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Bombay HC District Judge

Previous Year Paper (Civil Law) 08 Mar, 2014

DJ : MW   CE-101/13

HIGH COURT OF JUDICATURE AT BOMBAY

(APPELLATE SIDE)

WRITTEN EXAMINATION

FOR THE POST OF DISTRICT JUDGE

PAPER I - CIVIL LAW

Saturday, 8 March, 2014   Total Marks : 100

Time : 11.00 a.m. to 2.00 p.m.

INSTRUCTIONS

1. All questions are compulsory.

2. Figures to the right indicate marks.

3. Answers to optional questions, in excess of
   . prescribed number, will not be assessed.

1. Write a Judgment on the following facts after mentioning bare necessary facts , and presuming that necessary witnesses were examined and relevant documents have been produced.   **20**

   Plaintiff's case is that a deed was executed by Ramesh (Plaintiff) in favour of defendant Umesh on 12.07.1987 for a consideration of Rs. 3,00,000/-, by which the suit land along with 4 annas share in the mango trees was transferred to the defendant and possession of the same was handed over, with a specific stipulation to the effect that the land was sold on condition that after receiving Rs. 3,00,000/- in lump sum within 5 years before end of any Falgun month by the defendant, the land was to be returned to the plaintiff.

   The plaintiff's case is that it was a mortgage transaction and the land was to be returned by the defendant after receiving the said consideration of Rs. 3,00,000/- within 5 years. The plaintiff further alleged that the period of 5 years was nominal as there was no condition that after 5 years the sale would become final. According to the plaintiff, till 1998 the defendant was

agreeing to redeem the suit property, but thereafter he started avoiding to do it. On 20.07.1999, plaintiff issued a notice calling upon defendant to reconvey the suit property after accepting the amount. Upon non-compliance, plaintiff filed a suit for redemption of the suit property against the defendant.

The defendant contested the suit by filing written statement contending that the transaction in question is not a mortgage transaction, but was that of outright sale. He denied of having any relationship of mortgagee and mortgagor between him and the plaintiff. According to him, the plaintiff had sold the suit property to him as per the said sale deed, but only as a concession the period of 5 years was mentioned in the deed to reconvey the said suit property and since there was no repayment in 5 years no reconveyance could be claimed.

The Trial Court held the transaction to be a mortgage by conditional sale. Accordingly, the suit for redemption was decreed. The defendant appealed. Write a judgment in appeal.

2.   Answer any two(2) of the following giving reasons: **10**

A.   A decree has been passed in a suit which was barred by limitation. The decree has attained finality. Proceedings for execution of the said decree are taken out. In the said proceedings, the judgment debtor takes exception to the executability of the decree on the ground of it being a nullity as the suit was barred by limitation and the court ought to have dismissed the suit in view of Section 3 of the Limitation Act even there was no defence in that regard raised in the written statement.

Decide the objection.

B.   A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. Whether Appellate Court has power to pass a decree against Y.

C.   X, who is B's patient, is unhappy with the treatment he is receiving from the doctor. He discontinues the treatment. His illness disappears by itself after sometime. X is very upset with B because the treatment cost him a lot of time and money. He writes a letter to B accusing him of cheating. He claims that B deliberately extended his treatment and caused his health to worsen. B shows this letter to his lawyer and a lawsuit for defamation is filed. Will it succeed?

D.   Siddharth has a ferocious dog called Rocky, which he always keeps on a leash. There was a "Beware of Dog" notice outside the house. One day, Siddharth's servant was walking the dog inside the house premises when a ball belonging to some children fell into the premises and hit the dog. The dog lost his cool, broke the leash and ran outside the gate. It then attacked the children who were playing outside, and hurt them. The children's parents sued for damages, claiming strict liability. Will they succeed?

3.   State the classes of suits to which Order XXXVII (summary procedure) applies. Discuss the relevant provisions pertaining summary procedure.   **10**

<div align="center">OR</div>

What is the effect of acknowledgment in writing and payment on account of debt, on the period of limitation for a suit. State essentials of valid acknowledgment and the payment on account of debt.

4.   Under what circumstances a suit in representative capacity may be filed. Discuss relevant provisions of Code of Civil Procedure relating to representative suit.   **10**

<div align="center">OR</div>

State nature of remedies available to a person dispossessed of immovable property. Explain concept of Adverse-possession.

5. Discuss any **two (2)** of the following: 10

    1. Actionable claim

    2. Feeding the grant by estoppel

    3. Cross objections

    4. Constructive Res-judicata

6. Discuss general rules of succession in the case of female Hindus.   10

    OR

    Discuss the provisions relating to property of a female Hindu to be her absolute property, with reference to Section 14(1)and (2) of The Hindu Succession Act.

    OR

    Discretion as to decreeing specific performance, explain.

7. Write short notes on any **two(2)** :   10

    1. Production of additional evidence in Appellate Court.

    2. Probate and letters of administration.

    3. Condition and warranty

    4. Continuous and Discontinuous, Apparent & Non-Apparent Easement

8.(A) What is meant by primary and secondary evidence? Discuss the cases in which secondary evidence relating to documents may be given?   10

    OR

    Explain concept of burden of proof. What is the effect of factual and statutory presumptions on burden of proof. Whether birth during marriage is conclusive proof of legitimacy.

8.(B) Chose correct answer from the given options.   10

[Instructions for writing answers:

There are four alternatives for the answers to every question denoted by options (a), (b), (c) and (d). The candidate shall answer the question as given in the illustration.

Illustration:

Q.No.15 : (1) The term "Lex-Loci" means _____

     (a) Law of Property   (b)   Law of the land

     (c) Law of Marriages   (d)   Personal Law of parties

The correct answer of this question is "Law of the Land" which is indicated by option (b). Therefore, the correct answer should be written in the Answer booklet as follows:-

Q.No.15(1)
Answer :- (b)]

1. Which of the following is not a decree_____.

    a.   dismissal in default.

    b.   rejection of a plaint.

    c.   both 'a' and 'b'.

    d.   neither 'a' nor 'b'.

2. A corporation, under section 20 of CPC, is deemed to carry on business at _____.

    a.   its principal office in India.

    b.   its subordinate office in India.

    c.   both 'a' and 'b'.

    d.   either 'a' or 'b'.

3. Where a decree is silent as regards future interest_____.

    a.   future interest shall be deemed to have been refused and a separate suit shall lie for the same.

    b.   future interest shall be deemed to have been refused and a separate suit shall not lie.

c. future interest shall be deemed to have been inadvertently omitted and an application can be moved before the court.

d. future interest shall be deemed to have been granted and it shall be a *clerical or arithmetical error to be corrected on application.*

4. All questions arising between the parties to the suit in which the decree was passed, and relating to execution discharge or satisfaction of the decree shall be determined by _____

a. the Court executing the decree.

b. by a separate suit.

c. either the court executing the decree or by a separate suit.

d. none of the above.

5. Exception to the Rule of Res Judicata is/are _____.

a. Judgment obtained by fraud and/or collusion.

b. judgment delivered by a court not competent to deliver it.

c. 'a' and 'b'.

d. there is no such exception.

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