

M.P. HIGHER JUDICIAL SERVICE MAIN EXAMINATION-2015

अनुक्रमांक/Roll No.

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कुल प्रश्नों की संख्या : 4
Total No. of Questions : 4

मुद्रित पृष्ठों की संख्या : 20
No. of Printed Pages : 20

**निर्णय लेखन
चतुर्थ प्रश्न-पत्र
JUDGMENT WRITING
Fourth Paper**

समय – 3:00 घण्टे
Time Allowed – 3:00 Hours

पूर्णांक – 100
Maximum Marks - 100

निर्देश :-

Instructions :-

1. All questions are compulsory. Answers to all the Questions must be given in one language either in Hindi or in English. In case of any ambiguity between English and Hindi version of the question, the English version shall prevail.
सभी प्रश्न अनिवार्य हैं। सभी प्रश्नों के उत्तर हिन्दी अथवा अंग्रेजी एक भाषा में ही देने हैं। यदि किसी प्रश्न के अंग्रेजी और हिन्दी पाठ के बीच कोई संदिग्धता है, तो अंग्रेजी पाठ मान्य होगा।
2. Write your Roll No. in the space provided on the first page of Answer-Book or Supplementary Sheet. Writing of his/her own Name or Roll No. or any mark of identification in any form or any Number or Name or Mark, by which the Answer Book of a candidate may be distinguished/ identified from others, in any place of the Answer Book not provided for, is strictly prohibited and shall, in addition to other grounds, entail cancellation of his/her candidature.
उत्तर पुस्तिका अथवा अनुपूरक शीट के प्रथम पृष्ठ पर निर्दिष्ट स्थान पर ही अनुक्रमांक अंकित करें। उत्तर पुस्तिका में निर्दिष्ट स्थान के अतिरिक्त किसी स्थान पर अपना नाम या अनुक्रमांक अथवा कोई क्रमांक या पहचान का कोई निशान अंकित करना जिससे कि परीक्षार्थी की उत्तर पुस्तिका को अन्य उत्तर पुस्तिकाओं से अलग पहचाना जा सके, सर्वथा प्रतिषिद्ध है और अन्य आधारों के अतिरिक्त, उसकी अभ्यर्थिता निरस्त किये जाने का आधार होगा।
3. Writing of all answers must be clear & legible. If the writing of Answer Book written by any candidate is not clear or is illegible in view of Valuer/Valuers then the valuation of such Answer Book may not be done.
सभी उत्तरों की लिखावट स्पष्ट और पठनीय होना आवश्यक है। किसी परीक्षार्थी के द्वारा लिखी गई उत्तर-पुस्तिका की लिखावट यदि मूल्यांकनकर्ता/मूल्यांकनकर्तागण के मत में अस्पष्ट या अपठनीय होगी तो उसका मूल्यांकन नहीं किया जा सकेगा।

P.T.O.

SETTLEMENT OF ISSUES

**Q.1 Settle the issues on the basis of the pleadings given hereunder -
- 10 Marks**

PLAINTIFFS PLEADINGS -

The case of plaintiffs, two real brothers, is that they are owner and landlord of the municipal house No. 10 situated in ward No. 8 of Barwani town. From the time of their deceased father, the defendant is tenant in the two rooms of the ground floor of this house, for non-residential purpose on rent at the rate of Rs. 3,000 per month. Previously, another brother of the plaintiffs namely Kishor was residing in the third room of the ground floor and rooms of the upper story. Aforesaid Kishor was unmarried, who has died on 06-02-2014. Previously, the defendant was paying rent to the above mentioned Kishor and took receipt from him, but now the rent from the date 01-02-2014 is due towards the defendant. After the death of above mentioned Kishor, the defendant has unlawfully occupied the third room of the ground floor and all the rooms of first floor, which were previously in occupation of Kishor and not included in the tenanted premises. The plaintiffs have demanded from the defendant, the due rent from the date 01-02-2014 towards the defendant and also demanded the possession of portion of this house unlawfully occupied by the defendant through a registered notice, but the tenant after receiving this notice has not paid the arrears of rent in prescribed period and has not vacated the portion unlawfully occupied by him.

