

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Code of Civil Procedure and Limitation
Semester-III (Batch: 2019-24)

End Semester Online Examination: December 2020

Date: 20th December, 2020

Duration: 8 hours

Max. Marks: 50

Instructions:

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.

Q.1 Answer the following.

- a) After the counter-claim was filed, plaintiff filed an application for dismissal of the counter-claim on the ground that it was barred by Order 2 rule 2 of Civil Procedure Code, 1908 [CPC]. The trial court granted the application and dismissed the counter-claim filed by the defendant. Against this order of the trial court, learned counsel advised on with three options to the defendant. *First* that a revision application can file in the High Court under section 115 of the CPC. *Second*, High Court can also exercise its power of superintendence under Article 227 of the Constitution of India by reading Article 227[1], and may give appropriate direction to the trial court. *And third*, since the counter-claim is in the nature of a plaint and when it is dismissed it is a decree, it has to be assailed by way of appeal before the competent forum.

You being a senior counsel, advise on procedural law.

- b) Mrs. Mathur, her two sons and three daughters have filed appeal to the Supreme Court as a legal representative of late Mr. Mathur against Mr. K.K. Agarwal. In fact, a suit was filed by Shri K.K. Agarwal against Mr. Mathur for specific performance of a contract for sale. It was alleged that Mr. Mathur had entered into an agreement to sell the property in dispute to the plaintiff - respondent, K.K. Agarwal. In that agreement Mathur stated that the property in dispute was his self-acquired property. During the pendency of the suit Mathur died and his wife & sons were brought on record as legal representatives. After they were impleaded, they filed an application that they should be permitted to file supplementary written statement and also be allowed to take such new pleas which are available to them and never pleaded before. The trial court rejected this application, against which a revision application was filed by the parties which was also dismissed by the High Court by relying on the case of the Supreme Court of India which held that 'in a suit for specific performance of a contract for sale of

Marks

(5/7)

10)

property, a stranger or a third party to the contract cannot be added as defendant in the suit.

Do you agree with the decision of both courts? Having vast experience in civil litigation, give correct legal advice with provisions of CPC and decided case law.

- Q.2 Shri Subramanian who is the owner of three residential premises worth of INR 300 lakhs and living in the State of West Bengal since 1977. The said properties are situated in three different districts namely Gandhinagar, Ahmedabad and Jaipur of the State of Gujarat and State of Rajasthan. Shri Subramanian died in the year 2010 leaving behind his wife Smt. Chitra, was living with Shri Subramanian, his son Shri P.P. Subramanian living separately in the district Trichinopoly, State of Tamil Nadu and married daughter Smt. Kaberi living with her husband in the State of Kerala, district Wayanad. It has been on record about sour relations among them. The family is said to be governed by Dayabhag School of Hindu Law. It has been on record that Smt. Chitra also died in the year 2014 with the un-registered Will and transferred all three properties to Smt. Kaberi. With intention to get sum by selling the properties for his new business, in month of November 2020, the son Shri P.P. Subramanian has approached you, with belief that you are an expert in civil matters, for legal advice with intend to file a civil suit of partition against Smt. Kaberi. He also strongly anticipated that if he files suit, opponent may either file setoff or counter claim against given loan of 100 lakhs for the business. The said amount was given against the property [mortgaged with bank] which is situated at Ahmedabad. He further clarified that the documents of one property which is situated at Gandhinagar is disputed and is pending with revenue court for the title clearance, where he is also a party to the said dispute. (10)

Having regard to the above given facts and circumstances, give detailed procedural legal advice to your client on how, where and when to file the suit with appropriate procedural provisions of Civil Procedure Code 1908 along with suggesting the list of documents you are required to file for the suit. You are also required to frame probable 'issues on facts' that you expect to be included by the trial court to decide this matter.

- Q.3 At present an appeal is pending before the Supreme Court of India. (10)
The appellant is aggrieved by and dissatisfied with the judgment and order passed by a learned Single Judge of the High Court of Gujarat at Ahmedabad dismissing the appeal preferred against an order passed by Addl. Civil Judge Gandhinagar in I.A. No. 77/1992. 2012

Facts of the case are as follows.

