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JUDICIARY EXAMS QUESTION PAPER

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Kerala Higher Judicial Service

NCA Mains Examination, 2011

Question Paper

KERALA HIGHER JUDICIAL SERVICE EXAMINATION 2011

(NCA Vacancies)

Duration : 3 Hours

Marks : 100

PAPER – I

Part –I

(Answer all the questions in one or two sentences. Each carries one mark)

1. What does 'prescribed period' mean under the Limitation Act?
2. What is the case in which the court may order cancellation in part of a document?
3. At whose option the transfer of an immovable property made with intent to defeat or delay the creditor is voidable?
4. What is the right of a co-owner/mortgagor who redeems the mortgage?
5. What is the effect of novation of a contract?
6. When is a firm dissolved compulsorily?
7. When is a letters of administration issued by a court?
8. What does the term 'after him' mean in the provision that the natural guardian of a Hindu minor, in the case of a boy or an unmarried girl, is the father, and after him, the mother?
9. What are the grounds on which an application for divorce by mutual consent may be presented under the Hindu Marriage Act?
10. Who is a mentally ill person under the Mental Health Act?
11. What are the issues on which the District Court shall enter finding on completion of the inquisition under the Mental Health Act?
12. Under the Indian Succession Act what is the rule of distribution of the property of an intestate who leaves behind his widow, father and mother and no lineal descendants?
13. What is the provision in the KB (L&R) Act regarding conversion of buildings?
14. What is deemed transfer of certificate of insurance?
15. When does a decision of a court taken at the conclusion of the trial of an Election petition under the Kerala Municipality Act take effect?

Part – II

(Answer any 15 questions in not exceeding 120 words. Each carries three Marks)

16. What is the effect of substitution or addition of parties under the Limitation Act?
17. Examine the right of a plaintiff to claim and the power of the court to award compensation in a suit for specific performance.
18. (a) 'Once a mortgage, always a mortgage and nothing but a mortgage'. Explain.
- (b) A mortgages his property to B. The period for repayment of the loan is fixed at 10 years. The mortgage deed provides that if the amount is not paid within 10 years thereafter, A will not be entitled to redeem the mortgage. Examine the validity of the provision and the principle involved in the matter.
19. (a) What is pawnor's right of redemption?
- (b) What are the rights of a pawnee?
- (c) A obtained from B title to a gold ornament by misrepresenting certain facts. A pledged it with C. After the pledge, B makes a claim to the property. Examine the validity of his claim in the light of the statutory provisions.
20. (a) An Unregistered firm advanced a loan of a certain amount to a person on his issuing a cheque for the amount. The cheque was dishonoured. The firm filed a complaint against the borrower u/s. 138 N.I. Act. He contended that since the firm is unregistered, the complaint is not maintainable. Examine the validity of the contention.
- (b) What is the mode of giving public notice under the Partnership Act?
21. (a) What is bribery for the purposes of The Kerala Panchayat Raj Act?
- (b) Under the Kerala Panchayat Raj Act what is the ground on which a court can dismiss an Election Petition at the threshold?
- (c) What is the remedy of the petitioner when an Election Petition is dismissed at the threshold?
22. (a) What are the matters over which a Family Court has jurisdiction?
- (b) A and B are husband and wife. A property was purchased in their joint names. Their marriage was dissolved by a decree of divorce. Thereafter, a dispute

