Maharashtra Civil Judge (Mains) 2016

Paper I: Civil Laws · compulsory paper

Civil Procedure Code, Transfer of Property Act, Specific Relief Act, Law of Contracts, Sale of Goods Act and Partnership Act. Time: 3 Hours · Maximum Marks: 100

Instructions to the candidates

1. All questions are compulsory.
2. Question No. 1 carries 20 marks. All other questions carry equal marks, i.e. 16 marks each.
3. Your answers must be to the point, wherever possible quoting the specific provision of law.
4. Do not reproduce any question. Write only the question's number against the answer.
5. Wherever an option has been given, only the required number of responses in the serial order attempted shall be assessed. Excess responses shall be ignored.
6. Other than cited cases, the candidate should not write roll number, any names (including their own), signature, address or any indication of their identity anywhere inside the answer book, otherwise he will be penalised.
7. The English version of the question shall be authentic in case of any ambiguity.
8. All questions can be attempted only in one language, either English or Marathi, as per the option given in the application form.
9. Candidates are expected to answer all the sub-questions of a question together. If a sub-question is attempted elsewhere (after leaving a few pages or after attempting another question), the later sub-question shall be overlooked.

Question No. 1 [20 marks]

Write a judgment on the basis of the facts narrated below. While writing the judgment: (a) adhere to the contents of a judgment as required under the Code of Civil Procedure; (b) frame and answer the issues properly; (c) wherever necessary, fill up the details from your imagination; (d) give legal, logical and proper reasons for your findings; (e) conclude the judgment with a proper operative order.

Facts. Suit properties: Gat No. 817, 820 and 828, situated at Village Bhada, Tal. Ausa, District Latur.

Plaintiff's case: One Ashok Amol Desai was the owner of the suit properties. On 1.10.2004 he entered into an agreement of sale of the suit properties with plaintiff Ram Lalit Mane for a total consideration of Rs. 4,00,000. On the date of the agreement the plaintiff gave Rs. 1,00,000 to Ashok Desai towards earnest money. It was agreed that Ashok Desai would obtain the requisite permission of the authorities for sale of the suit properties and thereafter, within one month, the sale deed would be executed on payment of the balance consideration. Ashok died on 11.10.2006. The plaintiff approached the son of Ashok Desai, namely Arvind, in January 2008. Arvind denied the transaction. The plaintiff issued a legal notice dated 30.9.2010. Arvind did not respond to the notice. Hence Ram filed a suit for specific performance of contract and, alternatively, for refund of the earnest money.

Defendant's case: The defendant denied the transaction and took the defence that the plaintiff had fraudulently taken the signature of his father on a blank paper, as the father of the defendant was in need of money and therefore obtained a loan of Rs. 1,00,000 from the plaintiff.

Evidence: Take by imagination, based on pleadings.

Question No. 2 [16 marks]

Answer any two of the following sub-questions:

(a) What is a decree? Explain the difference between a preliminary decree and a final decree. Whether a preliminary decree can be executed?

(b) Explain the difference between Section 5 and Section 6 of the Specific Relief Act, 1963.

(c) When is a suit for Declaration, Possession and Injunction required to be filed? When is a suit for Possession and Injunction required to be filed?

Question No. 3 [16 marks]

Write short notes on any four of the following:

(a) Vested and contingent interest

(b) Transfer by one co-owner

(c) Marshalling securities

(d) Difference between courts of limited jurisdiction and courts of unlimited jurisdiction

(e) Cause of action and when it can be said that a cause of action arose partly

(f) Necessary and proper parties

Question No. 4 [16 marks]

Answer any two of the following sub-questions:

(a) Explain the need for temporary injunction to create third party interest in suits for specific performance of contract vis-à-vis the provision of lis pendens in the Transfer of Property Act, 1882.

(b) Under what circumstances specific performance of contract cannot be enforced?

(c) What is part performance of contract with reference to specific performance of contract?

Question No. 5 [16 marks]

Answer any four of the following sub-questions:

(a) Define consent. When is consent said to be free?

(b) What is the importance of consideration under the Contract Act, 1872?

(c) Define contract of guarantee and continuing guarantee.

(d) Explain the difference between pledge and mortgage.

(e) Explain the concept of fiduciary relationship between principal and agent.

Question No. 6 [16 marks]

Answer any two of the following sub-questions:

(a) Explain the different modes of service of summons under the Code of Civil Procedure, 1908.

(b) Explain the difference between ex parte decree and ex parte order. What are the grounds to set aside an ex parte decree?

(c) What is the principle of res judicata and constructive res judicata? Explain the difference between res judicata and Order 2 Rule 2 of the Code of Civil Procedure, 1908.

(d) Explain the difference between preliminary issue under Section 9-A and Order 14 Rule 2 of the CPC.