Tamil Nadu Civil Judge (Mains) 2018

Law Paper II · compulsory paper

Duration : 3 Hours · Max. Marks : 100

General Instructions to Candidates

i) The facts and particulars provided in the Question Paper i.e. the court name, place, case numbers and names of parties are fictional. Yet candidates have to conclusively assume them to be true for the purposes of solving the questions..

ii) Candidates may write the answers either in English or in Tamil but not in both.

iii) The Question Paper is provided in Tamil and English versions. In all matters and the cases of doubt, the English version is final.

SECTION A — (4 x 10 = 40)

FRAMING OF ISSUES

Note:

i. This section contains four questions and all the four shall attend. For the Pleadings provided, issues shall be framed. The question carries 10 marks. ii. The candidates are to assume the role of the Presiding Officers and they are to consider the details of the pleadings furnished herein below and frame necessary issues. iii. Candidates need not write the cause title of the case, court number, the name of the Judge, case number, name of the Advocates etc., No separate marks will be awarded for writing cause title. Marks will be awarded only for the Issues framed.

1. [10 marks]

Suit for declaration, recovery of possession and for mesne profits with costs.

The averments in the plaint are briefly as follows:-

The suit property, which is a Bajanaimadam belongs to the Balija Naidus of Melapalayam, Vadakailasam, Panruti Taluk. The plaintiff is the hereditary trustee of the said Bajanai madam, which has been so declared in the compromise decree in 0.S.No0.648/26 on the file of this court. The suit property was rented out to one Parthasarathi Naidu on a monthly rent of Rs.15/- and he was paying rent regularly, but later fell into arrears. He became a chronic defaulter. In the minutes book of the trust, the said Parthasarathi Naidu had acknowledged the rent due by him on 09.2.1975. The said Parthasarathi Naidu and his son have signed in the minutes book and thereby undertook to vacate the suit property by the month of Chitrai. But Parthasarathi Naidu did not vacate the property. Further, he let out the suit property to the defendant, in the year 1976 and the defendant has been in possession and enjoyment of the suit property. The defendant had no right to be in possession and he was inducted into possession only by the tenant of the trust in the year 1976. The defendant is none other than the brother of the deceased Parthasarathi Naidu. As the defendant refused to vacate the suit property, the plaintiff issued a notice on 05-10-1977, for which the defendant gave a false reply, thereby denying the title of the trust. As the defendant denied the title of the plaintiff, the plaintiff is obliged to file this suit for declaration of title, recovery of possession and for mesne profits with costs.

Written statement of the defendant in brief:

The defendant contends that the plaintiff has no locus standi to file the suit, as he is not the hereditary trustee of the Balija Naidu Community. The allegation that there is a 'Bajanai madam' which belongs to the Balija Naidus community, is denied. The decree in O.S.648/26 is not binding on the defendant. The suit property was rented out to one Parthasarathi Naidu and he committed default and that he acknowledged the arrears in the minute book are not known to the defendant. The allegation that the defendant was put in possession only from June, 1976 is denied. The defendant and his predecessors-in-interest are in possession of the suit property for more than 50 years in their own right and that they have in any event prescribed title to the suit property by adverse possession. The notice issued by the plaintiff was suitably replied by the defendants and the plaintiff has no right to claim any mesne profits, as against the defendant. Therefore the suit has got to be dismissed with costs.

2. [10 marks]

Suit for partition of the plaintiffs' share in the suit property and mesne profits.