- arose between them with regard to the property. Can B maintain a petition for partition in the Family Court? Give reasons.
- (c) A wife sued her husband in the Family Court for recovery of an immovable property. Since the husband gave the property on lease to a stranger, the latter was also made a party. The husband contends that the proceedings is not maintainable in the Family Court. Examine the validity of the contention.
23. (a) Distinguish between probate and letters of administration.
- (b) In an application for letters of administration if there is reason to believe that there is a Will in existence, is it proper for the court to grant letters of administration. Give reasons.
24. (a) Distinguish between strict liability and absolute liability in torts. Discuss case law.
- (b) Distinguish between composite negligence and contributory negligence.
25. (a) What is the liability of joint tortfeasors and several tortfeasors?
- (b) A and B jointly committed a wrong. In a suit filed by the victim, A was compelled to pay compensation to the victim. A filed a suit against B for contribution. Will he succeed? Will it make any difference if there was an agreement between A and B for contribution by B?
26. (a) Distinguish between gift and Will under Muslim Law.
- (b) A Muslim makes a gift of his property. The donee was not put in possession of the property, but the gift deed was registered. Is the gift valid? Give reasons.
27. (a) 'The claims under S. 163 A and S. 166 M.V. Act are mutually exclusive'. Discuss.
- (b) The owner of a car insured it and issued a cheque for the premium. The insurer issued a policy. The cheque was dishonoured. The next day the car hit a pedestrian causing injuries to him. Is the insurer liable to pay compensation to him. Give reasons.
28. (a) Are the provisions in CPC applicable to an O.P. filed in MACT?
- (b) What is the mode of execution of an award passed against an insurer under M.V. Act?
29. (a) Which is the court having jurisdiction to entertain divorce petition filed by a Christian wife. Discuss the relevant statutory provisions.

- (b) Discuss the liability of a Christian father to maintain his minor son and major unmarried daughter.
30. Examine the provision in the KB (L&R) Act relating to commission of waste by the tenant in the leased out premises.
31. (a) When does the authority of the guardian of the person cease under the Guardians and Wards Act?
- (b) Does the principle of res judicata apply to the order of custody of a minor?
32. (a) What are the conditions for a valid adoption under the Hindu Adoptions and Maintenance Act?
- (b) Is it legal for adoptive parents to bequeath their properties to a stranger after they have adopted a child?
33. (a) Who are the persons entitled to file an application for inquisition under the Mental Health Act?
- (b) What are the orders that may be passed by the court on such application?
- (c) What is the procedure to be followed by the District Court if it has reason to believe that a person who was found to be mentally ill after inquisition has ceased to be mentally ill?
34. (a) What are the grounds for revocation or annulment of a probate or letters of administration?
- (b) What is the procedure to be followed by the court if after the grant of letters of administration with the Will annexed a codicil is discovered?
- (c) What is the procedure to be followed, if an error in the purpose in a limited grant has crept in?
35. (a) What is actionable claim?
- (b) How can it be transferred?

Part – III

(Answer any 5 questions in not exceeding 250 words. Each carries eight marks)

36. (a) Explain the term adverse possession?
- (b) Distinguish between Art. 64 and Art. 65 Limitation Act.
- (c) A was born on 1-1-1970. On 5-7-1982 a property in his possession was taken illegal possession of by his neighbour. After becoming a major he

wants to file a suit on the basis of his previous possession. Which is the last date for filing the suit? Examine the relevant statutory provisions.

37. (a) How is fraudulent transfer dealt with under the T.P. Act?
- (b) What is the provision in the T.P. Act regarding transfer by unauthorised person who subsequently acquires interest in the property transferred?
- (c) A & B are husband and wife. B's father made a gift of Rs.10 lakhs to her. With this money, a property was purchased in the names of A & B. A dispute arose between them. B filed a suit for a declaration that she has exclusive title to the property. Examine her claim in the light of the relevant provision in the T.P. Act. Discuss the provision.
38. (a) Who are the persons compulsorily insurable under the M.V. Act?
- (b) When is the insurer entitled to recover from the insured the amount paid by it in a claim petition under the M.V. Act?
- (c) Discuss permanent disability and loss of earning capacity.
39. (a) What are the remedies available to a Muslim divorced woman who is denied maintenance?
- (b) Discuss the validity of dissolution by agreement of Muslim marriage.
- (c) What is the difference (if any) between apostacy from Islam of a Muslim husband and of a Muslim wife so far as its consequence on marriage is concerned?
40. (a) What are declaratory decrees? What are the principles for granting declaratory decrees?
- (b) A files a suit for a declaration that his brother is dead on the allegation that his whereabouts have not been known for the last 10 years. Discuss the maintainability of the suit.
- (c) Why is it said that a decree in a suit for specific performance of agreement for sale is in the nature of a preliminary decree?
41. (a) What are the rules for execution of an unprivileged Will?
- (b) Explain the armchair theory in construing a Will?

