of possession against the Defendant. The Government of M.P. through Collector is also made a defendant, but no relief has been sought against this Defendant.

Defendant's Pleadings :-

1. As per Written statement of the defendant, Plaintiff is not the owner of suit property. The suit property was the self acquired property of his uncle (plaintiff's father) and the uncle had bequeathed the land to him through a registered will, being happy with his services to him in his last days. On the basis of said registered will dated 01-09-2010, he got his name mutated in the records of suit property.

2. Plaintiff never stayed with his father, nor had provided him any help or cared for him in his life time. Plaintiff has no right over the suit property, whereas he has a registered will in his favour.

3. Also the suit is hopelessly time barred as suit is filed in the year 2016.

Plaintiff's Evidence :-

1. Plaintiff examined himself and one more witness 'W'. Plaintiff substantially reiterated his pleadings in his statement. He also added that the defendant having misused the trust of his father, got fabricated a forged will in his favour by getting his father's signature on a blank paper. It is also averred that at the time of execution of said will, his father was not in a fit state of mind.

2. Witness 'W' supported plaintiff's contention that 'F' was not in a fit state of mind in his last time. Plaintiff is the sole legal heir of the deceased 'F'. However, the plaintiff failed to produce any documentary evidence in support of his father's ill health and as to the source of the suit property.

Defendant's Evidence :-

1. The defendant, in his statement, supported the facts pleaded in written statement. He also supported the execution of Registered will in his favour by his uncle 'F' and further stated that the state of mind of 'F' was fit at the time of execution of will.

2. The defendant also produced one more witness 'W2' who supported defendant's pleading that defendant is in possession of the suit property since 2011. However, this witness kept silent regarding execution of Will. The defendant produced documentary evidence from Ex D1 to D5 regarding the suit property, showing that the said land was purchased by 'F' from his own earnings. The defendant has produced Registered will Ex D6 in his support.

Arguments Plaintiff : -

The plaintiff argued that the will is not proved. He is the owner of the suit property being the only successor.

Arguments Defendant : -

The defendant argued that he is the owner of the suit property on the basis of the will & the suit is time barred.

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

On 04-12-2020 in the morning at or about 08:00 AM informant 'B' lodged a first information report with police station city kotwali Rewa to the effect that he resides in village khaurkoti within thana city kotwali Rewa. On 30-11-2020 in the evening at or about 07:00 PM while he was resting in his drawing room just after he came from office suddenly accused A1 and A2 because of his open drainage towards their plot started to abuse 'B'. When 'B' went out to see what is happening outside A1 and A2 chased 'B' with Lathi inside the house and assaulted 'B' because of which 'B' sustained bleeding injuries over head and on right arm. When 'W', wife of 'B', tried to save 'B', accused A1 and A2 also gave Lathi blows to 'W', who sustained bleeding injuries over left arm and right leg. When other family members of 'B' and neighbours came and shouted to save 'B' and 'W', both the accused persons intimidated 'B' by threatening to cause death and fled away from the place of incident. 'B' immediately went to Bichiya hospital Rewa along with 'W' and after discharge from the hospital on 04-12-2020 'B' with plaster in his right arm and bandage over his head along with 'W' went to city kotwali Rewa and lodged the report. There by police registered a case under crime no. 946/20, witnesses were examined, accompanied by the informant and victim, site plan was prepared and on

obtaining MLC from the bichiya hospital Rewa, it was found that 'W' sustained simple injuries and 'B' sustained grievous injuries caused by hard and blunt object. Accused A1 and A2 were arrested, Lathi's were also seized from them and after completion of investigation charge sheet against A1 and A2 was filed.

Defence plea

Both the accused persons advanced defence that complainant has grudge because they are prohibiting complainant from draining water in their open plot. Complainant and his wife fell down from motorcycle and lodged a false complaint to take advantage of the situation.

Prosecution evidence

Prosecution has examined as many as 5 witnesses. In examination in chief 'B' (PW1) stated that on the date and time of incident the accused A1 and A2 entered into his house and assaulted him over right arm and right side on the head with lathi's and when his wife 'W' (PW2) tried to save him both the accused persons also gave lathi blows to 'W'. When his family members and neighbours came and shouted over to accused A1 and A2, they fled away from the spot of incident. The report filed by him is EXpl and spot map prepared before him is EXP2. He remained admitted in hospital for 3 days because his right arm was fractured. In cross examination 'B' (PW1) has denied the suggestion of defence that he has sustained injuries from fall by the motorcycle.

Another injured witness 'W' (PW2) also supported the prosecution version to the extent of B's (PW1) prosecution case.

Prosecution witness 'R' (PW3) who is real brother of 'B' has supported the prosecution version to the extent of B's prosecution Case.

Doctor 'D' (PW4) also corroborated the version of 'B' and 'W' by proving their MLC report exhibit P3 and P4, X-Ray report of 'B' EXP5 and X-Ray plate & article A1 and A2 with minor variation that injuries on 'W' was on right arm and right leg.

Investigating officer 'I' (PW5) has supported all the proceedings done by him in the course of investigation.

Evidence for defence

Accused persons have denied all the inculpatory circumstances put to them in examination under section 313 Cr.P.C. Accused persons examined his neighbour 'N' who deposed that the plot of A1 is beside the house of 'B' and all the water from his drainage is collecting in the plot making it a marsh land. A1 and A2 who are father and son requested 'B' many times to make arrangement for the drainage but instead of this 'B' who is a well-to-do person and a Municipal officer has lodged a false report against A1 and A2. 'B' has recently purchased a new motorcycle and he is unable to drive it and had fallen from the motorcycle and sustained various injuries.

Argument for prosecution

Prosecution has established the case fully. There is no ground in existence to disbelieve the testimony of victims. Both accused persons are liable to be convicted for their acts.

Argument for defence

There is variation in medical and ocular evidence. No independent witness has been examined by prosecution and there is considerable unexplained delay in lodging FIR. The story of prosecution is

false because 30 November 2020 was a public holiday (Kartik Poornima Gurunank Jayanti) hence no question of coming from the office by complainant arises. The standard of their defence is of preponderance of probability so they are entitled to be exonerated from the charges with which they are subjected to trial.

De Facto IAS