Odisha Judicial Service (Mains) 2013

Law of Property · optional paper

JSM – 13/5 · 3 hours · 150 marks

Answer six questions, selecting two from each of Sections A, B and C.

Section A

1. (a) Mr. Sanjay. a political pensioner, was the grantee from the Government of the plot building site at Jaipur, Orissa state, in 2012 he entered into an agreement with Mr. Vivek undertaking to sell the plot to the latter if he, should be given permission, by the Government to live in Bangladesh. Mr. Sanjay, did in fact obtain such permission, but failed to execute conveyance in favour of Mr. Vivek. The Collector, thereupon cancelled the grant and put Mr. Vivek in possession of the said plot. Then Mr. Vivek brought the action for a declaration of his title and for ejectment. The Collector's order cancelling the grant was found to be invalid, but the defendant Mr. Sanjay contended that the ejectment action should fail since he could rely upon the doctrine of part-performance. Decide. [12 marks]
(b) Write short notes on the following: [13 marks]
(i) Onerous gift
(ii) Unpaid Vendor's lien
(iii) Actionable claim

2. (a) Mrs. Lakshmi, a widow of Praveen, executes a will whereunder she gives to Mr. Vijay a sum of Rs. 20 lakhs belonging to herself and to Mr. Siva an item of land belonging to her late husband. Vijay and Siva are the nearest reversioners to her husband's estate. On Mrs. Lakshmi's death Vijay seeks to recover the legacy as also a moiety of the item settled on Mr. Siva. Can he succeed ? [12 marks]
(b) Write short notes on the following: [13 marks]
(i) Doctrine of holding out
(ii) Notice
(iii) Subrogation

3. (a) 'A' makes a gift to 'B' with a proviso that if he marries without the consent of 'C' and D', it shall go to 'E'. 'D' dies. B' marries without the consent of 'C'. Can 'E' claim the property ? [8 marks]
(b) 'A' mortgaged his land to 'B' with possession for five years, the rent and profits to be set off against the interest. The mortgage further provided that if the mortgage was not redeemed within a period of 20 years from the date, the mortgagee should treat the land as sold to him absolutely. 'A' has period of 20 years from the date, the mortgagee should treat the land as sold to him absolutely. 'A' has not redeemed the mortgage within a period of 20 years. Can 'B' become the owner of the land ? [8 marks]
(c) Write short notes on the following: [9 marks]
(i) Tenancy by holding over
(ii) Equitable Mortgage
(iii) Vested interest
(iv) Exchange

4. (a) "Once a mortgage and always a mortgage and nothing but a mortgage." Explain the statement with the help of decided cases. [8 marks]
(b) What are the ways in which the lease can be determined ? [8 marks]

(c) A' mortgaged property to 'B'. 'B' sued on the mortgage and obtained a decree 'nisi' for foreclosure. Before the decree was made absolute, 'A sold property to 'C'. The decree for foreclosure was made absolute. 'B' wants to enforce the decree against 'C' for foreclosure. Can 'C' be entitled to redeem the property being a purchaser for valuable consideration ? [9 marks]

Section B

5. (a) What do you understand by the expression "Specific relief ? In what cases may the specific performance of a contract be enforced? [12½ marks]
(b) 'A' proceeds to U. K. leaving his furniture in charge of 'B', as his agent during his absence. 'B' without As authority, pledges the furniture to 'C. 'C' knows that 'B' is not the owner of the furniture. 'C' advertises it for sale. A' returns in the meantime and demands the furniture back from C. 'C does not comply with A's demand. Advise 'A. What would be your answer if 'C' believed in good faith that 'B' was the owner of the furniture ? [12½ marks]

6. (a) What are the rights and remedies under the Specific Relief Act of a purchaser or lessee against vendor or lessor with imperfect title ? [12½ marks]
(b) 'A' proposed to sell to 'B' a freehold estate free from all encumbrances. 'B' discovers that the estate is mortgaged to 'C' for the full amount of purchase money. What right, if any, has 'B' against 'A' ? [12½ marks]

7. (a) Will the Courts specifically enforce the following contracts ? Give reasons for your answer: [9 marks]
(i) A contract to marry
(ii) A contract to give money or loan
(iii) A contract to build or repair a house
(iv) A contract to refer a dispute to arbitration
(b) Distinguish between a temporary or interlocutory injunction and perpetual injunction. [8 marks]
(c) Distinguish between a 'mistake of fact' and a 'mistake of law'. [8 marks]

8. (a) What is the summary and speedy remedy provided by the Specific Relief Act for a party dispossessed of immovable property to recover possession ? Can title also be determined along this remedy ? [12½ marks]
(b) The Collector of Adilabad under the order of the Government of Andhra Pradesh forcibly dispossessed 'A' from his house at Adilabad on the 1st January, 2013. Can he recover possession under Sec. 9 of the Specific Relief Act by a summary procedure if he brings a suit against the Government within a period of six months from the date of his dispossession ? What would be your answer if 'A' was dispossessed by a private individual? [12½ marks]

Section C

9. (a) Explain the object of the Law of Limitation and salient features of the Limitation Act, 1963. [12½ marks]
(b) How the period of limitation is extended in certain cases by showing 'sufficient cause' by the appellant or applicant to satisfy the court and how the sufficient cause is to be determined ? What are the guidelines for it ? [12½ marks]

10. (a) Explain the law relating to effect of the following factors on the computation of period of limitation: [12½ marks]

(i) Effect of death on or before the accrual of the right to sue
(ii) Effect of Fraud or Mistake
(iii) Effect of Acknowledgement in Writing
(b) A, B and C inherited property from their father. C is minor aged 15 years. A on 2nd August, 2002 sold his share of the property without offering it to C. C wants to file a suit to challenge the sale. What is the last date of limitation for filing a suit by C ? [12½ marks]

11. (a) Explain the Law relating to Exclusions in computation of the period of limitation under Sections 12,13,14 and 15 of the Limitation Act. [12½ marks]
(b) Explain the following: [12½ marks]
(i) Legal disability
(ii) Acquisition of Easement by Prescription
(iii) Exclusion in favour of reversioner of servient tenement
(iv) Extinguishment of right to property

12. (a) "The general principle that the Law of Limitation only bars the remedy but not the right itself." Explain the statement. [12½ marks]
(b) Mr. 'P' a subscriber in chit fund executed two promissory notes as security for regular payment on interest for a sum of Rs. 2,00,000 consisting of 40 instalments payable @ Rs. 5,000 per month. The subscriber 'P' paid regular instalments up to 25th instalment. He committed default from the 26th instalment which fell due on 28th February, 2012. The chit terminated on 2nd May, 2013 calling upon the subscriber to pay the arrears from the 26th instalment and finding no response filed the suit in June, 2013 for recovery of arrears from the 26th instalment. Mr. 'P' resisted the suit contending, that it was barred by limitation. Decide. [12½ marks]