

MHCPDJ-M-IV-2023

Register No.

4120231151

JUDGMENT WRITING PAPER
(English Version)

Date of Examination : 13/08/2023 (AN)
(02.00 p.m. to 05.00 p.m.)

Total Marks : 75

General Instructions to Candidates :

1. The facts and particulars provided in the Question paper i.e. the court's name, place, case numbers and name of parties are fictional. Yet candidates have to conclusively assume them to be true for the purpose of solving the questions.
2. Candidates should write the answers only in English.
3. The candidates have to assume themselves as Presiding Officers and to consider the details furnished in the question and frame necessary charges specifically against each accused if required and write judgment on the facts given.
4. The candidates have to assume themselves as Presiding Officers and to consider the particulars furnished in the questions and frame necessary issues and write judgments on given facts.
5. Candidates need not write the cause title of the case, case number, name of the judge, 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, application of law on the facts, reasoning given by the candidates for arriving at whatever conclusion they have reached.
6. There are 4 questions in this section. Question number 1 and 3 each carries 22½ marks. Each problems in Question number 2 and 4 carries 7½ marks.
7. The candidates need not provide cause title with citation while answering questions. Providing wrong or incomplete cause title or quoting a wrong citation will be detrimental to the candidates.
8. The candidates should answer the Question numbers 1 and 3 not exceeding ten pages each, others not exceeding five pages each. No additional answer sheets will be provided.

SEAL

JUDGMENT WRITING PAPER

(English Version)

Question No. 1

The suit property belonged to one Ganapathy Gounder. He had one son (V) and two daughters (S & Q). The suit property had been purchased by Ganapathy Gounder in 1941. It is alleged in the plaint that he had treated the property as a joint family property and had enjoyed the same as such during his life time. It is further alleged that after his demise the daughters and son of Ganapathy Gounder enjoyed the suit property jointly. As V, the brother of S & Q, did not come forward to effect a peaceful division of the property, the sisters (S & Q) instituted a suit for partition and for possession.

The suit is resisted by V alleging that the suit property is the absolute property of Ganapathy Gounder and that Ganapathy Gounder had executed a WILL in his favour on 31.01.2000. After the demise of Ganapathy Gounder, V & his son (N) have entered into a partition deed dated 17.01.2006 and are in enjoyment of their respective shares. The defendant denies the fact that the plaintiffs are in joint possession of the property and contends that the suit has been improperly valued under Section 37(2) of The Tamil Nadu Court Fees and Suit Valuation Act, 1955.

The plaintiffs filed a reply statement vehemently denying the execution of the WILL by their father. According to them, the WILL was fabricated and their father was not in sound state of mind at the relevant point of time. The WILL is the result of forgery only to non suit the legitimate share of the plaintiffs.

S examined herself as P.W.1 and reiterated the averments in the plaint. According to S, her father Ganapathy Gounder was not in a sound state of mind to execute any WILL. She has also filed Ex.A.1 sale deed of the year 1941 executed in favour of her father. She has also filed Ex.A.2, A3, and A4 sale deeds which were executed by Ganapathy Gounder in 1940 selling his share of ancestral property allotted to him in a partition between his brothers and himself. She has also filed Ex.A.5 and Ex.A6 which are revenue records to show that the property still stood in the name of Ganapathy Gounder.

On the side the defendant, examined himself as D.W.1. He reiterated the contents in the written statement. He marked Ex.B.1. Will dated 31.01.2000 and partition deed dated 17.01.2006 as Ex.B.2 and Electricity Receipts and Property Tax Receipt (series) as Ex.B.3 and B.4 to show that he was enjoying the property as per Ex.B.2.

One of the attesting witnesses was examined as D.W.2 to prove the WILL Ex.B.1. In his evidence, he has stated that the testator has signed the WILL in his presence. Except the above, he has not stated anything. The scribe of the WILL was examined as D.W.3. He has spoken about the preparation of the WILL and signing of the WILL by the testator.

