

Delhi Judiciary(Junior Division) Mains 2015

CIVIL LAW – I: Part A

1. 'A' in Delhi entered into a contract with 'B' in Mumbai on 01.12.2015 as per which 'A' had had to supply 100 metres of jute material at controlled price to 'B'. There was a term in the contract stating 'I ('A') shall go on supplying jute material to you ('B') of The Jute Mills Calcutta as soon as they are supplied to me by the said mills". 'B' gave Rs. 10,000/- to 'A' as earnest money. The Jute Mills Calcutta shut down on 05.12.2015 because of losses and 'A' did not supply jute material to 'B'. 'B' in turn failed to perform his contract with 'C' of supplying stitched jute bags to 'C'. 'B' files a suit for damages and return of earnest money against 'A'. 'A' pleads frustration of contract and also that he was not aware of the contract between 'B' and 'C'. Decide. Also discuss with reference to precedents specific grounds of impossibility which are recognized and not recognized in Indian law.

2. On 01.01.2006 'A' occupied an empty plot of land measuring 500 sq. yds. Which as per municipal records was in the name of 'B' a government employee. After one year 'A' built a two room house thereon. On 15.01.2015 'B' forcibly dispossessed 'A'. On 05.05.2015, 'A' filed a suit under Section 6 of the Specific Relief Act for possession against 'B'. 'B' contested the suit on the ground that he was the real owner while 'A' contended that he was in "settled possession" till 15.01.2015. Decide.

3. 'A', 'B' & 'C' are partners of the unregistered firm M/s ABC & Sons their former partner 'D' who owes Rs. 5 lakhs to M/s ABC & Sons without permission uses the trademark of M/s ABC & Sons. 'A', 'B' & 'C' file a suit for perpetual injunction to restrain 'D' for passing off his goods as those of M/s ABC & Sons by using their trademark and for damages and also a suit to recover the amount due from 'D' to M/s ABC & Co.. Are the suits barred under Section 69 of the Partnership Act?

4. X & Co. is a registered partnership firm in real estate business. It has three partners 'X', 'Y' and 'Z'. 'N' who is illiterate contracts X & Co. to sell his property. 'Z' informing 'N' that his signatures were being obtained on a sale deed dishonestly induces 'N' to sign a gift deed in the name of 'Z'. 'Z' disposes of the property of 'N' and misappropriated the money. 'N' sues X & Co. for the pecuniary loss caused to him and for damages for harassment. X & Co. contests saying that the firm and its other partners are not liable for the wrongful act of 'Z'. 'N' contends that 'Z' acted in his implied authority. Decide.

5. 'A' in Calcutta agrees to supply bananas to 'B' in Delhi. It was agreed that the payment would be made by way of RTGS by 'B' to 'A' exactly four days after the bananas are received by 'B'. The consignment of bananas is sent by 'A' to 'B' on 15.04.16 and is received by 'B' on 18.04.16. 'B' makes payment to 'A' on 22.04.16 in the morning. On inspection of the received consignment of bananas in the afternoon of 22.04.2016, 'B' finds that the bananas are over ripe and some are rotten and not of the specification agreed upon and so he immediately informs 'A' about the condition of the consignment and that he has rejected the same. 'A' says 'B' cannot reject the consignment. 'B' sues for damages. Decide while citing the relevant provisions under the Sales of Goods Act.

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6. Caveat Emptor is a defence available to every seller. Discuss with the help of decided cases.

7. 'A' entrusted her antique diamond necklace to 'B' a jeweller cum auctioneer for sale through a public auction on the term that 'B' shall not sell it for less than Rs. 15 lakhs. 'B' sold the antique diamonds necklace to 'C' in a private sale for barely Rs. 10 lakhs and misappropriated the amount and disappeared with the antique diamond necklace. Can 'C' recover the cost of the antique diamond necklace from 'A'? 'A' puts up the defence of nemo dat quod non habet (nobody can give what he himself does not have). Decide.

Civil Law - I: PART-B

1. (a) "The concept of bona fide or genuine requirement u/s 14(1) (e) of the Delhi Rent Control Act, 1958 needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against". Do you agree with this proposition? Elucidate your response with reference to decided cases.

1(b) What are the conditions of applicability of Section 14(1) (e) of the Delhi Rent Control Act, 1958?

1(c) Can a perpetual lessee of a property constructed on government land seek eviction of a tenant u/s 14(1) (e) of the Delhi Rent Control Act, 1958?

1(d) How do you interpret the word 'dependent on the landlord' in terms of section 14(1) (e) of the Delhi Rent Control Act, 1958, as amended.

2. (a) What is iddat? What is the object of iddat?

2(b) When is observance of iddat necessary?

