

HIGH COURT OF JUDICATURE AT BOMBAY

(APPELLATE SIDE)

WRITTEN EXAMINATION

FOR THE POST OF DISTRICT JUDGE

PAPER I – CIVIL LAW

Sunday, 3rd February, 2013

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.

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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

Facts:-

The Plaintiff company filed suit for possession by way of specific performance of the agreement for sale against the defendant. The case set up by the plaintiff was that at the time of execution of agreement, its authorised representative had paid Rs.1,00,000; i.e. on 22.11.2006, Rs.9,00,000 were offered to the defendant but he avoided to accept the amount despite telephonic message and phonogram sent on 23.11.2006 and personal visit to his office and residence. It was further pleaded that even though the plaintiff company was always ready and willing and is still ready and willing to perform its part of the agreement, the defendant intentionally committed breach of the terms and conditions thereof and failed to perform his obligation.

Terms of the agreement:-

The agreement has been executed by the defendant in favour of the plaintiff company whereby he had agreed to sell 5 acres of land situated in village Wagholi, Tehsil Haveli, District Pune at the rate of Rs.14,00,000 per Acre. Clauses 1, 2, 3, 4 and 5 of the

Agreement read as under:

1. That the total sale price of the above said land has been fixed at Rs.14,00,000/- (Fourteen Lac Only) per acre.
2. That the said plaintiff Company has paid to the defendant seller a sum of Rs.1,00,000/- (Rupees One Lac Only) in cash in the shape of currency Notes as earnest money for which amount the defendant Seller hereby acknowledges the receipt in the presence of witnesses.
3. That the plaintiff company will develop the land for residential colony and will pay further advance of Rs.9,00,000/- (Rupees Nine Lac Only) as part payment on or before 23rd November of 2006, further part payment of Rs.10,00,000/- (Rupees Ten Lac Only) on or before 24.12.2006. The payment of remaining amount of consideration will be made to the defendant Seller on or before 23.10.2007.
4. That the defendant Seller would execute the conveyance of sale deed in favour of the plaintiff company on or before 23.10.2007.
5. That the defendant Seller will handover the vacant physical possession of the said land for the purpose of development activities to the plaintiff company at the time after receiving the part payment of Rs.9,00,000/- (Rupees Nine Lac Only).

Written Statement

In the written statement the defendant denied the execution of the agreement of sale. It was pleaded that the defendant was of 88 years of age. The document of agreement of sale was fictitious document prepared by the plaintiff company in collusion with the attesting witnesses. The averments in the plaint as regards the receipt of earnest money and the offer of Rs. 9,00,000/- has also been denied. In the alternative, it was pleaded that it will not be just and equitable to grant specific performance of the agreement in view of escalation in price of the suit land. Question of hardship to the defendant has also been raised.

The trial court dismissed the suit on the ground that the plaintiff company failed to prove execution of the agreement of sale. The trial court opined that the plaintiff company failed to prove ready and willingness to perform its part of the contract. In view of the trial court, it will also not be equitable to grant decree for specific performance of contract.

The plaintiff has appealed.

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

A. (a) A suit for compensation on account of defamation was dismissed and the plaintiff has filed an appeal. The plaintiff dies. His legal representatives appear and request the court to allow them to come on record to pursue the suit. The respondent (Original Defendant) objects.

(b) A suit for compensation on account of defamation was decreed. The defendant has filed appeal against the said decree. During the pendency of the appeal, the Original Plaintiff passed away. His legal representatives appear before the court and request for being substituted in place of the deceased plaintiff.

Will the legal representatives succeed?

B. 'A' owed 'B' Rs. 35,000/-. Towards the payment of the dues, 'A' drew unstamped promissory note. 'B' files a suit against 'A' for recovery of the sum due. In support of his claim, 'B' tenders in evidence said promissory note. The promissory note has been duly proved. During recording of evidence tendered in proof of the promissory note, 'A' did not raise objection as to admissibility of unstamped promissory note.

However, during arguments 'A' relies upon Sec. 35 of the Indian Stamp Act to contend that unstamped negotiable instrument could not be impounded even on payment of duty and penalty.

Give your findings as to admissibility of the promissory note in evidence.

C. 'A' is an unregistered partnership firm dealing in manufacture and sale of Farsan and Sweetmeats. 'B' is in construction business. The firm enters into a contract with 'B' for construction of residential flats for its partners. 'B' commits breach of the contract. 'A' firm sues 'B' for compensation.

'B' raises preliminary objection as to maintainability of the suit on the ground of it having been filed by unregistered firm. 'B' relies on S.69(2) of the Partnership Act.

Decide the objection.

D. The decree holder puts to execution a decree for possession of agriculture land. The executing court issues warrant for possession of the land.

A person claiming to be tenant in possession of the land obstructs delivery of possession of the land. He prays the court to refer the issue of his tenancy to the Mamlatdar for decision under Bombay Tenancy and Agriculture Land Act. The decree holder objects.

Whether the executing court has jurisdiction to decide the claim of tenancy raised by the obstructionist.

3. What is legal disability? State its consequence on the limitation period for filing a suit or execution proceeding with exception thereto? 10

OR

Define decree. Who can prefer Appeal from decree? State in what circumstances it is necessary to file cross objections? When the Appellate Court may permit the parties to an appeal to produce additional evidence?

OR

Explain and distinguish Inter-se the relevant provisions as to suit for possession of immovable property u/s. 6 of Specific Relief Act and under Article 64 and 65 of the Limitation Act?

4. When plaint may be returned? When plaint may be rejected? State nature of remedy available against an order rejecting and returning the plaint, why? 10

OR

State changes brought about in Hindu Law of succession since 1937 to-date with a view to ameliorate position of women.

OR

State relevant provisions as to removal of obstruction to delivery of possession to decree holder during execution of proceedings.

5. Discuss any two of the following: 10

1. Interim Mandatory Injunction.
2. Injunction to perform negative agreement.
3. General rules of succession in the case of female Hindus.
4. Attachment before judgment.
5. Easements of necessity.

6. Explain the principle of res-judicata and constructive res-judicata. State whether there may be res-judicata between co-plaintiffs and/or co-defendants? 10

OR

When sale of immovable property in execution of decree may be set aside?

OR

State when the court shall not direct the specific performance of a part of a contract? State exceptions thereto.

7. Write short notes on any **two** of the following: **10**
- a. Cause of action and Bar of Suit under Order II Rule 2 of C.P.C.
 - b. Mortgage by conditional sale.
 - c. Waiver, acquiescence, and estoppel.
 - d. Part performance.
 - e. Award of interest- past, pendant-lite and future.
 - f. Sustainable Development and Public Trust doctrine.
8. Express your views on any **one** of the following: **20**
(in about 400 words)
- I. Role of Media (Print and Electronic) in a Constitutional democracy.
 - II. Euthansia, with special reference to Aruna Shanbhag's case.
 - III. Should death sentence be abolished?
 - IV. Judicial Review – basic feature of Constitution of India.
 - V. Corruption : A Menace in India.