Frame necessary issues and write a judgment based on the above set of facts and evidence narrated above with relevant provision of law, burden of proof etc.,

Question No. 2

Problem 2(i)

X approached a finance company Y and entered into a hire purchase agreement dated 26.03.2019 for the purchase of a truck for his business purposes. The hire purchase contemplated repayment on monthly instalments. In case if any disputes or differences, the parties were to subject themselves to arbitration in terms of Clause 12 of the Hire Purchase Agreement. Clause 8 of the Hire Purchase Agreement also gave Y to repossess the truck upon default of three instalments. X pays monthly instalment regularly for a period of six months from the date of contract. Thereafter he defaulted in payment of instalments. Y terminated the agreement and demanded repayment of the entire dues. Y filed an application before the Principal District Judge seeking appointment of a receiver to repossess the vehicle on 26.03.2022. X filed a counter contending that the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 was not maintainable in view of the efficacious remedy available to Y before the arbitral tribunal. Y has also not issued any notice contemplated under Section 21 of the Arbitration and Conciliation Act. As on the date of consideration of the application, the arbitral tribunal has not been constituted.

Decide the application of Y for interim relief for appointment of a receiver to seize the truck in the light of the settled position of law.

Problem 2(ii)

A, B & C are trustees of XYZ a public charitable trust which runs a medical college in the State of Tamil Nadu. The dispute and differences arise between A on the one hand and B & C on the other hand. On 19.03.2023, a board meeting was convened whereby A was removed from the post of Vice Chairman of the medical college. Alleging that such removal was done behind his back and without complying with the principles of natural justice, A instituted a suit before the Principal District Court seeking a declaration that the order dated 19.03.2023 removing him from the post of Vice Chairman was illegal and for a consequential relief of perpetual injunction restraining the board from interfering with the discharge of his function as Vice Chairman. Summons was received by B & C who immediately convened a meeting of the trust on 30.06.2023. A was told that he had acted contrary to the object of the trust and was thereby summarily expelled from the trust. A challenged this order of expulsion by seeking an amendment of the plaint. After contest, the amendment was allowed. A also filed two applications (i) seeking an order of stay of expulsion from the trust and (ii) seeking interim mandatory injunction allowing him to function as the Vice Chairman of the medical college pending disposal of the suit.

The respondents filed a counter contending that the relief sought for in the interlocutory application not maintainable as that would amount to decreeing the suit itself. According to the respondents even if there is violation of principles of natural justice in removing A that can at best give rise to a claim for damages and not for any interim mandatory injunction.

Decide the above two interim applications as per law with reference to the relevant provisions and case laws.

Question No. 3

- (i) It is the case of the prosecution that there was a land dispute between D [A3] and his younger brother P [deceased], though they had partitioned their lands some twenty years before.
- (ii) On 20.7.2020, D [A3] put up a fence in the land that was common to both parties and annexed it to his property. On the same evening, R [PW2], son of the deceased P demolished the fence. On 26.7.2020 it is alleged that S [A1] the son of D [A3], came to the house of the deceased and picked up a quarrel with the family members and abused them for demolishing the fence. On the same day, before dusk, B [PW3], who is the wife of the deceased and the mother of PWs. 1 & 2, went in search of their cattle which had gone away for grazing. Since she did not return, P [deceased] and his two sons PWs. 1 & 2, went around 7.00 p.m. to help PW3 to collect the cattle and bring them home.
- (iii) As they were passing through the house of D [A3] it is alleged by the prosecution that they were wrongfully restrained by A1 & A2. Then D [A3], S [A4, nephew of A3] and T [A5, wife of A3] came to the spot. Except A5, others were armed with eucalyptus Sticks. At that time, D [A3] exhorted his sons to beat the victim party and T [A5] abused them in vulgar language. Then, A1 & A2 started indiscriminately attacking P [deceased] and his two sons PWs. 1 & 2. A3 joined them. A4 hit PW1 and also the deceased on two hands. A5 kept abusing P while A-1 to A-4 administered the blows with the sticks. Soon B [PW3] also came to the spot and saw the occurrence. On account of the attack, he fell unconscious. Thereafter, the assailants left the place as crowd gathered.