2(c) When is iddat not necessary?

2(d) What is the period of iddat?

2(e) What is the effect of death of the husband during iddah of divorce?

3. (a) What is defamation? Is it actionable as a tort?

3(b) What privileges can be claimed as defence for defamation?

3(c) Differentiate between tort and crime.

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3(d) What are the rules laid down in: (a) Rylands vs. Fletcher (1886) LR 3 HL 330 (b) Rule of strict liability in M.C. Mehta & Anr. Vs. Union of India & Ors. Decided on 20.12.1986.

4. (a) What is the effect of the Hindu Succession (Amendment) Act, 2005 on the rights of Hindu women?

4(b) What is Stridhan?

4(c) What are the essential features of a coparcenary property?

5. What are the grounds on which divorce may be obtained under the Hindu Law?

6. (a) What is dower? Specify the kinds of dower.

6(b) How can a claim for dower be satisfied?

6(c) When can a Muslim wife seek dissolution of marriage?

7. (a) How can irregular marriages be made valid under the Muslim Law?

7(b) When does oral talaq become effective?

7(c) How is written talaq effective?

CIVIL LAW – II: PART – A

1. Bansi (Plaintiff) in possession of House No. P-53, Seelampur, Delhi (suit property) has filed a civil suit on 05.01.2016 against Ramesh seeking declaration that he (Plaintiff) is the owner of the Suit property and for injunction against any interference in his possession, use or enjoyment thereof. The suit is contested by Ramesh (Defendant) on the basis of registered sale deed executed by the plaintiff on 31.12.2010 transferring the suit property for consideration of Rs. Ten lacs in his favour. In the pleadings, the following facts are admitted:

1. The Plaintiff had purchased the suit property for consideration of Rupees Eight Lacs from its erstwhile owner in the year 2009.
2. On 31.12.2010, the plaintiff, in possession of the suit property, executed the sale deed relied upon by the defendant.
3. On 31.12.2010, simultaneous to the sale deed, the plaintiff also executed a rent-note, indicating the lease money to be Rupees Ten Thousand per month, in respect of suit property in favour of the defendant.
4. The plaintiff issued cheques for amounts of Rupees Ten Thousand each on 01.02.2011 and 01.03.2011, both of which when presented by the defendant returned dishonoured for want of sufficient funds.

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5. The defendant instituted a suit under Order 37 of Code of Civil Procedure, 1908 (CPC), on 01.06.2011 against the plaintiff pleading that he is the owner and landlord, seeking recovery of rental on the basis of two cheques. The said suit (former suit) was contested by the plaintiff, inter alia, on the pleadings that the sale deed and the rent note were sham documents and that the true & correct facts were that he being in urgent need of money for renovation of the newly acquired house had raised a loan of Rupees Ten Lacs from the defendant and that the said document were executed only as a security.

6. The civil court decreed the suit, inter alia, holding that the defendant is the owner and landlord of the property qua the plaintiff.

The defendant in the suit for declaration & injunction moves an application under Order 7 Rule 11 CPC raising the following issues:

(a) The suit is barred by principle of res judicata in view of the decision in former suit;

(b) The plaintiff cannot lead oral evidence contrary to the written contracts in the nature of the sale deed and rent note, the execution whereof is admitted, in view of the bar contained in Section 92 of the Indian Evidence Act.

The plaintiff urges that the principle of res judicata & bar of Section 92 Indian Evidence Act, 1872 do not apply in the present case.

Decide.

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2. Ramlal filed a partition suit against his father Nanak and two brothers, namely Kishori and Kannihya in respect of joint family property comprising of four houses (i.e. 'P', 'Q', 'R' and 'S'). All three defendants appeared and filed their respective written statements. However thereafter Kishori stopped appearing and was proceeded ex-parte. During the further proceedings, before the trial commenced, the parties that were contesting filed an application for compromise along with a compromise deed, inter alia, declaring as under:

- (a) That property 'P' belonged exclusively to Ramlal, the others having no claim or concern with or interest in it.
- (b) That property 'Q' belonged exclusively to Nanak, the others having no claim or concern with or interest in it.
- (c) That property 'R' belonged exclusively to Kishori, the others having no claim or concern with or interest in it.
- (d) That property 'S' belonged exclusively to Kannihya, the others having no claim or concern with or interest in it.
- (e) That the parties are in separate & exclusive possession of the properties respectively belonging to them and further that they have obtained separate and exclusive possession of the properties respectively allotted to their shares. The trial court, after recording the statements of the said parties, was satisfied and accepted the petition of compromise, and passed a compromise decree on 03.04.1964, treating Kishorias ex-parte.

Kishori later filed an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (CPC) through his son & special attorney Sudama, on which notices were issued. However, before effective proceedings could take place on the said application, Kishori died.

