# Tamil Nadu Civil Judge (Mains) 2019

## Law Paper II · compulsory paper

Duration : 3 Hours · Max. Marks : 100

**General Instructions to Candidates**

i) The facts and particulars provided in the Questions Paper i.e. the courts name, place,case numbers,documents details, names of parties and witnesses are fictional. Yet candidates have to conclusively assume them to be true for the purpose of answering 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 in cases of doubt, the English version is final.

iv) The candidates have to assume themselves as Presiding Officers and to consider the particulars furnished in questions and frame necessary issues and write judgements on given facts

v) Candidates need not write the cause title of case, case number, name of judge, case number, names of the counsel appearing for the parties, list of documents, evidence etc, which would be indicative in nature. No marks will be awarded for writing the cause title etc. Marks will be awarded based on the appreciation of facts and evidence, applications of law on the facts, reasoning given by the candidates for arriving at whatever conclusion they have reached.

vi) There are 4 questions in this section and each question carries 25 marks.

vii) The candidates need not provide the cause title with citation while answering questions. Providing wrong or incomplete cause title or quoting a wrong citation will be detrimental to the candidates.

**1.** [25 marks]

Plaint averments:

The plaintiffs are the owners of the property bearing Door No.12-B by means of a settlement deed, dated 26.05.1981, executed by the plaintiffs' fathers, Kuppuswamy, in favour of the plaintiffs out of love and affections. The settlement deed cannot be revoked as the executant did not reserve any power of revocation. The defendants manoeuvered to obtain the sale deed in their favour, when Kuppuswamy was not in a sound and disposing state of mind. As the defendants made hostile claim, the plaintiffs have filed the suit for declaration of title. The suit was filed in 1990.

Averments in written statements:

The alleged settlement deed was not executed by Kuppuswamy. The alleged settlement deed was not executed freely, voluntarily and willingly. By making Kuppuswamy in an unconscious state, by injecting sedatives, thumb impression was obtained in a document purporting to be a settlement deed on coming to know of the circumstances, Kuppuswamy executed a revocation deed on 04.08.1981. Kuppuswamy sold the property in favour of the first defendant on 04.11.1981. The patta for the suit property stands in the name of the first defendant. The suit was barred by limitations, as the plaintiffs did not question the revocation deed and the sale deed within the period of three years.

Documents and evidence on the side of plaintiffs;

Ex. A1 - Settlement deed dated 26.05.1981.

The admission made by P.W. 1 during cross examinations is that the executant Kuppuswamy was in the habit of signing the document and the signature of Kuppuswamy as found in the revocations deed - Ex. B-1 is that of Kuppuswamy himself. He has admitted that in Ex.A-1- settlements deed, signature of Kuppuswamy is not found, but thumb impression alone is found.

It is the evidence of P.W.1 that he has not signed as a witness in the settlement's deed. It is not even stated in the evidence that the executant put his thumb impression in the document after fully understanding the contents of the document.

P.W.1 has admitted that he did not choose to question the executant Kuppuswamy about the sale deed after coming about the execution of the sale deed, in favour of the first defendant.

P.W.1 has admitted that in Ex.A-1, it is specifically stated that the settlement deed is irrevocable and was made truly and in Ex.A-1, it is mentioned that due to old age and poor eyesight, the settler was not able to sign.

On the side of the plaintiffs, excepting the first plaintiffs, no other witness has been examined.

Defendants side documents:

Ex. B1 - Revocations of settlements deed dated 04.08.1981.

Ex.B2 - Sale deed dated 04.11.1981

Ex. B3 -Patta in the name of the first defendant.

In Ex.B-1 revocations deed, there is recital to the effect that Kuppuswamy used to put signature in the bank while withdrawing money and also that in the Police complaints, he has put his signature.

It is specifically stated in Ex.B-1 Revocation Deed that the executant was administered sedatives and the thumb impression was taken, while the executant was in an unconscious state. Evidence on the side of defendants

The first defendant alone was examined as DW 1. He supported the case of the defendants.