- (iv) The injured persons, namely B [PW1] and P [PW2] and the deceased were taken by S [PW5] to the General Hospital where [PW17] examined them at around 7.50 p.m. P was brought dead to the hospital and [PW17] noted seven injuries on his body which have been noted in the Accident Register [Ex. P24].
- (v) PW-17 also examined B [PW1] and noted one injury on his left shoulder. The copy of the Accident Register relating to B [PW1] is Ex. P22. [PW17] examined Parthiban [PW2] and noted three injuries on his body and the same have been referred to in the Accident Register, the copy of which is Ex. P23. The injury sustained by PWs. 1 & 2 were simple in nature as opined by [PW17].
- (vi) On receipt of information from the Hospital, [PW24], the Sub-Inspector of Police went to the General Hospital and recorded the statement of B [PW1] which was treated as a Complaint in this case and was marked as Ex. P1. The Sub-Inspector of Police [PW24] registered a case at 21.15 hours on 26.7.2020 in Cr. No. 359/2020 under Sections 147, 341, 294, 323, 302 & 506(ii), I.P.C. against the Five Accused above named. The Complaint and a copy of the printed FIR was sent to the learned Judicial Magistrate, who received the same at 22.40 hours on 26.7.2020.
- (vii) The investigation was taken over by [PW25], who went to the scene of occurrence on 27.7.2020 at 6.30 a.m. and in the presence of witnesses K [PW6] and R [PW7] prepared Observation Mahazar [Ex. P4] and Rough Sketch [Ex. P30]. He took samples of earth, with and without blood stains, and a chappal of the deceased under the cover of Mahazar [Ex. P5] in the presence of the same witnesses.

(viii) Thereafter, he proceeded to General Hospital, where the body of P was kept in the mortuary and in the presence of Panchayatdars, conducted inquest over the body from 9.00 a.m. to 11.30 a.m. on 27.07.2020. The Inquest Report is Ex. P31.

(ix) Thereafter, he sent the body for Post-mortem. Autopsy was done by Dr. N [PW18], who in his evidence and in the Post-Mortem Certificate [Ex. P25] has noted the following injuries and has given his opinion as to the cause of death :

1. *Contusion 5 × 4 cm (right side) of face*
2. *Contusion right side neck 3 × 4 cm*
3. *Laceration 1 × 4 cm lower lip*
4. *Abrasion 2 × 1 cm right side abdomen*
5. *Abrasion 3 × 2 cm right shoulder*
6. *Contusion with abrasion present 4 × 2 cm lower 1/3 right forearm*
7. *Contusion with abrasion 5 × 4 cm right lower 1/3 of left forearm*
8. *Contusion with abrasion 1 × 2 cm wrist*
9. *Contusion presents right parietal (head) 4 × 3 cm*

External Appearance : Eyes opened, no discharge from ear, nose, mouth opened, tongue inside, thorax well formed, scrotum intact.

IE: no fracture of ribs, heart congested filled with blood lungs congested hyoid intact, stomach contains undigested food particles 200 gms present, liver spleen kidney congested intestine distended with gas, bladder empty, and skull lower fracture 3cm right parietal (head), brain pale

Post-mortem concluded at 2.40 p.m. On 27. 7.2010

Time of death: 18 to 20 hours prior to PM

Opinion as cause of death: the deceased would appear to had been died of shock due to head injury."