(c) How is a Will different from other documents so far as inconsistent clauses are concerned?

42.(a) Discuss the entitlement of a landlord under the KB (L & R) Act to evict a tenant on the ground of bona fide own occupation or occupation by any member of his family dependant on him.

(b) On whom the burden lies in proving the ingredients in each of the clauses?

(c) How is section 11 (3) different from S. 11 (8)?

43.(a) Examine the powers of the court to order interim measures under the Arbitration & Conciliation Act?

(b) What are the grounds on which an arbitration award may be set aside?

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PAPER – II

Part – I

(Answer all the questions in one or two sentences. Each carries one mark)

1. What does conduct mean u/s. 8 Evidence Act?
2. In a prosecution for rape is it permissible for the defence counsel to question the prosecutrix as to her general immoral character. Give reasons.
3. What is the probative value of the entries in books of account regularly kept in the course of business?
4. Who is an expert?
5. How an attested document may be proved when the attesting witnesses deny their attesting it?
6. In a suit based on a promissory note, the defendant produces from his custody the promissory note executed by him. What is its legal consequence?
7. A summons was issued to a stranger to a suit to produce a document. He produced it, but did not attend the court for cross-examination. The court ordered issuance of arrest warrant against him. Is it legal? Give reasons.
8. Which is the appropriate government for the purpose of commutation of sentence under IPC?
9. When is abetment in India of commission of an act without and beyond India abetment of an offence?
10. What is the difference between rashness and negligence?
11. Is it legal for the court to award a sentence of imprisonment for a term less than the minimum period for the offence of rape u/s. 376 (1) IPC?
12. What are the ingredients of dishonestly receiving stolen property?
13. What is property mark?
14. What is the punishment prescribed for possession of commercial quantity of ganja?
15. Has the special court constituted under the S.C. & S.T (Prevention of Atrocities) Act jurisdiction to take cognizance of the offence under the Act without committal? Why?

Part – II

(Answer any 15 questions in not exceeding 120 words. Each carries three Marks)

16. (a) What is illicit traffic under the NDPS Act?
(b) What is a psychotropic substance under NDPS Act?
17. (a) When does intentional insult of a member of a scheduled caste become an offence u/s. 3 (xi) SC & ST (Prevention of Atrocities) Act?
(b) When does an assault of any woman belonging to a scheduled caste become an offence u/s. 3 (x) SC & ST (Prevention of Atrocities) Act?
18. (a) What are the powers of a police station officer to conduct search of a house without a warrant under the Abkari Act?
(b) Is a confession made to an abkari officer admissible in evidence? Give reasons.
19. (a) What is the procedure to be followed by an abkari officer who arrests an offender under the Abkari Act without a warrant?
(b) What is the provision regarding disposal of a person arrested by an abkari officer?
20. (a) What is the presumption as to a bank slip under the Negotiable Instruments Act?
(b) What is the presumption in favour of a holder u/s. 139 N.I. Act and how can it be rebutted?
21. (a) How does the Indian Penal Code apply to extraterritorial offences and what is the extended meaning of offence for this purpose?
(b) Who is a Judge and what is a Court of Justice under the Indian Penal Code?
22. What are the provisions in the Indian Penal Code regarding imposition of fine and imprisonment for non-payment of fine?
23. What are the acts against which there is no right of private defence?
24. What are the offences in relation to which disclosure of the identity of the victims is an offence? What are the exceptions to it, if any. Is the provision applicable to judgments of courts?

