Maharashtra Civil Judge (Mains) 2017

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 and evidence given below. While writing the judgment: (a) The judgment should be written as required by the provisions of the Code of Civil Procedure. (b) Frame proper issues and give findings. (c) Facts and evidence given here may not be complete. Consider missing details by imagination. (d) Give legal, logical and appropriate reasons for your findings. (e) Conclude the judgment with an appropriate operative order.

Facts for writing judgment. Plaintiff's case:

Plaintiff Mira instituted RCS no. 172 of 1987 against Gopal in the Court of Civil Judge J.D. Nagpur praying for a declaration of her title in the suit property and also for recovery of possession thereof. She claimed to have purchased the same vide a registered sale deed dated 26/6/1982 for the consideration of ₹ 35,000 from the sons of Rahim, the original owner. She was registered as the registered owner in the municipal records of the suit property. She averred that at the time of sale, defendant Gopal was in possession of the suit property as tenant. Gopal neither accepted her as his landlord nor paid the rent when demand was raised.

Defendant's case:

The defendant in his written statement, while reiterating that Rahim was the owner of the suit property, stoutly denied the transaction of sale by his sons in favour of the plaintiff. Defendant Gopal claimed to be in occupation thereof on the strength of an agreement for sale executed between him and the original owner Rahim. He contended that the vendors of the plaintiff had no subsisting title in the

suit property to convey to her. He claims that Rahim executed a Registered Agreement for sale on 20/5/1975 and he had, by instalments, in all paid ₹ 26,000 by 12/4/1976, which formed the major part of the price. He claims to have paid municipal tax of the suit property since he is in possession. He also contended that in spite of repeated insistences, the original owner did not execute the sale deed and after his death his sons also avoided doing so.

Evidence:

PW1 Subhash, the husband of the plaintiff, in his testimony has stated that at the time of purchase, when he enquired about the possession of the defendant over the suit property, his vendors told him that the defendant was in occupation of the premises as a tenant. The witness categorically denied any knowledge of such agreement for sale at the time of purchase.

PW2 Sultan, one of the sons of the original owner, on oath affirmed the execution of the sale deed dated 26/6/1982 in favour of the plaintiff for a consideration of ₹ 35,000. Though this witness admitted the agreement for sale between the defendant and his father, he mentioned that on inquiry, his father had told him that the agreement had lapsed as the purchase was not made within time. This witness has categorically stated that he did not disclose the agreement for sale to the plaintiff and instead had disclosed to her husband that the defendant was only a tenant in possession of the suit property.

As against this, the defendant, amongst others, sought to rely on his testimony to the effect that he had always been ready and willing to perform the contract, and also on the reply to the notice sent by the vendors of the plaintiff conveying to him the cancellation of the agreement for sale, in which he reiterated his readiness and willingness to get the sale deed on the basis of the agreement for sale executed. He claimed that he cannot be dispossessed from the suit property, House no. 44, Ravinagar, Nagpur.

Question No. 2 [16 marks]

Answer any two of the following sub-questions:

(a) Define the "rule against perpetuity" under the Transfer of Property Act. Enumerate the exceptions to this rule.

(b) Define "transfer of property". "Transferability is the most inherent quality of property": state the exceptions to this rule.

(c) Explain the right of the mortgagor to redeem. Who can exercise this right apart from the mortgagor?

Question No. 3 [16 marks]

Answer any two of the following sub-questions:

(a) In what circumstances may the court grant and may refuse a temporary injunction? What are the consequences of disobedience of an injunction order?

(b) What is the procedure given in the Code of Civil Procedure for production, impounding and return of documents?

(c) What is the procedure followed for attachment of movable property under the execution proceeding?

Question No. 4 [16 marks]

Answer any two of the following sub-questions:

(a) What is a void agreement? Explain the various instances of void agreement given in the Indian Contract Act.
(b) Explain the provisions regarding time and place of performance of contract under the Indian Contract Act.
(c) What are the consequences of breach of contract under the Indian Contract Act?

Question No. 5 [16 marks]

Answer any two of the following sub-questions:
(a) What is the liability of a person in possession of property of which he is not the owner under the Specific Relief Act? Fortify your answer with suitable illustrations.
(b) What is a declaratory decree? State the general principles on which the court grants such a decree and explain the effect of such a decree.
(c) "The jurisdiction to decree specific performance is discretionary." Explain. Which reliefs may be granted in a suit for specific performance in addition to or in substitution of such performance?

Question No. 6 [16 marks]

Write short notes on any four of the following:
(a) Define goods, existing goods and future goods.
(b) What are the implied conditions as to quality and fitness under the Sale of Goods Act?
(c) Requirements for auction sale of goods under the Sale of Goods Act.
(d) What are the modes of determining partnership in the Indian Partnership Act?
(e) Implied authority of a partner as agent of the firm as described in the Indian Partnership Act.
(f) Provisions for retirement of a partner in the Indian Partnership Act.