The respondent had filed a suit for recovery of a sum of INR 2, 22, 46,223 with future interest at the rate of 16.25% per annum against the appellant. It was appeared that the summons had sent to the appellant, and the date 10.10.2008 was fixed for his appearance. However, as the summons had not been served and the Court adjourned the matter to 2.12.2008. Summons were served on the appellant on 14.10.2008 but according to him a copy of the plaint was not annexed thereto. Then, he sent a telegram on 17.10.2008 and also a letter to the Court but, admittedly, the same was not responded to. Without issuing any further summons fixing another date for his appearance, the Court

fixed a date and having found the appellant absent on that date, and fixed another date for *ex-parte* hearing. On 13.12.2008 the suit was decreed *ex-parte* with costs.

An execution petition was filed to execute the said decree. Accordingly, the bailiff served a copy of summons on 2.12.2011. The said summons have been served upon the appellant and he came to learn that *ex-parte* decree had been passed.

An application for setting aside the said *ex-parte* decree filed on 13.12.2011.

By an order dated 17.1.2012 the learned Judge, City Civil Court, Ahmedabad dismissed the said application *inter alia* opining:

- (1) Non-receipt of a copy of the plaint and documents along with the summons cannot be a ground to set aside an *ex-parte* decree.
- (2) Moreover, since there was no report about the service of summons, there was no necessity to serve fresh summons.
- (3) An *ex-Parte* decree having been passed on 13.12.2008 and an application for setting aside the *ex-parte* decree having been filed on 13.12.2011, the same was barred by limitation.

An appeal preferred against the judgment which also dismissed by the single judge High Court of Gujarat with reasons of the impugned judgment. As stated above [first sentence], now this subject-matter is pending before the Supreme Court.

Do you agree with the judgment given by the trial court and confirmed by the High Court? Give legal procedural opinion.

- Q.4 The plaintiff who had instituted a suit on the Original Side of the High Court of Delhi for declaration, for specific performance of agreement, for possession of property and for permanent injunction in 1988. Written statement was also filed by the defendants in 1989 contesting the claim of the plaintiff on merits but without raising any objection as to jurisdiction of the Court. The jurisdiction of the Court was 'admitted'. The suit was then transferred to District Court, Delhi in 1993. In 1997, issues were framed which did not include issue as to jurisdiction of the Court as it was not disputed by the defendants. After more than eight [08] years of filing of the written statement, an application was filed by the defendants under the provision of the Code of Civil Procedure, 1908 [Code] seeking an amendment in the written statement by raising an objection as to jurisdiction of the Court. On the said issue appeal also filed to the High Court and then before the Supreme Court, which resulted with interim-order allowing District Court of Delhi to proceed with the suit but restricted it by not to deliver the judgment until final disposal of this appeal. In pursuance of the said order, District Court of Delhi proceeded with the suit. And accordingly pleadings were completed by the parties, evidence were taken, final arguments recorded and was on the stage of pronouncement of final order. (10)

In continuation of the said appeal before the Supreme Court, it was contended that since the suit is for recovery of immovable property situated in Gurgaon District and the property is in the Gurgaon, Delhi Court had no jurisdiction. As a result of which, Supreme Court finally decided to transfer the suit to Gurgaon Court.

Quite number of years have been passed now since the institution of the suit, the pleadings are completed, evidences are recorded, the arguments are over and judgment also written by the District Court of Delhi.

And now the issue /dispute is whether the suit may be considered by the Gurgaon Court as fresh suit or continuation of the suit. Decide.

- Q.5 The appellant [owner of the property / landlord] had filed a suit against the respondent [tenant] for recovery of possession of the suit-premises on the grounds of non-payment of rent for a period of over three years in spite of notices of demand of rent. In the written statement, the tenant pleaded that the rent charged was excessive in nature and there is no arrears of rent. He further alleged that, the landlord does not require the suit premises reasonably and bona fide. He pleaded that the tenant has a large family and he never cause any nuisance. Further, defendant added in the written statement that a greater hardship would be caused to the tenant if the decree for possession passes against him. Accordingly, the trial court framed the issues, but the parties presented 'consent terms' before the court for passing decree on those terms. And accordingly, the court passed a 'compromised decree' making an order below the 'consent terms' that the parties were present and admitted the terms. (10)

However, the tenant failed to deliver possession of the premises as per the condition of the 'consent decree' by given date [due date]. As on failure of execution, the landlord filed an application for execution of decree. The tenant also filed objections and contented that an eviction decree is not executable as it is a nullity. Also, mentioned that there is no material before the court which passed the decree to show the availability of the ground of eviction alleged against the tenant.

Do you think, the decree is not a nullity and it is executable? Give legal procedural advise.
