

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
 Course: Law of Civil Procedure and Limitation
 Semester-III (Batch: 2018-23)

End Semester Examination: October-2019

Date: 20th October, 2019

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Part-A

Marks

- Q.1 Mr. Sarvotam Jain had executed an agreement to sell the property-in-question in favour of the owner of the Kothari Construction on January 5, 2017. At the time of execution of the agreement to sell, Kothari Construction paid Rs. 1, 000, 00/- by way of earnest money. Thereafter, the original owner, Mr. Sarvotam Jain, executed Power of Attorney in favour of his son, Shaubhagya Jain on February 10, 2018. Mr. Shaubhagya Jain, executed a sale deed in favour of the owner of the Classic Construction on June 19, 2018. The owner of the Kothari Construction filed a suit for cancellation of the sale deed executed in favour of the Classic Construction and also prayed for specific performance of the agreement to sell executed in his favour along with an application for grant of temporary injunction in his favour. The reply filed by Mr. Sarvotam Jain in the suit admitting the execution of the agreement to sell in favour of the owner of the Kothari Construction and also accepting the fact that his son had wrongly sold the property-in-question to the owner of the Classic Construction. He also offered to return the sale consideration to the subsequent purchaser; the owner of Classic Construction.
- The trial court by an order dated January 3, 2019, had dismissed the temporary injunction application moved by the Kothari Construction. The dismissal of the application is challenged in the appellate court. Decide the appeal based on the appropriate legal provisions and decided cases.
- Q.2 Mr. Narrottam Narula filed a suit for a perpetual injunction restraining Ms. Revati Naika from disposing him from the suit property. Mr. Narrottam Narula contended in the suit that he and his deceased brother, Late Mr. Purrushottam Narula, were owners and in possession of the suit property. He further contended that his brother was unmarried and hence he is the only surviving legal heir of the share of his deceased brother in the suit property. In his submission, he claimed that Ms. Revati Naika, who had no concern with the suit property was out to dispossess him from the suit property and hence, prayed for a perpetual injunction against her. Ms. Naika resisted the suit by filing a written statement contending that the deceased Mr. Narula had executed a will in favour of her before death for the services rendered by her during his lifetime. Hence, in accordance with the Will, after his death, she is entitled to have the share of the deceased Narula. Mr. N Narula denied and said that his deceased brother had not executed any Will during his lifetime, especially in favor of Ms. Revati as the day from which the

(10)

(10+10
=20)

professional services of Ms. Revati as a nurse was provided, his brother was not in a position to execute any Will at all due to his medical condition. The Will in question is absolutely false and forged. He further contended that it seemed now to me that my brother is killed by administering poison by the hired professional care taker, Ms. Revati, for getting the property on forged Will and urged the trial court to frame the issue in this regard as well during trial of the Suit. Though the trial court denied to frame the issue related to the question of administration of poison by Ms. Revati. On the basis of the appreciation of evidence and submission made by the parties during the trial, the trial court held that Mr. N. Narula was entitled to the perpetual injunction and decreed the suit accordingly. Ms. Revati challenged the decision in appeal and the first appellate court reversed the decision of the trial court after re-appreciating the evidence on record and also recorded the reason for doing so. Feeling aggrieved and dissatisfied by the decision of the first appellate court, Mr. N Narula challenged the decision in regular second appeal. The High Court, while deciding the second appeal had re-appreciated the entire evidence on record and consequently reversed the decision of the first appellate court and restored the decision passed by the trial court.

Based on the above fact answer the following questions:

- (a) Explain in detail, the power of the appellate courts in general and power to re-appreciate the evidence in particular.
- (b) Explain the concept of second appeal and decide the validity of decision given by the High Court for the above mentioned fact.

Part-B

- Q.3 Explain the concept of the ex parte decree and the remedies available against whom such decree is passed. Is aggrieved party entitled to avail simultaneous application of remedies in his matter? (05)
- Q.4 What is revision? Explain its scope and differentiate it from reference. Can a memorandum of appeal be converted into revision? (05)
- Q.5 Explain the necessity of provisions for allowing discovery, inspection and impounding of documents in the Code of Civil Procedure, 1908. (05)

Part-C

- Q.6 Write short note on **any two** of the following: (2x2.5=05)
 - (a) Attachment and arrest before judgment
 - (b) Modes of Execution of a decree
 - (c) Suit by or against the Government