25. (a) What does cruelty mean for the purpose of Sec. 498 (A) IPC?
- (b) Distinguish between adultery and bigamy.
26. (a) A witness who has been summoned to give evidence in a criminal case files an affidavit and offers himself for cross-examination. Is it legal for the court to act upon the affidavit? Give reasons.
- (b) What is the significance of facts in issue and relevant facts under the Evidence Act?
27. (a) Explain the maxim *falsus in uno falsus in omni bus*.
- (b) A was charged with having committed theft of gold ornaments belonging to B. In the presence of A, C told that police was in search of the thief. Thereafter, A was found missing till his arrest. Out of these what are the facts which may be admissible in evidence? What are the provisions under which they are admissible?
28. (a) Pradeep was walking along a public road when he was bitten by a dog belonging to Bhaskaran. In a suit filed by the former for damages from the latter, he wants to adduce evidence to prove that the dog had bitten 5 persons previously. Is it admissible? Why?
- (b) A was charged with having attempted to cause the death of B by administering poison. In his examination in chief B was asked about the symptoms of his illness. The defence objects to it. Is the objection sustainable? Why?
29. (a) Admission may be proved as against the person who makes them or his representative in interest. State the exceptions, if any?
- (b) When are admissions irrelevant in civil cases?
30. (a) When is an entry in a public record relevant?
- (b) Is a statement contained in a document which forms only a part of a connected series of letters admissible in evidence. Give reasons.
31. (a) Explain the uses of first information statement under the Evidence Act.
- (b) If the first informant gives a statement against the accused, which is in conflict with his statement in the first information, what is the procedure to be followed by the defence counsel?
32. (a) What is a certified copy of a public document?
- (b) What are the presumptions regarding a public document? When do these presumptions arise?
33. (a) What is the rule of exclusion of evidence of oral agreement?

- (b) A executed a sale deed in favour of B. Later, A filed a suit for declaration that the sale deed is void and he is the owner of the property.
- (i) Is A entitled to prove that the sale deed is not supported by consideration. Give reasons.
- (ii) Is A entitled to prove that the consideration was less than the one shown in the deed? Give reasons.
34. (a) What is the restriction on disclosure of professional communications under the Evidence Act?
- (b) (i) Can the privilege relating to professional communications be deemed to have been waived if the party to a suit gives evidence?
- (ii) When can the party be deemed to have consented to such disclosure?
35. (a) What are the questions lawful in cross-examination and what is the purpose of cross-examination?
- (b) (i) Is right of cross-examination necessary to make a statement given by a witness in court evidence in the case?
- (ii) A defendant failed to file written statement in a suit. The court disallowed his prayer to cross-examine the plaintiff's witnesses. Examine the legality of the action of the court.

Part – III

(Answer any 5 questions in not exceeding 250 words. Each carries eight marks)

36. (a) Discuss the law governing statements of persons who cannot be called as witnesses.
- (b) What is the evidentiary value of a dying declaration?
- (c) A doctor who conducted post-mortem examination on the body of the victim of a murder died before the trial of the case. Is the certificate issued by him relevant? How can its contents be proved?
37. (a) Discuss the law relating to the relevancy of confession. Mention case laws on the point.
- (b) Before the accused in a murder was arrested he had consulted a doctor and made a confession to him. Is it relevant? What is the provision applicable to it?
38. (a) Discuss the relevancy of opinion evidence.
- (b) Mention some instances in which opinion evidence becomes relevant in a sessions trial.

- (c) What is the probative value of opinion evidence?
- 39.(a) Discuss the act of a person of unsound mind as a defence in a criminal case.
- (b) In a sessions case the prosecution evidence revealed that the accused had a history of treatment for mental illness. But he did not adduce any evidence. Examine the merit in the argument that he is entitled to be acquitted.
40. (a) What is right of private defence of the body and what is its extent?
- (b) On a day on which a political party was observing hartal, its supporters attempted to close down a factory using force. When the owners and the workers attempted to resist it, the mob set fire to the factory from all its sides. An owner who was inside the factory fired a shot killing one of the political workers on the spot. Discuss the claim of right of private defence by the owner.
41. (a) What is rape? What is the punishment prescribed for the offence?
- (b) What is the difference between the phrases 'against her will' and 'without her consent' appearing in Sec. 375 IPC?
42. Discuss the law relating to house trespass.
43. (a) What is forgery?
- (b) What is making a false document?
- (c) What is falsification of accounts?