**2.** [25 marks]

Petition averments

The petition mentioned property has been leased out to the respondent on a monthly rent of Rs. 4500/- and the tenancy is for the residential purpose. The respondent / tenant has willfully defaulted in the payment of rent from the month of June 2005 till April 2012. In the above circumstances, eviction petitions have been filed by the petitioner in RCOP No.1202 of 2012.

Averments in counter affidavit

There is no jural relationship of landlord and tenant between the petitioner and the respondent . The petitioner / landlady, has entered into a sale agreement dated 13.05.2005 with the tenant for the sale of petition mentioned property and the total sale consideration was fixed at Rs. 7,50,000/-. On the date of Agreement, a sum of Rs.2,00,000/- was paid as an advance. Pursuant to the same, the tenant also paid a further sum of Rs. 50,000/- on 29.06.2005. In spite of the tenant being ready and willing to pay the balance of sale consideration and also expressed his willingness to get the sale deed executed on 10.10.2007, The landlady has refused to perform her part of contract. In the above circumstances, the tenant has filed a suit in O.S.No.14552 of 2010 for specific performance to execute a sale deed pursuant to the Sale Agreement entered into between the parties and the same is pending. The jural relationship of landlord and tenant has come to an end, as the tenant has been put in

possession pursuant to the Sale Agreement. Hence, the eviction petition is not maintainable. That apart, the tenant has already paid a substantial amount towards part of sale consideration. Hence, there is no necessity to pay the rent, and non-payment of rent is not wilful.

The landlady examined one K. Venkatagiri was the rent collector as P.W.1 and marked no documents. The respondent examined himself as R.W.1 and EX-R1 sale agreement was marked .

Contention on side of petitioner:

Ex R.1 is not at all a sale agreement and it is not even executed by the landlady. It is only a letter sent by the petitioner to one Sakthival and the tenant. At any rate, it cannot be considered as a sale agreement. That apart, even in the alleged sale agreement, there is no specific clause that the tenant has surrendered his possession to the landlady and was put in possession pursuant to the sale agreement.

Respondent's contention

In view of the sale agreement entered into between the parties, which is marked as Ex.R1, the jural relationship of landlord - tenant came to an end the respondent was put in possession pursuant to the sale agreements and it is settled law that the agreements for sale would bring the jural relationship of landlord and tenant to an end.

That apart, in view of the payment of substantial amount towards the part of sale consideration, the respondent cannot be compelled to pay the rent.

The respondent has filed a suit for specific performance to execute the sale deed pursuant to the sale agreement. When the suit is pending, the landlady has deliberately filed the present petition for eviction without even disclosing the pendency of the suit and there is no bonafide in the petition, and on that ground the eviction petition is liable to be dismissed.

Evidence:

R.W.1 has admitted in his evidence that there is no specific clause in Ex.R1, that the petitioner / landlady surrendered possession pursuant to the agreement.

**3.** [25 marks]

Plaint averments:

The defendant had been engaged in credit dealings with the plaintiff for the purchase of Dyes and Chemicals and as per the books of accounts maintained in the regular course of business by the plaintiff, the defendant is liable to pay a sum of Rs. 2,50,000/- as per the statement of account and after the payment of Rs.1,00,000/- by the defendant by way of a cheque dated 01.09.2005, the defendant is liable to pay the suit amount with interest. The defendant had accepted his liability by way of a letter dated 26.01.2005, promising to pay the due. The defendant had issued a cheque dated 15.02.2005 for a sum of Rs. 1,00,000/- payable to the plaintiff and as the cheque got bounced, the plaintiff had issued a notice for initiating action against the defendant under the Negotiable Instruments Act and after the receipt of the said notice, the defendant by way of a reply notice dated 01.09.2005 had acknowledged his liability and in fact, he has also paid a sum of Rs .1,00,000/- by way of a Cheque dated 1.9.2005. The plaintiff filed this suit on 25-01-2007 for recovery of the balance of Rs 1, 50,000/- with accrued interest.