2- The remaining pleadings of the plaintiffs are that the defendant has challenged their title to the suit house in his reply, sent to the plaintiff's notice. Thus, the tenant has become liable for eviction on this ground also under the M.P. Accommodation Control Act 1961. Thus, plaintiffs have demanded from the defendant by the suit the vacant possession of suit accommodation (tenanted premises) and vacant possession of the remaining portion of the suit house unlawfully occupied by the defendant, due rent of tenanted premises from the date 01-02-2014 till date of the decree towards the defendant and damages at the rate of Rs. 1,000 per month from the date of suit till recovery of the possession in reference to

encroached portion of the suit house and mesne profit at the rate of Rs. 3,000 per month from the date of decree till recovery of possession in reference to suit- accommodation.

DEFENDANT'S PLEADINGS –

The defenedant has admitted his status as a tenant in the suit accommodation at the alleged rent rate, but he has pleaded that he has not challenged the co-ownership of the plaintiffs, but has stated only that the plaintiffs are not sole owners of the suit house and plaintiffs' third living brother and their sisters are also owners of the building. The defendant was previously paying rent to the brother Kishor residing in the house, but after the death of Kishor, another living brother of the plaintiffs, who is residing in other town, is claiming his co-ownership on the suit house and also demanded the rent of the tenant premises from the defendant, thus, the defendant has not paid the rent due from 01-02-2014 after the death of Kishor to anyone, but he is depositing all the arrears of the rent lawfully in Court and also depositing the monthly rent for the period of pendency of suit. Plaintiffs' above mentioned living brother has filed a suit against the plaintiffs and their sisters for partition of the ancestral or joint Hindu Family properties including the house relating to the suit accommodation which is pending in another Court. Thus, plaintiffs' above mentioned brother and their sisters are also necessary parties in this suit. The defendant has not encroached or unlawfully possessed any portion of the building concerned with the suit-accommodation. The defendant has never challenged the co-ownership of the plaintiffs. Plaintiffs have filed this suit on false grounds, thus, the defendant has prayed for dismissal of the plaintiffs' suit.

निम्नलिखित अभिवचनों के आधार पर विवाद्यक विरचित कीजिये ।

वादी के अभिवचन –

1— दो सगे भाईयों, वादीगण का मामला है कि वे बड़वानी नगर के वार्ड नंबर 8 में स्थित भवन क्रमांक 10 के मालिक एवं भवन स्वामी हैं । उनके स्व. पिता के समय से उक्त मकान की तल मंजिल के दो कमरों में प्रतिवादी व्यवसायिक प्रयोजन हेतु 3,000 रूपए प्रति मासिक किराए पर किरायेदार है । पूर्व में वादीगण का अन्य भाई किशोर उक्त मकान की तल मंजिल के तीसरे कमरे और ऊपरी मंजिल के कमरों में निवास करता था। उक्त किशोर अविवाहित था, जिसकी दिनांक 06.02.2014 को मृत्यु हो गई है। पूर्व में प्रतिवादी उक्त किशोर को किराया अदा कर रसीद प्राप्त करता था, किन्तु प्रतिवादी की ओर दिनांक 01.02.2014 से किराया

बकाया है। उक्त किशोर की मृत्यु के पश्चात मकान के तल मंजिल के तीसरे कमरे तथा ऊपरी मंजिल के कमरों, जो पूर्व में उक्त किशोर के आधिपत्य में थे पर भी प्रतिवादी ने अनधिकृत कब्जा कर लिया है, जो प्रतिवादी की किरायेदारी में शामिल नहीं है। वाद प्रस्तुति के पूर्व वादीगण की ओर से दिए गए रजिस्टर्ड नोटिस में दिनांक 01.02.2014 से बकाया किराया की मांग की गई तथा अवैध रूप से कब्जा किए गए मकान के भाग का कब्जा छोड़ने की मांग भी की गई, किन्तु प्रतिवादी ने नोटिस प्राप्ति के बाद भी न तो बकाया किराया विहित समयावधि में अदा किया है, न ही अवैध रूप से कब्जा किए गए मकान के भाग का कब्जा छोड़ा है।