- (x) The Investigating Officer went in search of the Accused on 28.7.2020. At around 5.45 p.m., he arrested A1 to A5 in the presence of witnesses [PW8] and [PW9].S [PW8] turned hostile. The Investigating Officer recorded the confession statement of A1 to A4 and the admissible portion of the same are Exs. P34 to 37 respectively. Based on the information provided by A1, the stick [MO1] used by A1 in the attack was recovered under the cover of Mahazar [Ex. P38] in the presence of witnesses [PWs. 8 & 9].
- (xi) Similarly, from the disclosures made by A2, A3 & A4, Eucalyptus sticks M.Os. 2, 3 & 4 were recovered under the cover of Mahazar Exs. P39, 40 & 41 respectively in the presence of the witnesses S [PW8] and K [PW9]. The Accused were thereafter produced before the learned Judicial Magistrate, who remanded them to judicial custody. The Investigating Officer proceeded with the investigation of this case by examining the witnesses, including the two Doctors. He completed the investigation and filed a Final Report on 28.11.2020 before the learned Judicial Magistrate who took cognizance of the offences in PRC No. 34/2021.

- (xii) On appearance of the Accused, the provisions of Section 207, Cr.P.C. were complied with and the case was committed to the Court of Sessions.

In the light of the above facts, frame the requisite charges against the accused persons.

- (xiii) Write a judgment in this case on the basis of the aforesaid facts. For the said purpose, assume that PW-8 & 9, who witnessed the arrest, confession and recovery turned hostile. Also assume that all the eye witnesses turned hostile except PW-3 (the wife of the deceased) and the injured witnesses PW-1 and 2.

Question No. 4

Problem 4(i)

X launched a prosecution against Y under Section 138 of the Negotiable Instruments Act, 1881 alleging the dishonor of a cheque dated 10.05.2023 worth Rs.10 lakhs allegedly issued by Y towards the discharge of his lawful dues payable to X. According to X, Y had also issued a pronote for the said sum wherein he had affixed his thumb impression under his signature agreeing to repay the aforesaid sum on demand. The defense taken by Y in his reply notice is that the cheque was issued in 2015 to one R, and that it had somehow fallen into the hands of X who has misused the same to foist a false case. As regards the pro-note it was contended that the same was forged and fabricated for the purposes of supporting the illegal claim based on the cheque. During trial before the Magistrate, X took out three applications under Section 45 & 73 of the Indian Evidence Act seeking the following reliefs (a) for a direction to send

the cheque dated 10.05.2023 to the Forensic Science Laboratory, Chennai to ascertain the age of the ink used on the cheque (b) for a direction to the accused to tender his specimen signature and for forwarding the same to a handwriting expert to ascertain whether the signature in the cheque is that of the accused (c) to send the pro-note to a Finger print expert to ascertain whether the left hand thumb impression on the pro-note is that of the accused.

Decide these applications in the light of the relevant provisions and case law.

Problem 4(ii)

R was the owner of certain property in Chennai. As R was a resident of Madurai, he used to leave the parent title deeds and other documents of the Chennai property with his business associate P. The business run by the duo went into a loss. P blamed R for making indecisive business decisions which resulted in mounting losses. On account of mounting pressure by the creditors P hatched a plan to liquidate the property of R by impersonating him. Accordingly, on 10.02.2023, P went to the office of the Sub-Registrar, T. Nagar, Chennai and on the basis of bogus identity cards he executed a sale deed in favor of one Q for a total sale consideration of 5 Crores. In the meantime, R was alerted by one of his friends who happened to reside near the property. R immediately lodged a complaint given by R, an FIR was registered against P for offences under Section 420, 465 and 471 of the Indian Penal Code. After completion of investigation, a charge sheet was laid before the Magistrate arraying R as A1, Q as A2 and one Z, the attesting witness to the sale deed as A3. In the course of trial, R, the de-facto complainant, was permitted to assist the prosecution. R filed a petition under Section 91 Cr.P.C to direct A2 to produce the original sale deed dated 10.02.2023.

Decide the application in the light of the relevant case law on the point.