The averments in the plaint are briefly as follows:

The first P8 s Lo B HW 2 e 8 plaintiff is the younger sister of one Raja Balasubramania Mudaliar. The second and third plaintiffs are daughters of Dhanapathi Ammal, the elder sister of the first plaintiff and Raja Balasubramaniam. The first plaintiff's father was Raja Mudaliar. Kumaravel Mudaliar and Somasundara Mudaliar were brothers of the said Raja Mudaliar. Somasundara Mudaliar died in 1920, leaving behind him surviving his widow and a son Masilamani. Kumaravel, Raja and Masilamani entered into a partition agreement of the joint family properties on 24-01-1925 in which the suit property fell to the share of Raja Mudaliar. Raja Mudaliar died on 20-4-1925 leaving behind him surviving his only son Raja Bala Subramaniam, two daughters Dhanapathi Ammal and Santhanayaki Ammal and his widow Pappathi Ammal. Dhanapathi Ammal had three daughters Doraikannu, Jayalakshmi, the 2nd plaintiff and Nagarathinam, the third plaintiff. Dhanapathi Ammal died in or about 1946. Doraikannu died in Singapore. Raja Balasubramaniam was married to one Neelambal Ammal in the year 1918. They had no issues. Neelambal Ammal died on 16-3-1959. Raja Balasubramaniam died on 18-8-1969 at T.B.Sanitorium. Soon after the death of his father Raja Mudaliar, his son RajaBalasubramaniam became the absolute owner of the suit property and he was in possession of the same till he died. The first defendant was born to Raja Balasubramaniam and Loganayaki Ammal. The second defendant is the husband of the first defendant. The plaintiffs understand that due to the illicit intimacy between Raja Balasubramaniam and Loganayaki Ammal, the first defendant was born. Since Raja Balasubramaniam wanted to keep the matter secret, he did not take the matter to any of his relatives nor intimate the birth of the child to anyone. After a year of the birth of the first defendant, there were differences between Raja Balasubramaniam and Loganayaki Ammal, and therefore Loganyaki Ammal left Madras and went to live at Irumbuliyur and the child continued to live with Raja Balasubramaniam and Neelambal Ammal. In the year 1961 the first defendant was married to the 2rd defendant at Madras. Raja Balasubramaniam retired from service in 1955 and thereafter he was employed as Security Officer in Messrs T.I. Cycles of India Ltd for a period of five years. During that time, he sold some of his properties at Walajabad and with the sale proceeds and with the aid of the service benefits, he completely renovated the %uit property. After the death of the Raja Balasubramaniam, the first defendant issued a notice dated 27-3-1971 to the 2rd said plaintiffs husband Seetharama Mudaliar claiming herself to be the heir of Raja Balasubramniam, demanded the return of certain cash and other personal effects of Raja Balasubramaniam. The said

contention was promptly refuted by a notice dated 27-4-1971. The plaintiffs state that Raja Balasubramaniam died without any legal issues. The first defendant is not the legal heir of the said Raja Balasubramaniam and she has no manner of right over the property and estate of Raja Balasubramaniam. There was no relationship of husband and wife between Raja Balasubramniam and Loganayaki Ammal and therefore in the absence of any such relationship, the first defendant cannot be said to be the legitimate daughter of Raja Balasubramaniam. The first and second defendants have no manner of right to be in possession of the property. The defendants are in illegal occupation of the suit property. Being the only heirs of the said Raja Balasubramaniam, the first plaintiff is entitled to one half share in the suit property. They are also entitled to claim mesne profits from the defendants from the date of the death of Raja Balasubramaniam, but they are waiving their claim of mesne profits up to the date of the suit. They are claiming the mesne profits from the date of the suit. The first plaintiff reported dead and plaintiffs 4 and 5 were brought on record as legal representatives of the first plaintiff as per order in I.A.No0.246/74 dt.8-3-1974. Hence the suit for declaration that the plaintiffs are the joint and put owners of the suit property; for partition of the suit property by metes and bounds the 2rd, 3rd plaintiffs in possession of one fourth share each respectively and the plaintiffs 4 and 5 be put in possession of one half share in the suit property and for recovery of mesne profits at Rs.150/-p.m. from the defendants.

