Odisha Judicial Service (Mains) 2014

Law of Property · optional paper

3 hours · Full marks: 150

The figures in the right-hand margin indicate marks. Answer six questions, selecting two from Section–A, two from Section–B and two from Section–C.

SECTION—A

1. (a) Define 'mortgage' and distinguish among ‘simple’, 'usufructuary'; 'conditional' and ‘english’ mortgages. [10]
(b) Explain the maxim, "redeem up, foreclosure down”. X borrows Rs. 5,000 from Y and executes a usufructuary mortgage for Rs. 3,000, the rents and profits to be taken in lieu of interest X covenants in the deed that the payment of balance of Rs. 2,000 with interest @ 2% per month would be compulsory at the time of redemption. Does this covenant amount to a clog on redemption? [15]

2. (a) Discuss the doctrine of ‘Part performance’ and ‘Equitable estoppel’ and distinguish between them. [12]
(b) Discuss briefly the law relating to fraudulent transfers. [13]

3. (a) Who is an Ostensible owner? What is the effect of the Benami Transaction Act, 1988 on Section 41 of the TP Act, 1882. Refer to decided cases. [10]
(b) Distinguish between “condition precedent" and “condition subsequent". Discuss the validity of the following transfers: [15]
(i) A transfers field to B on the condition that he shall walk one hundred miles an hour.
(ii) A transfers a field to his niece C on the condition that she will leave her husband.

4. (a) “Section 53-A of TP Act does not confer 'title'. It enables a person without title to defend his possession." Do you agree with the above statement? Give reasons for your answer with the help of decided cases. [12]
(b) Define contingent interest. Write down its nature and salient features. What is distinction between contingent interest and chance of heir apparent succeeding to an estate? [13]

SECTION—B

5. (a) "Protection of life and property cannot be assured by a simple declaration of rights and duties. The enumeration of rights and duties must be supplemented by legal devices which help the individual to enforce his rights. Social redress must be provided to every person who is injured in the social process. Basically the mission of the Specific Relief Act is to assure that whenever there is a wrong, there must be a duty.” (Ashok Kumar Srivastava v. National Insurance Co. Ltd. (1998) 4 SCC 361). Elucidate. [15] Z bequeaths land to A, "not doubting that A will pay there out an annuity of Rs. 1,000 to B for his life”. A accepts the bequest. Whether A is bound to pay the annuity to B?
(b) "Specific relief to be granted only for enforcing individual civil rights and not for enforcing penal laws.” Explain. [10] A buys land from B, having noticed that C is in occupation of land. A omits to make an enquiry as to the nature of C’s interest therein. Whether A is a trustee for C to the extent of that interest?

6. (a) Explain the cases in which specific performance of contracts connected with Trust enforceable. Two, trustees, A and B, empowered to sell trust property worth a lakh of rupees, contract it to C for Rs.

30,000. Whether specific performance of this contract is possible? [12]
(b) Explain, in brief, the contracts which cannot be specifically enforced by law. A and B contract to become partners in a certain business, the contract does not specify the duration of the partnership. Whether this contract can be specifically enforced? [13]

7. (a) Briefly discuss the provisions relating to rectification of instruments and rescission of contract in the light of the Sp. R. Act. [12] A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals form B. Whether B is entitled to have the contract rescinded?
(b) Explain the rule laid down in Section 28 of the Sp. Relief Act with the help of suitable case law. [13]

8. (a) What are the declaratory decrees and how the Court can use this discretionary power? [12]
(b) Define injunction. In what cases the injunction is not issued and in which injunction can be refused? [13]

SECTION—C

9. (a) What is the meaning and nature of the law of limitation? Is law of limitation 'lex feri'? Distinguish between limitation and prescription. [10]
(b) How the period of limitation reckoned under the Limitation Act in the following cases? [15]
(i) A minor
(ii) An insane person
(iii) An idiot person

10. (a) In case of fraud or mistake, the limitation does not begin until the fraud or mistake has been discovered by the plaintiff or applicant. Discuss with the help of relevant provisions of Act and decided cases. [12]
(b) Explain and illustrate with the help of decided cases "when once time has begun to run, no subsequent disability or inability can stop it". [13]

11. (a) Can a Court entertain an appeal or an application after the expiry of the period of limitation? If so, under what circumstances and on what grounds? Mention relevant provisions of the Act and decided cases. [10]
(b) "Computation of period of limitation excludes the time taken in legal proceedings." Explain with the help of legal provisions and illustrations. In a partition suit Court found the value of suit properties beyond its pecuniary jurisdiction and returned the plaint on 10-6-2013. On account of compromise with some claimant few properties were deleted and the value of the suit came within the jurisdiction of the Court. The plaintiff represented the plaint in the same Court on 12-06-2013. He claimed exclusion of time between the date of filing of suit 20-11-2011 and representation of the plaint under Section 14 of the Act. He urged that he must be deemed to have been prosecuting with due diligence another civil proceeding. Decide giving reasons. [15]

12. (a) What is the effect of acknowledgement on limitation? [10]
(b) Whether the following illustrations are sufficient acknowledgement of liabilities: [15]
(i) "I am ashamed that the account has stood so long."
(ii) "I admit the loan but I have since repaid the amount."
(iii) "The promissory note which I gave is unstamped. I will not pay it."
(iv) "I wish to look your accounts; in my own account I do not see any amount due to you. Please,

therefore, send the account."

(v) "I cannot afford to pay my new debts much less the old debts I owe."