Averments in written statements:

The defendant had a business transaction with the plaintiff. However the business transaction lasted only till 15.09.2001 and thereafter, there had been no business transaction between the parties. The acknowledgements of the liability on the part of the defendant on 26.01.2005 is not true. The suit laid by the plaintiff is barred by limitations and any acknowledgement of liability beyond the period of three years from 15.09.2001 would not save the suit from the point of limitations and accordingly, the defendant prayed for the dismissal of the plaintiffs suit.

Evidence on the side of plaintiff:

P.W.1 was alone examined.EX A1 TO A6 were marked. P.W.1 supported the case of the plaintiffs. P.W.1 has admitted that the transaction lasted till 15.09.2001.

EX - A1 - Account Book

EX -A2 - Letter dated 26.1.2005

EX - A3 - Cheque dated 15.2.2005

EX - A4 - Cheque dated 1.9.2005 (copy)

EX - A5- Legal notice

EX - A6 - Reply notice dated 01.09.2005

Evidence on the side of defendant

D.W.1 was alone examined without marking any documents.

D.W.1 in his evidence, has admitted that the defendant issued a letter dated 26.01.2005 promising to pay a sum of Rs.2,50,000/- to the plaintiff and thereafter, he had issued a cheque dated 15.02.2005 for a sum of Rs. 1,00,000/- and the defendant had issued a cheque dated 01.09.2005 towards the payment of the debt.

Contention on the side of plaintiff

1. The plaintiff has laid the suit on the original cause of action viz., the business dealings made by the defendant with the plaintiff for the purchase of dyes and chemicals. 2. Even if the fact that the transaction had lasted till 15.09.2001 is correct, when the defendant had acknowledged his liability on 26.01.2005 and 01.09.2005, the suit is not barred by limitation and on the basis of the same, the plaintiff would acquire a fresh cause of action and entitled to maintain the suit.

**4.** [25 marks]

Plaint averments:

The first defendant is the owner of the suit property. The plaintiff has been in possession and enjoyment of the suit property by means of a registered lease deed dated 12.3.2015 executed by the first defendant in favour of the plaintiff on a monthly rental of Rs15,000/-. The plaintiff has been regular in the payment of rent without any default. The second defendant Bank claiming to have advanced the loan amount to the first defendant against the suit property, is attempting to dispossess the plaintiff from the suit property colluding with the 3rd defendant. The plaintiff cannot be dispossessed except under due process of law. Hence, this is a suit for permanent injunction to restrain the 2nd and 3rd defendants from interfering with the peaceful possession of the plaintiff.

1st defendant remained in ex parte.

Averments of written statements filed by 2nd defendants and adopted by the 3rd defendants

The 2nd defendants initiated recovery proceedings under SARFAESI Act to recover the loan amount of Rs. 15 lakhs availed by the 1st defendant from the 2nd defendant bank. The 1st defendant mortgaged the suit property with the 2nd defendant on 8.4.2016. The authorised officer of the bank brought the suit property for sale under the above Act. The 3rd defendant purchased the suit property in a public auction held and got a sale certificate. The 3rd defendant shall be put in possession of the suit property in pursuance of sale certificate. When the 2nd and 3rd defendants asked the plaintiff to vacate the suit property, he filed this suit colluding with the 1st defendant. The suit is not maintainable before the Civil Court. The suit is liable to be dismissed.

Evidence on the side of plaintiffs:

P.W.1 was alone examined marking EX- A1 to A3. He reiterated the plaint averments in his chief examinations as well as cross examinations.

EX - A1 Lease deed dated 12.3.2015

EX - A2 Encumbrance certificate showing lease and mortgage deed

EX -A3 Copy of mortgage deed dated 8.4.2016

Evidence on the side of 2nd and 3rd defendants:

D.W. 1 was alone examined marking EX - B1 alone.

EX - B1 Copy of sale certificate issued to the 3rd defendant. D.W.1 reiterated the averments found in the written statement, in his chief examinations as well as cross examinations.