Written statement of the defendants in brief:

The defendants contend that the relationship between Raja Balasubramaniam and Lokanayaki Ammal was that of legally married husband and wife and the first defendant is therefore a daughter of Raja Balasubramaniam. The plaintiffs are remote heirs and cannot claim any manner of right, title or interest in the suit property. During the lifetime of Raja Balasubramaniam, the first defendant was regarded as his own daughter. Raja Balasubramaniam left a Will in and by which he bequeathed the suit property to the first defendant to be enjoyed by her. The defendants deny that there was any illicit intimacy between Raja Balasubramaniam and Lokanayagi Ammal. The defendants performed the funeral ceremonies and so they rightly claim to succeed to the estate of Raja Balasubramaniam. The first defendant is his heir and legitimate issue and so she is entitled to the suit property. The defendants deny that they are not in legal occupation of the suit property. The plaintiffs are not entitled to claim any right or interest in the property. The plaintiffs are not entitled to claim mesne profits at Rs.150/-per month. The suite property is a very old and dilapidated building. Hence they pray that the suit may be dismissed with costs.

In the additional written statement, the first defendant contends that she is the lawful issue of deceased Raja Balasubramaniam, who was the absolute owner of the suit property and the defendants were in possession of. the same till the death of her father. She denies that Raja Balasubramaniam stayed with the second plaintiff during his last days. She is the only legal issue of the deceased Raja Balasubramaniam and she was acknowledged to be so by him and his wife Neelambal during their lifetime.

3. [10 marks]

Suit for directing the defendant to deliver vacant possession of the suit property, for directing the defendant to pay Rs.360/- being the arrears of rent and to pay damages, for use and occupation from 01-03-1975 to 31-3-1975 and for directing the defendant to pay Rs.40/- per month for damages for use and occupation from date of plaint till date of delivery of possession and for costs of the suit.

The averments in the plaint in brief are:

The plaintiff-Devasthanam is the owner of premises No.13A, Jeenis Road, more fully. described in the plaint schedule. The defendant was a tenant of the said premises on a monthly rent of Rs.40/-. The defendant had failed and neglected to pay the rent from June 1974. The plaintiff, therefore, determined the tenancy of the defendant with the end of the month of February 1975 by issuing a notice dated 25-1-1975 through counsel. The defendant had acknowledged the said notice on 06-02-1975. The plaintiff is obliged to come forward with this suit for recovery of possession of the suit property and for Rs.360/- being the arrears of rent due from June 1974 to January 1975, and for recovery of damages for use and occupation @ Rs.40/- per month from 1-3-1975 to 31-3-1975 which is the date of plaint and thereafter at Rs.40/- per month till date of delivery of possession of the suit property and for costs of the suit.

The defendant pleads as follows: The defendant admits that he is a tenant in respect of the suit premises, but states that he has been a tenant for a longtime. The defendant alleges that he has been paying rent regularly and in or about June 1974, the plaintiff refused to receive the rents. However, this defendant has paid rents up to date.. The defendant contends that the tenancy is one covered by the Tamilnadu Buildings (Lease and Rent Control) Act, 1960 and hence the plaintiff is not entitled to maintain the suit for possession in this court and on this ground the suit is liable to be dismissed. It is also contended that notice to quit is not valid in law and the plaintiff is not entitled to claim possession. It is alleged that the defendant was always ready and willing to pay the sum of Rs.350/- as arrears and it is only the plaintiff, who has been refusing to receive the same. The defendant contends that this suit is not bonafide and he prays that the suit may be dismissed with costs.

4. [10 marks]

Suit for redemption of Mortgage.

The plaint averments are as follows:-

Plaintiff executed a mortgage on 09-11-1922 in respect of suit property in favour of one Chinnan. As heirs of the mortgagee, the defendants are in possession of the suit property. Though the Plaintiff is ready to pay the mortgage amount, the defendants are not amenable to accept the amount and surrender the property. Hence, the suit.

The defendants have filed a written statement contending as follows:

For the debt of plaintiff and others, one Arunachalam Ramalingam filed O.S.445 of 1957 and purchased the equity of redemption of the suit property and other properties and therefore, the present plaintiff has no right to redeem the suit property from the defendants.