2— वादीगण के शेष अभिवचन हैं कि वाद प्रस्तुति के पूर्व वादीगण की ओर से दिए गए नोटिस के प्रतिवादी द्वारा भेजे गए उत्तर में वादग्रस्त स्थान वाले भवन पर वादीगण के स्वत्व को चुनौती दी गई है। अतः म.प्र. स्थान नियंत्रण अधिनियम के अंतर्गत इस आधार पर भी प्रतिवादी निष्कासन का पात्र है। अतः वादीगण ने वाद द्वारा प्रतिवादी के किरायेदारी वाले वादग्रस्त स्थान का रिक्त आधिपत्य, वादग्रस्त स्थान वाले भवन के प्रतिवादी द्वारा अवैध अतिक्रमण किए गए शेष भाग का रिक्त आधिपत्य, वादग्रस्त स्थान का दिनांक 01.02.2014 से आज्ञापति दिनांक तक के बकाया किराया तथा वादग्रस्त स्थान वाले मकान के अतिक्रमण किए गए भाग के संबंध में 1,000 रूपए मासिक की दर से नुकसानी तथा आज्ञापति से वादग्रस्त स्थान के आधिपत्य प्राप्ति तक 3,000 रूपए मासिक की दर से अंतरिम लाभ भी दिलवाए जाने की सहायता चाही है।

प्रतिवादी के अभिवचन —

प्रतिवादी ने अपने वादोत्तर में वादग्रस्त स्थान में उल्लेखित किराये की दर पर अपने किरायेदार होने के तथ्य को स्वीकार किया है, किन्तु यह अभिवचन भी किया है कि उसने वादीगण के सहस्वामित्व को चुनौती नहीं दी है, अपितु केवल यह कहा है कि केवल वादीगण ही भवन स्वामी नहीं है तथा दोनों वादीगण का तीसरा जीवित भाई तथा उनकी बहनें भी उक्त भवन के स्वामी हैं। पूर्व में प्रतिवादी वादग्रस्त स्थान वाले मकान में ही रहने वाले वादीगण के भाई किशोर को किराया अदा करता था, किन्तु किशोर की मृत्यु के बाद अन्य नगर में रहने वाला वादीगण का जीवित भाई भी उक्त मकान में अपने सहस्वामित्व का दावा करने लगा है तथा उसने भी प्रतिवादी से वादग्रस्त स्थान के किराये की मांग की है, इस कारण प्रतिवादी ने किशोर की मृत्यु के बाद से दिनांक 01.02.2014 से आगे की अवधि का किराया किसी को भी अदा नहीं किया है, जो वह न्यायालय में नियमानुसार जमा करा रहा है तथा वादकालीन किराया भी नियमानुसार जमा करा रहा है। वादीगण के उक्त जीवित भाई ने वादीगण तथा उनकी बहनों के विरुद्ध वादग्रस्त स्थान वाले भवन के अतिरिक्त वादीगण को प्राप्त अन्य पैतृक अथवा संयुक्त हिन्दू परिवार की संपत्ति के विभाजन का वाद प्रस्तुत किया है, जो अन्य न्यायालय में लंबित है। अतः वादीगण का उक्त भाई तथा उनकी बहनें भी इस प्रकरण में आवश्यक पक्षकार हैं। प्रतिवादी ने वादग्रस्त स्थान वाले भवन के किसी अन्य भाग पर अवैध रूप से अतिक्रमण या अवैध कब्जा नहीं किया है। प्रतिवादी ने वादीगण के सहस्वामित्व को कभी चुनौती नहीं दी है। वादीगण ने मिथ्या आधारों पर वाद प्रस्तुत किया है, अतः प्रतिवादी की ओर से वादीगण का वाद निरस्त किए जाने की प्रार्थना की गई है।

FRAMING OF CHARGES

Q.2 Frame a charge/charges on the basis of allegations given here under - - 10 Marks

PROSECUTION CASE / ALLEGATIONS

Accused Dhirendra and deceased Bhupati used to sell channa at Manikpur Bazar for last 15-16 years. On 03-07-2014 in the evening hours both of them were seen talking over the money matter by co-villagers. On the same day at about 10:45 p.m. the deceased Bhupati was returning from Manikpur Bazar along with his two minor sons Shantanu and Ramu on his bicycle being followed by the accused Dhirendara. Accused attacked Bhupati on the neck with a knife. When his sons Shantanu and Ramu raised a hue and cry, they were also assaulted by the accused. Shantanu received injury on his right side of chest with the same knife and Ramu received injury on his left hand.