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PAPER – III

Part –I

(Answer all the questions in one or two sentences. Each carries one mark)

1. For the offence under Sec. 326 IPC a Magistrate sentenced the accused to undergo imprisonment for 3 years and to pay a fine of Rs. 5,000/- and in default of payment of fine to undergo imprisonment for a further period of 3 months. Is it legal? Give reason.
2. What is the purpose for which a police officer is empowered to arrest a person who, in his presence, commits a non cognizable offence?
3. The owner of a house saw a thief in his house. While the latter was attempting to escape with the stolen article, the owner arrested him. Was it legal? Why?
4. What is the order a Magistrate shall pass when an officer in charge of a police station makes a request for identification of an arrested accused?
5. What is the procedure to be followed when a party dispenses with the examination of witnesses in a criminal court?
6. Which is the court having territorial jurisdiction to try the offence of abduction?
7. A complaint alleging commission of the offence u/s. 497 IPC is filed. On a reading of it, the Magistrate finds that it is barred u/s. 198 Cr.P.C. What is the procedure to be followed by him?
8. What is the procedure prescribed when an application for copy of a document or proceedings is filed by a stranger to the proceedings in a criminal court?
9. How should a sessions judge record the examination of an accused?
10. What is the purpose of tendering pardon?
11. What direction a civil court should issue to the parties in the final judgment for partition?
12. What should an executing court do when the decree holder fails to take steps in respect of one of the cumulative reliefs prayed in the E.P?
13. What is the time for commencement and closing of sale by a civil court?

14. Who is the officer empowered to sign the various processes issued by a civil court?
15. What are the stages at which the question of court fees may be considered by a court in a suit?

Part – II

(Answer any 15 questions in not exceeding 120 words. Each carries three Marks)

16. Write a note on the appellate jurisdiction of the District Judge and the Subordinate Judge under the Civil Courts Act?
17. (a) What is impounding of documents?
- (b) What is the procedure to be followed when a document is impounded?
- (c) What are the cases in which a document may be impounded by a criminal court?
18. (a) Who can record a confession u/s. 164 Cr.P.C.?
- (b) What is the mode of recording confession by a Magistrate?
- (c) A Magistrate fails to take the signature of the accused in his confession. Can the defect be cured by examining the Magistrate? Why?
19. (a) What is the procedure prescribed for granting remand of an accused to police custody?
- (b) An accused in a murder case was arrested and produced before a Magistrate. He was remanded to judicial custody for 15 days. On the way to the jail, he was taken ill and was admitted to a hospital. On the 12th day of his remand he was discharged and was lodged in the jail. On the 13th day of his remand an application was filed for his remand to police custody. On the same day, the Magistrate remanded him to police custody for 5 days. Was it legal? Why?
20. (a) What is the procedure prescribed when the sole accused has absconded and some of the accused have absconded before appearance in the court?
- (b) What is the procedure to be followed when the accused has absconded after committal of the case to the sessions court?
21. What is the provision regarding medical examination of the victim of rape?
22. (a) What is meant by indefeasible right of bail u/s. 167 Cr.P.C?
- (b) In a murder case the accused had been in judicial custody for 90 days during the investigation. On the 91st day, he filed an application for bail. The next day was a Sunday. On Monday (the 93rd day) the police filed

final report. On that day, when the bail application was taken up for hearing, the Public Prosecutor submitted that since the final report was filed the accused was not entitled to bail. Discuss the merit of the argument.

- 23.(a) What is case diary and what is its use?
- (b) What are the options before the Magistrate when a final report is filed?
- (c) In the course of the trial of a case the evidence revealed that the investigation was not honest and the real offender was not before the court. The Magistrate suo motu ordered further investigation. Examine the legality of the action.
24. (a) Write a brief note on enquiry by Judicial Magistrate in the case of death.
- (b) What are the differences between investigation by police u/s.156 (3) & u/s. 202 (1) Cr.P.C.?
25. (a) A complaint was filed alleging commission of the offences u/s. 326 IPC. After the accused appears pursuant to the summons issued to him u/s. 204 Cr.P.C. what is the procedure to be followed?
- (b) In a warrant case instituted on a complaint what are the options before the Magistrate if the complainant is absent on any day before the charge is framed?
26. (a) What is meant by rateable distribution?
- (b) How does the provision in the CPC relating to rateable distribution affect the rights of the government?
27. (a) When can a party to a proceedings file an appeal under CPC?
- (b) What is cross objection and when is it not necessary to file a cross objection by a respondent?
28. (a) Examine the powers of a civil court to order amendment of pleadings.
- (b) What does trial mean for the purpose of O.6 rule 17 CPC?
- (c) The Munsiff entered a finding that the plaintiff is entitled to a certain relief. But this does not find a place in the decree. What is the remedy?
29. (a) What are the materials on the basis of which issues may be framed?
- (b) When can the court hear an issue as a preliminary issue?
- (c) The plaintiff claimed permanent injunction on the basis of his title and paid court fees for that relief. In his written statement the defendant