Plaintiff's Reply statement:

The plaintiff has filed a replication denying contentions of the contesting defendants in their written statement.

SECTION B — (2 x 30 = 60)

WRITING JUDGEMENT

Note:

i. Candidates need not write the cause title of the case, court number, the name of the Judge, case number, name of the Advocates etc., No marks will be awarded for writing cause title. Marks will be

awarded based on: (1) (i1i) appreciation of facts and evidence (i1) for application of law, and the reasoning given by the candidates for arriving at whatever conclusion they have reached. ii. The candidates are to assume the role of the Presiding Officers and they are to write judgement, commencing with answering the issues. iii. There are 2 questions in this section and each question carries 30 marks. Candidates are supposed to answer all questions.

5. [30 marks]

Plaint Averments in Brief:

The Suit property originally belonged to one late Samy, who had two sons Anandan and Seshu and daughter Rajammal. Anandan died on 14.7.1970 and Seshu died on 14.12.1974. Rajammal died on 11.11.1972. Anandhan had a son by name Sethuraman who died on 15.5.1975. Plaintiff Mythili is the widow of Sethuraman. Rajammal had a son by name Sriraman, who is the defendant in the suit and a daughter by name Kalyani. Kalyani was married to her uncle Seshu and they had no children. After the death of Samy all his properties had been partitioned among his children and the suit property has been allotted to Seshu. After Seshu's death it devolved upon his wife Kalyani. The Defendant also happens to be the brother of Kalyani. Kalyani died intestate on 10.7.1987. After the death of Kalyani, the plaintiff is claiming right over the suit property as per section 15(1) of the Hindu Succession Act. The defendant being the brother of Kalyani took possession of the suit property and hence the suit has been filed seeking the relief of the Declaration of title and for recovery of possession.

Defendant's written statement in brief

The defendant resisted the suit on the ground that he alone is the heir of Kalyani and her husband as per Hindu Succession Act, 1956. Defendant also claims himself to be in possession of the suit property.

Issues:

1. Whether the plaintiff is the legal heir of the deceased Kalyani? 2. Whether the defendant as legal heir of Kalyani and Seshu excluded the plaintiff as claimed by him? 3. Whether the Plaintiff is entitled for declaration of title and for recovery of possession? 4. To what other relief?

Evidence:

Plaintiff side evidence:

1. PW1 - Plaintiff Mythili has deposed in support of her case.

Defendants side evidence:

1. DWI1 - Defendant Sriraman has deposed in support of his case.

Arguments:

Plaintiff's Counsel has claimed that the plaintiff is the sole legal heir of deceased Kalyani. Defendant's counsel has claimed that the defendant is the sole legal heir of Kalyani.

Admitted facts:

1. Relationship between parties and the fact that the suit property of Seshu devolved on his wife Kalyani after his death are admitted. 2. Defendant in possession of the Property is also admitted.

The provisions of Section 8, 15, 16 and schedule of Hindu Succession Act, 1956 are provided for reference. With the above facts, the judgement shall be written.

Section 8:

8. General rules of succession in the case of males: The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter

a. firstly, upon the heirs, being the relatives specified in class I of the Schedule; b. secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule; c. thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and d. Lastly, if there is no agnate, then upon the cognates of the deceased.

Section 15:

15. General rules of succession in the case of female Hindus:

1. The property of a female Hindu dying intestate shall devolve according to the - rules set out in Section 16:

a. firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband; b. secondly, upon the heirs of the husband; c. thirdly, upon the mother and father; d. fourthly, upon the heirs of the father; and e. lastly, upon the heirs of the mother.

2. Notwithstanding anything contained in sub-section (1)

a. any property inherited by a female Hindu from her father or mother shall other devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and b. any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

Section 16

16. Order of succession and manner of distribution among heirs of a female Hindu

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among -those heirs shall take place, according to the following rules, namely:

Rule 1: Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2: If any son or daughter of the intestate had predeceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3: The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 the case shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as may be, and such person had died intestate in respect thereof immediately after the intestate's death.