No steps were taken in terms of Order 22 CPC and the said proceedings were closed. In the year 1973, Sudama, Son of late Kishori, brought a fresh suit for partition, also seeking declaration that the earlier decree had been obtained by fraud, also contending that no proceedings had been initiated for any follow up on the decree based on compromise.

The defendants in the above mentioned suit of Sudama, namely Ramlal, Nanak and Kannihya, contested this suit contending that the partition had effectuated in terms of the compromise decree, attaining finality. The arguments raised by Sudama are:- 1. The compromise decree was non est as Kishori was not a party thereto; 2. The parties to the first suit had not brought any application for final decree of partition to be passed; and 3. That with no execution application having been moved, the compromise decree has not given effect to any partition.

The defendants in the suit assert that they are in exclusive possession of the respective properties, which fell to their share in terms of the partition under the compromise decree, and the same has attained finality. Decide

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3. Gurnam Singh executed a registered Will on 02.01.1943 in favour of his wife Des Rani. According to the terms of the Will, on the demise of Gurnam Singh, his estate comprising of a house at Patel Nagar, would devolve unto Des Rani, who will be limited owner during her life time without any right of alienation, and upon her death, the house would devolve unto their only daughter KulwinderKaur. Gurnam Singh died on 16.12.1946. Des Rani, during her life time, gifted the property in favour of Gurdeep Singh and executed a registered gift deed on 13.12.1956 and also parted with possession in his favour. Des Rani died on 14.03.1968. After her death, KulwinderKaur filed the present suit for possession and injunction against said Gurdeep Singh in the year 1978.

While the statement of KulwinderKaur was being recorded and before she could tendered for cross-examination, KulvinderKaur expired and her legal heirs were brought on the record. During her said deposition, late KulvinderKaur and brought on record the certified copy of the Will dated 02.01.1973. In the said suit, the legal heirs have relied upon the testimony of KulvinderKaur and the certified copy of said Will.

The counsel for defendants argued that the suit of plaintiff is liable to be dismissed, Inter alia, on the following grounds:

1. Since KulvinderKaur died before her testimony could be completed, her testimony being incomplete and not subjected to cross-examination, cannot be considered at all; and
2. The plaintiffs have not proved the Will dated 02.01.1943 in accordance with the provisions of Indian Evidence Act.

Per contra, the counsel for the plaintiffs argued that evidence of KulvinderKaur, though not subjected to cross-examination, is admissible in the eyes of law and cannot be discarded. In respect of the Will dated 02.01.1943, the Plaintiff submitted that since the registered Will is more than 30 years old document, and is being produced from proper custody, under Section 90 of the Indian Evidence Act, it should be presumed that the signature and every part of the document is in the handwriting of the person concerned, and that the Will was duly executed. Decide.

Civil Law- II: PART – B

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1. A entered into an agreement with B for purchase of an immovable property on 20.12.64. The agreement was got registered. It was agreed that the sale deed was to be executed by B within 03 months of the date of getting due permission for sale from other co-owners. Possession of the suit property was also delivered to A by B.

A died in 1972, whereas B died in 1965. C is the successor in interest of A, whereas E is the successor in interest of B. In 1993 C wanted to sell the suit property to D. D issued a public notice inviting objections, if any to the intended sale/purchase of the suit property. E filed her objections on 21.11.93. Thereafter C filed a suit against E on 06.04.94 for specific performance of the agreement dated 20.12.64 and for perpetual injunction restraining E from interfering with his possession of suit property.

It was pleaded by C that the entire sale consideration was paid by A on 20.12.64 itself to B and possession of the suit property was also handed over to A and nothing remained to be done on part of A or his successor in interest. It was further stated that C came to know on 21.11.93 that E was refusing to perform his part of agreement and therefore he filed the present suit on 06.04.94.

The suit was contested by E raising a preliminary objection that the suit for specific performance and injunction was barred by limitation as it was filed after about 30 years of the agreement to sell dated 20.12.64. Decide the preliminary objection.

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2. Plaintiff/ A was inducted as a tenant in respect of half portion of suit property on a monthly rent of Rs. 300/- w. e. f. 22.12.70 by the defendant/B. On 24.12.70 the defendant/B executed an Agreement to Sell the suit property to plaintiff/A for a sum of Rs. 3,75,000/-, out of which a sum of Rs. 50,000/- was paid by A to B as part payment on the same day. It was stipulated in Agreement to Sell that defendant/B will obtain Tax Clearance Certificate from Income Tax Authorities for sale of suit property and shall deliver a copy of the certificate to the plaintiff within 12 months from the date of execution of agreement dated 24.12.70. It was further agreed that within 03 months thereafter the plaintiff/A shall pay the balance sale consideration on receipt of which defendant/B shall execute sale deed in favour of the plaintiff/A.