An FIR was lodged by Shantanu. He and Ramu were sent to Hospital for medical treatment. Dead body of Bhupati was also sent for PM Examination.

The Medical Officer, on examination of the dead body of Bhupati found the following injury :-

One penetrating wound about 5" deep on the right side of the neck just below the thyroid cartilage.

It was opined by the doctor that the death was caused because of Cardio respiratory failure due to shock and haemorrhage as a result of above mentioned injury. The death was homicidal in nature.

On being examined by the Doctor, a stab injury about 3" deep on front of the right side of chest was found on the body of Shantanu. The Doctor opined that the injury was dangerous to life. The injury on the body of Ramu was found to be simple in nature.

निम्नलिखित अभिकथनों के आधार पर आरोप विरचित कीजिये –

अभियोजन का प्रकरण / अभिकथन –

अभियुक्त धीरेन्द्र और मृतक भूपति विगत 15-16 वर्षों से माणिकपुर बाजार में चना बेचते थे। दिनांक 03.07.2014 को शाम के समय दोनों को गांव के लोगों के द्वारा रूपयों के

संबंध में बातचीत करते हुए देखा गया था। उसी दिन रात्रि में करीब 10.45 बजे रात्रि में मृतक भूपति माणिकपुर बाजार से अपने दो अवयस्क बच्चों शांतनू और रामू के साथ सायकिल से लौट रहा था। अभियुक्त उसका पीछा कर रहा था। अभियुक्त ने भूपति के गले पर चाकू से वार किया। जब उसके बच्चों ने शोर मचाया तो अभियुक्त ने उन पर भी हमला किया। शांतनू को उसी चाकू से सीने पर दाहिनी ओर चोट आयी और रामू को बांये हाथ पर चाकू की चोट आयी।

शांतनू के द्वारा प्रथम सूचना रिपोर्ट दर्ज करवायी गई। उसे तथा रामू को चिकित्सीय उपचार के लिए अस्पताल भेजा गया। भूपति की लाश भी शव परीक्षण के लिए भिजवायी गई।

चिकित्सा अधिकारी ने भूपति की लाश का परीक्षण करने पर निम्न चोट पायी :-

गले पर दाहिनी ओर 5 इंच गहरा एक पेनिट्रेटिंग वुंड था जो कि थायराइड कार्टिलेज के ठीक नीचे था।

चिकित्सक के द्वारा यह अभिमत दिया गया कि भूपति की मृत्यु हृदय तथा श्वसन-तंत्र की विफलता के कारण शॉक और हेमरेज से उपरोक्त चोट के परिणामस्वरूप हुई थी। मृत्यु हत्यात्मक प्रकृति की थी।

चिकित्सक के द्वारा शांतनू का परीक्षण करने पर उसके सीने पर सामने दाहिनी ओर तीन इंच गहरी चाकू की एक चोट पायी थी। चिकित्सक के मत में यह चोट जीवन के लिए घातक थी। रामू के शरीर पर पायी गई चोट साधारण स्वरूप की थी।

JUDGMENT WRITING (CIVIL)

Q.3 Write a judgment on the basis of pleadings and evidence given hereunder after framing necessary issues and analyzing the evidence, keeping in mind the provisions of relevant Law/Acts :-

- 40 Marks

Plaintiffs Pleadings :-

Gajanand plaintiff no.1 and Babulal plaintiff no.2 have stated that the defendant no.1 Goverdhan is real brother of them and they were members of joint Hindu family. After the death of their father Gyarsiram defendant no.1 Goverdhan used to look after agricultural operation of the family. The plaintiffs have further alleged that after the death of father Gyarsiram the disputed property 5 acre agriculture land bearing survey no.14 situated in village Renhti Tahsil Sagar was partitioned among the three sons of Gyarsiram i.e. the plaintiffs and defendant no.1. Though the disputed property was in the name of defendant no.1 yet the whole disputed property was managed by the plaintiffs. The disputed land was partitioned among the plaintiffs and defendant no.1 orally in presence of