denied the plaintiff's title. The court framed an issue regarding the controversy. What is the next step for the court to do?

30. (a) Distinguish between set off and counter claim.
- (b) In a written statement the defendant states that the plaintiff should be directed to prove his allegations. What is its effect?
31. (a) What are the endorsements to be made on the documents admitted in evidence?
- (b) A document was tendered in evidence. It was found inadmissible. What the court should do with the document?
- (c) What is the procedure for return of documents admitted in evidence?
32. (a) What is the satisfaction to be entered for the court to order coercive steps against a witness who fails to appear in obedience to the summons?
- (b) A witness was arrested and produced before the court. But the case was adjourned owing to the absence of one of the parties. What is the order the court may pass so far as the witness is concerned?
33. (a) What is the relief to be granted when a suit for delivery of movable property is decreed and how such decree is to be executed?
- (b) A borrowed a certain amount from a bank. He died before the debt was discharged. The bank filed a suit against his legal representatives. What is/are the relief/s to be granted if the suit is decreed?
- (c) A suit for recovery of money was decreed. Later the judgment debtor died. The decree holder filed an E.P. against the legal representatives of the J.D. What is the direction the court should issue at the initial stage?
34. (a) Who is a garnishee and what is the direction to be issued to him in the notice?
- (b) What is the order which should be passed if the garnishee does not comply with the direction?
- (c) What is the effect of garnishee's payment of the amount ordered by the court?
35. (a) Distinguish between upset price and reserve price?
- (b) 'Sec. 47 and Order 21 R.90 CPC are mutually exclusive'. Discuss.
- (c) In the auction held by the court in execution of a decree the decree holder purchased an immovable property belonging to J.D. The sale was confirmed. Thereafter, the D.H. and the J.D. jointly submitted an application in the executing court for setting aside the sale on the

allegation that they had settled the matter. Examine the merit in the application.

Part – III

**(Answer any 5 questions in not exceeding 250 words.
Questions 40 to 43 are compulsory. Each carries eight marks)**

- 36.(a) Discuss the powers of an appellate court to reject an appeal, and dismiss an appeal without sending notice to the lower court and remand an appeal.
- (b) What are the options before a court when a question arises as to whether any person is or is not the legal representative of a deceased appelland?
37. Discuss
- (a) the right of partners to sue in the name of the firm.
- (b) Service of summons when persons are sued in the name of their firm.
- (c) Right of suit on the death of a partner.
- (d) One Kochan was carrying on business in the name of Koch Kichen. One of his customers failed to discharge his liability. So Kochan filed a suit against the customer. In the plaint the plaintiff was shown as 'Koch Kichen'. Examine the maintainability of the suit.
38. How a decree for money may be executed by arrest and detention of J.D. in civil prison?
39. (a) The term anticipatory bail is a misnomer". Examine the correctness of the statement.
- (b) Under a Special Act, an offence is punishable with imprisonment upto 3 years. There is no provision in the Act regarding bail. Is the offence bailable?
40. (a) In an appeal filed by the accused the sessions court noticed that there was an error in the charge framed by the Magistrate. The appelland submitted that he was entitled to acquittal. Examine the merit in the argument.
- (b) Frame a charge on the basis of the final report attached to this question paper.
41. What are the powers of a police officer in investigating a case?
42. On the basis of the materials furnished below, write a judgment.

