Madhya Pradesh Civil Judge (Mains) 2021

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 Frame the issues on the basis of the pleadings given here under - [10 marks]

PLAINTIFF'S PLEADINGS :- The defendant had prosecuted the plaintiff for theft of bicycle. The plaintiff was arrested and detained in police custody for two days. Thereafter, during trial, he remained in jail for about 15 days. After investigation, the plaintiff was charged under Section 380 of IPC for committing theft of bicycle in the dwelling house of the defendant, however, the plaintiff was acquitted of the offence charged. The judgment of acquittal was declared on date 01-01-2008. According to plaintiff, the defendant had enmity with him. After acquittal, the plaintiff served a notice to defendant that due to malicious prosecution his reputation is lowered down in the eyes of public and in particularly of his relatives. He has claimed Rs. 10,000/- as compensation.

WRITTEN STATEMENT :- The defendant has denied the averments made by the plaintiff and alleged that he never prosecuted the plaintiff. The police officer of the concerned police station investigated the case and seized the bicycle from the accused. The witness of seizure memo were declared hostile and the court did not believe the evidence of the Investigating Officer who seized bicycle at the instance of the accused/plaintiff. He has denied that plaintiff is entitled to any damages, as the plaintiff's reputation was not at all lowered down in the eyes of public or in the eyes of the relatives. He has also stated that he did not find it necessary to reply to the notice, hence, no reply was given. He has further claimed that he can not be estopped for not replying to the said notice.

FRAMING OF CHARGES

Q. 2 Frame a charge/charges on the basis of prosecution case/allegations given below:- [10 marks]

PROSECUTION CASE / ALLEGATIONS :- The case of prosecution in brief is that the complainant has lodged F.I.R. in police station stating that on 02/08/20 at 12 o'clock noon, he was proceeding towards his field at Bablai on his motorcycle and when he reached in front of well of Bhagwan on Sirsya road, then the driver of a dumper bearing registered No O.D. 29 B. 0120 drove

his vehicle in rash & negligent manner and hit his motorcycle. Resultantly, the complainant suffered injuries on left leg, knee, right thigh, right hand finger, and left side of the face, near eye. The driver of dumper ran away from the spot with the vehicle. The complainant was taken to hospital for treatment of injuries. A memo of bringing complainant to hospital for treatment was sent from hospital to the police station. The medical examination of complainant was done in which Doctor found abrasions on his body and opined for X-ray. On having done x-ray, fracture was found in his leg. An offence u/s 279, 337 of I.P.C. was registered against driver of dumper at the police station. At the time of submitting challan Section 338 of I.P.C. was added in it.

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

Q. 3 Frame issues on the basis of pleadings and evidence given below and write a judgment based on marshalling and appretiation of the evidence, along-with the relevant provisions of Law/Acts :- [40 marks]

Plaintiff's Pleadings :- Plaintiff is owner of Plot No. 1 and admittedly defendant is owner of plot No.2. Both the plots are adjacent to each other. The plaintiff has constructed a house on his plot No.1 and on right side of his house, he has opened two windows. Since on left side and back side, there are walls of other houses, as, the plaintiff had no other source to get air in rear portion of his house. This is why plaintiff had constrain to open window on the right side. The plot No.2 is lying open for more than 25 years as defendant intends to sell it when it would fetch high value of plot. The plaintiff is enjoying air and light from his windows which is according to him minimum requirement for the permanent beneficial enjoyment of his property. According to plaintiff, he is enjoying the above right within knowledge of the defendant, peaceably, without any interruption for more than the last 23 years. It is further pleaded that the defendant had purchased his plot No.2. from some other person and before that plaintiff had already constructed his house. The defendant had even after purchase of said land, never objected to the constructed windows. Now, the defendant has started construction work and he is digging foundation so that on certain day he will erect wall adjacent to his house and thereby plaintiff will be precluded from enjoying his right of easement. Therefore the plaintiff has filed this suit for declaration and injunction restraining the defendant for closing windows and obstructing air and light which plaintiff is receiving for more than 20 years. The plaintiff has valued the suit for declaration to the tune of Rs. 1,000/- (One Thousand) as the value of the suit property and court fee of Rs. 120/- (M.P. State) has been paid. In addition, he has valued the suit for injunction to the tune of Rs. 400/- and a minimum court fee of Rs. 100/- (one hundred) has also been paid.