THE SCHEDULE

HEIRS IN CLASS I AND CLASS II

CLASS I

Son; daughter; widow; mother; son of a predeceased son; daughter of a predeceased son; son of a predeceased daughter; daughter of a predeceased daughter; widow of a predeceased son; son of a predeceased son of a predeceased son; daughter of a predeceased son of a predeceased son; widow of a predeceased son of a predeceased son. Son of a predeceased daughter of a predeceased daughter; daughter of a predeceased daughter; daughter of a predeceased daughter of a predeceased son of a predeceased daughter; daughter of a predeceased daughter of a per-deceased son.

CLASS II

I. Father.

II. (1) Son's daughter's son, (2) Son's daughter's daughter, (3) Brother, (4) Sister.

III. (1) Daughter's son's son,

(2) Daughter's son's daughter, (3).Daughter's daughter's son, (4) Daughter's daughter's daughter.

IV. (1) Brother's son, (2) Sister's son, (3) Brother's daughter, (4) Sister's daughter.

V. Father's father; father's mother.

VI. Father's widow; brother's widow. VII. Father's brother; father's sister.

VIII. Mother's father; mother's mother.

IX. Mother's brother; mother's sister.

6. [30 marks]

The case of the Plaintiff:

The defendant borrowed from the plaintiff a sum of Rs. 50,000/- by way of cheque dt. 22.4.2016 agreeing to repay the same on demand with interest at 12% per annum. Despite repeated demands and issuance of legal notice dt. 10.10.2016. The defendant refused to repay the amount. Hence the Plaintiff has filed this suit claiming Rs. 50,000/- with interest at 12% per annum.

The case of the Defendant.

The defendant has not borrowed any money from the Plaintiff. In fact the Plaintiff had taken a hand loan of Rs. 50,000/- from the defendant about 6 years ago and when the said amount was demanded, the Plaintiff had issued the suit cheque dt. 22.04.2016 which was encashed by the defendant. The Plaintiff had requested him to depose evidence in his favour in a civil suit, which he had refused. Because of this enmity the Plaintiff had filed the present false claim against the defendant. No amount is payable to the Plaintiff. Hence the suit is liable to be dismissed.

Issues:

1. Whether the suit cheque was issued as a hand loan to the defendant? 2. Whether the Plaintiff had issued the suit cheque only towards repayment of the debt due towards the defendant? 3. Whether the Plaintiff is entitled to the suit claim? 4. To what other relief?

Plaintiff's side evidence:

1. Plaintiff has examined himself as PW1 and has deposed in favour of his case. 2. One Prabhu has been examined as PW2. He has deposed that the cheque was given by the plaintiff only as hand loan to the defendant.

Exhibit Ex Al is the Legal notice issued by the plaintiff.

Defendant's side evidence:

1. Defendant examined as. DW1 — Defendant had deposed in his cross examination that though he had received legal notice he had not sent any reply because when the defendant approached the plaintiff after receipt of the legal notice the Plaintiff had agreed not to proceed with any litigation in pursuant to the cheque. However he had admitted that he is not aware of the suit number for which he was called to depose in favour of the Plaintiff. The defendant has admitted that Prabhu was present when the Plaintiff gave him the suit cheque. He has also admitted that there is no previous enmity with Prabhu.
2. Defendant's brother Ramasamy was examined as DW2.

He has deposed that 6 years ago the Plaintiff had borrowed Rs. 50,000/ from the defendant as a hand loan.

Exhibits: NIL

Arguments:

Counsel for the Defendant argued that presumption under Sec. 139 of Negotiable Instruments Act is in his favour. The counsel for the plaintiff has argued that presumption under Sec. 118 of Negotiable Instruments Act is in his favour.

Admitted facts:

1. The suit Cheque dated 22.4.2016 was encashed by the defendant With the above facts, the Judgment shall be written.