Panch in the year 1969 and subsequently the deed of acknowledgment of partition was written in the year 1970 between the plaintiffs and defendant no.1. The plaintiffs have further alleged that they are in possession after the oral partition. Thus the defendant no.1 Goverdhan had no right in the disputed land after the partition. Even though the defendant no.1 sold the disputed land to the defendant no.2 Prakashchandra on 15/01/1992 and the sale deed so executed by defendant no.1 in favour of defendant no.2 is not legal and the transaction is null and void. On the basis of above allegation the plaintiffs have prayed that it should be declared that they are Bhooswami of the disputed land and the sale deed dated 15/01/1992 is null and void and consequently the defendant no.2 be restricted from making any interference in the possession of plaintiffs on the disputed land.

Pleadings of defendant no.1

Defendant no.1 Goverdhan died before filing the written statement. His legal representatives taken on record and on behalf of them written statement has been filed. They have admitted the entire pleadings of the plaintiffs and requested to pass a decree in favour of the plaintiffs as stated in the plaint.

Pleadings of defendant no.2

Prakashchandra defendant no.2 has denied the allegations made in the plaint and has stated that the disputed land is not property of Joint Hindu Family of the plaintiffs and the defendant no.1. Goverdhan, defendant no.1 was recorded as the Bhooswami of the disputed land and was in possession and the defendant no.2 has purchased the property from defendant no.1 after paying the entire consideration to him and after execution of the sale deed dated 15/01/1992 in his favour he is in possession of the disputed land. It is also stated that defendant no.1 Goverdhan did not challenged the legality of the sale deed in his life. The plaintiffs have no right and title to the disputed land and after execution of the sale deed the defendant no.2 is in possession as owner. The plaintiffs have filed the suit with the connivance of the defendant no.1 and the document of acknowledgement of partition is a fabricated and concocted document, on the basis of which the plaintiffs could not get

any right on the property. On the basis of aforesaid pleading defendant no.2 has prayed that the suit be dismissed with cost.

Plaintiff's Evidence :-

1. Gajanand plaintiff no.1 (P.W.1) and Babulal plaintiff no.2 (P.W.2) have stated in their statement that the disputed land was the property of joint Hindu family of them and defendant no.1. After the death of their father in 1969 the disputed land was partitioned and came in share of plaintiffs. In this regard the deed of acknowledgement Ex.P.1 was written in the year 1970. After the partition the disputed land is in their possession.

2. In cross-examination Gajanand (P.W.1) has admitted that he has another two brother who are not parties in this case and apart from the disputed land all brothers have 25 acre land and the same is being cultivated jointly by the all brothers.

3. On behalf of the plaintiffs scribe of the deed of acknowledgement Ex.P.1 Ramesh (P.W.3) has also been examined who has stated that Ex.P.1 was written as per direction of the parties of the document. The plaintiff has also produced certified copy of Khasra Panchsala Ex.P.2 which is relating to year 1965 to 1969 in which the disputed land is recorded in the name of defendant no.1 as Bhooswami and possession holder. Plaintiff has also produced certified copy of the report of patwari (Ex.P.3), which was submitted by him to the Tahsildar in the year 1992 and the certified copy of the Panchnama Ex.P.4 prepared by the patwari at the time of local inspection and certified copy of the report of revenue inspector (Ex.P.5) regarding demarcation of the land in which the inspector has recorded plaintiffs possession on the disputed land.

Evidence of defendant no.1 :-

On behalf of the defendant no.1 no evidence has been adduced.

Evidence of defendant no.2 :-

Prakashchandra defendant no.2 has stated that the defendant no.1 Goverdhan (D.W.1) was the owner of the land and it was in his possession and in revenue paper it was recorded in the name of defendant no.1, therefore, he purchased it after paying consideration and the defendant no.1 executed the sale deed Ex.D.1 in his favour and thereafter