Defendant's Pleadings :- The defendant has denied all the averments made by the plaintiff and has stated that the predecessor-in-title had told him that the plaintiff had sought permission to construct two windows which he had acceded but no written document was executed. Therefore, plaintiff has just an oral permission and can be revoked at any time. It was just a permission which was withdrawn by him before he started digging work on the plot. The defendant has further stated that even if the plaintiff has acquired the easementry right but this does not mean that it is an unfettered right. It is always to be chanalised so as to enable the defendant to use his property to the maximum beneficial enjoyment. The defendant has also challenged the valuation and court fee.

Plaintiff's Evidence :- Plaintiff has examined himself and proved the sanction of construction of his house which is 23 years old on the date of filing of the suit. The Municipal Corporation had given permission to open the disputed windows subject to easementry rights of neighbours.

Plaintiff has also proved the completion certificate of house which is also taken by him more than 22 years back on the date of institution of suit. In the cross-examination, he has denied that he had taken any permission from the defendant's predecessor-in-title. He has stated that since the land was lying vacant there was no need to seek permission. He has further stated that the predecessor-in-title used to visit on his land but never objected to it as he was an illiterate labourer. Plaintiff has also admitted that he has just passed 5th standard and does not know anything about legal rights.

The plaintiff has examined one neighbour who deposed that he has seen the existence of windows for more than 20 years and has denied that the windows are never opened as plaintiff has no need of the windows and he has other sources from where he is receiving light and air. Plaintiff has examined one engineer, who has supported the plaintiff's case and stated that if windows are closed, there will be complete darkness in the room where the windows are situated.

Defendant's Evidence :- The defendant has examined himself and predecessor-in-title to support the case. Both have stated that in their presence the plaintiff had admitted that he will remove the windows when the owner of the plot will start construction, but in cross-examination the predecessor-in-title had admitted that when the plaintiff opened windows in the wall he was not present on the spot. Subsequently, when he came to know about it, he objected to it and on objection plaintiff agreed to remove the windows as and when required. Nothing was done in black and white. It was all oral. The defendant has denied any right of easement and claimed that he has right to construct on his land and has also right to close windows.

Arguments Plaintiff :- Section 4 of the easement was referred a right by prescription was claimed. There was no consent on behalf of the plaintiff that he will remove the windows as and when required & there was no permission sought by the plaintiff from the predecessor-in-title for construction of windows in the wall, are the main arguments of plaintiff.

Arguments Defendant :- Plaintiff can have light and air from the front portion. No easement. The Plaintiff was permitted to open windows, therefore, no question of easement arises. All these are main arguments of defendant.

JUDGMENT/ORDER (CRIMINAL) WRITING (JMFC)

Q. 4 Frame the charge on the basis of prosecution case and write a judgment with reason based upon the facts, evidence and arguments given below. [40 marks]

Prosecution Case :- The prosecution case in short is that on 11.4.2008, at about 11:55 p.m. in the night, the complainant was fetching water from a public tap. The accused asked for his cycle but the complainant refused to give his cycle to him. On this issue, the accused started abusing the complainant and when the complainant requested him not to do so, then the accused brought a lathi. After seeing the accused, the complainant went inside his house, however, the accused followed him and brought him out of house and started beatings the complainant by means of lathi, as a result of which, the complainant fell down on the ground and sustained various injuries on the different parts of his body. The incident was witnessed by Lala Shrivastav, Kundan Singh, Manju, etc. The complainant lodged report in police station Kotwali, Shivpuri on 12.4.2008, at about 00:45 a.m. in the night and on the said complaint, the police registered Crime No. 230/2008. The complainant was sent for medical examination. During investigation, spot map was prepared, the statements of the witnesses were recorded.

Defence Plea :- There is no previous enmity with the complainant. The injuries on the body of complainant are old injuries, not caused on the date of the incidence. Injuries can be caused by falling on ground. No offence is made out under section 327 of I.P.C. There is no eye-witness, as incidence occurred in dark midnight.

Evidence for prosecution :- The complainant had received 8 contusions on his body and medically examined by Doctor (P.W.-5), Prepairing M.L.C. report Exhibit P-6. Prosecution examined the complainant (P.W.-1), Gopal Giri (P.W.-2), Lala Shrivastav (P.W.-3), Kundan Singh (P.W.-4).

Evidence for defence :- Accused in his examination under section 313 Cr.P.C. contended that recovery of lathi is not proved. He has committed no offence, injuries were not caused on the date of incidence, but injuries were old.

Arguments of Prosecutor :- The offences are established by the prosecution evidence. Injuries are proved by expert evidence. Prosecution witnesses are reliable.

Arguments of Defence Counsel :- Prosecution has not proved the case beyond reasonable doubt. There is no extortion of property. Injuries are not proved. Recovery is not proved. There was no assault on the complainant.