On 05.11.77 the plaintiff/A filed a suit for specific performance of agreement dated 24.12.70 alleging that he had written a letter dated 29.12.71 to the defendant/B enquiring about the necessary Tax Clearance Certificate. On failure of defendant/B to reply to the said letter, plaintiff/A had issued a legal notice dated 16.11.72 reiterating his readiness to tender the balance consideration and asking the defendant/B to fulfil his part of obligation and execute the sale deed. The defendant/B vide notice dated 18.09.77 terminated the tenancy of plaintiff/A qua half portion of the suit property. It was a specific plea of the plaintiff/A that the suit for specific performance of agreement to sell dated 24.12.70 could not be instituted earlier, as defendant/B was all along residing in London.

Denying the claims of plaintiff/A, the defendant/B contended that the suit was liable to be dismissed being barred by limitation.

The defendant/B admitted the execution of Agreement to Sell dated 24.12.70 but claimed that the plaintiff/A was not entitled to any relief, as he had himself breached conditions of the Agreement. As regards plea of plaintiff/A that defendant/B was not in India from Dec. 1970 till Sept. 1977, the defendant/B claimed that he was in India during following periods:

1. From 19.12.70 to 30.12.70
2. From 18.08.71 to 13.09.71
3. From 31.10.72 to 12.11.72
4. From 04.09.77 to 03.10.77

Quoting relevant provisions of Limitation Act, give your findings with detailed reasons, as to whether the suit of plaintiff/A is barred by limitation or not.

3. L filed a suit for declaration and injunction against M claiming that under a family settlement he was given a plot of agricultural land and residential house, both part of ancestral property. He was in possession of both the land as well as the residential house. However, now M is refusing to admit the claim of L to the agricultural land and the residential house negating the family settlement and is threatening to dispossess L, both from agricultural land and residential house.

On service of summons, M appeared and filed his written statement admitting the entire claim set up by L and gave a statement before the court that a consent decree in favour of L may be passed in terms of relief claimed by him. The suit was accordingly decreed vide judgment dated 24.11.80 in favour of L.

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Thereafter another suit was filed by N, son of M, claiming that judgment and the decree dated 24.11.80 was obtained by L and M in collusion with each other and that there was no family settlement whatsoever. The agricultural land and residential house being ancestral property, M could not have gifted the same to L. Further, the decree dated 24.11.80 amounted to gift of suit property by M to L and could have been made only through a duly stamped and registered document. The decree being neither registered nor stamped could not be acted upon.

During trial, it was proved that there was no family settlement, wherein the agricultural land and residential house were given to L and that the suit property i.e. agricultural land and house were part of self acquired property of M.

Decide the suit filed by N in view of plea raised by him that the decree passed vide Judgment dated 24.11.80 not being registered and stamped, could not be acted upon.

4. A as guardian / father of B entered into an oral agreement with C for sale of his house/ suit property on 28.02.06 for a sum of Rs. 1,80,000/- Sale deed was agreed to be executed and registered on the same day. C purchased the stamp papers, paid the entire sale consideration and was handed over possession of the suit property by A and B on the same day. They also executed the sale deed in favour of C, which was taken to office of Sub Registrar on the same day i.e. 28.02.06. The sale deed, however, could not be registered. It is the plea of C that Sub Registrar informed them that there was an order of attachment against the suit property and that A and B had promised C that they will get the attachment removed and get the sale deed registered at the earliest. On failure of A and B to get the sale deed registered, C issued a legal notice to A and B on 05.02.07, whereafter A and B tried to dispossess C from the suit property.

C filed a suit seeking direction to A and B to execute fresh sale deed and prayed for relief of permanent injunction restraining A and B from disturbing possession of C.

In defence, A and B claimed that they had taken a loan of Rs. 1,75,000/- from C and had executed an agreement to sell (not sale deed) in favour of C on her insistence. C had fraudulently got prepared sale deed and therefore A and B had refused to get it registered.

In evidence, C tendered the unregistered sale deed in support of her case, which was refused to be admitted in evidence by trial court on the ground that it was an unregistered document.

C challenged the order invoking Section 49 of The Registration Act, 1908.

Decide whether the sale deed could have been admitted in evidence or not.

5. Write short notes on the following:

(i) Effect of acknowledgment/part payment on computation of limitation.

5(ii) Limitation in case of suit with application for leave to sue as pauper.

5(iii) Effect of death of a person on or before accrual of right to sue/be sued.

5(iv) The persons authorised to present a document for registration.

5(v) The period within which a document can be presented for registration.