Plaint

Plaint schedule property having an extent of 10 cents, which is described in detail in the plaint schedule was part of the 50 cents which belonged to one Santan. He sold 20 cents to one Sankar Unni in 1979. Sankar Unni sold the plaint schedule property to the defendant in 1990. On 1-1-2004 the defendant agreed with the plaintiff for the sale of the plaint schedule property for Rs. 10,000/- per cent. On the same day the former put the latter in possession of the property on the latter's paying Rs. 20,000/- as part of the sale consideration. The plaintiff was and is ready and willing to pay the balance sale consideration. The defendant did not take steps to measure the property. On 1-11-2008 the plaintiff issued a notice demanding him to receive the balance sale consideration and execute the sale deed. The defendant issued a reply notice refusing to execute the sale deed. The plaintiff has a right to get a decree for specific performance and his costs. In the alternative he is entitled to get back the advance amount paid by him with interest at 12% per annum from 1-1-2005 and his costs.

Dated this 1st day of January 2009.

Written statement

The suit is hopelessly time barred. The defendant was ready to do his part of the contract. But the plaintiff was not ready. He had no money to pay the balance sale consideration. The defendant sent a reply notice stating only true facts. It is false that he put the plaintiff in possession of the property. The defendant is not liable to execute sale deed. He is not liable to pay back the amount paid as advance. He has no liability to pay interest or costs.

The court framed issues.

Plaintiff's witnesses : PW1
Defendant's witness : Nil
Exhibits for plaintiff : A1 to A3
Exhibits for defendant : Nil

PW1

Examination in chief

A1 is agreement, A2 is copy of notice. A3 is reply notice.

Defendant gave me possession on the date of agreement. I am still in possession. I was ready to pay the balance sale consideration. I have bank balance of Rs. 4-5 lakhs from 2007. Defendant postponed execution of deed for one reason or another. At last I sent Ext. A2 notice. What is stated in Ext. A3 is false. I am entitled to all the reliefs.

Cross examination

I was put in possession before Ext. A1 was written and signed. There is no reason for not stating in Ext. A1 that I was given possession. I have not paid basic tax.

Within 1 year of Ext. A1 agreement I wanted the defendant to execute the sale deed. That was Gandhi Jayanti day in 2004.

Re-examination : Nil

43. On the basis of the materials furnished below, write a judgment.

Prosecution case

The accused and the first informant Azad were friends and members of the same political party. Towards the end of 2010 Azad joined another political party. This caused estrangement. On 2-1-2011 Azad ridiculed the accused on a public road. This caused enmity. On 2-2-2011 at 3.30 p.m. while Azad was going to Kaloor market along the Mahakavi road at Palarivattom the accused armed with a Malappuram knife came from behind him and stabbed him with the knife twice causing him injuries. He sustained injuries on the right upper arm. There was fracture of the right ulna. The accused thus committed the offence u/s. 326 IPC. The accused was arrested on 3-1-2011 and was in remand till 18-1-2011 granted bail by Magistrate.

PW1- PW4 examined. Exts. P1 to P4 and MO1 marked.

Ext. P1 - FIS

Ext. P2 - FIR

Ext. P3 - wound certificate

Ext. P4 - scene mahazar

MO 1 - knife

Defence evidence - Nil

PW1 : Informant/victim

Examination in chief

He repeated the prosecution version. Ext. P1 FIS was given at hospital. MO1 is the knife with which he was attacked.

Cross examination

When he turned back he saw the accused with the knife. He attempted to ward off the attack. There was no identification mark for the knife, but he had seen it when they were friends. Some passers by saw the incident. He did not know why they were not cited as witnesses.

PW2 : Head Constable

Examination in chief

Head Constable recorded Ext. P1 FIS. He prepared Ext. P2 FIR.

Cross examination

He went to hospital at 5.30 p.m. Completed FIS at 6.15 p.m. Came back to the station at 7.00 p.m. That was why Exts. P1 and P2 were sent to Magistrate only on the next day.

PW3 : Doctor

Examination in chief

Examined PW1 at 4.15 p.m. on 2-2-11. Noticed an incised wounds on right upper arm muscle and right forearm. Fracture of right ulna. MO1 could cause the injuries. Ext. P3 is the wound certificate.

Cross-examination

The police did not question me. I was not shown MO1 knife.

PW4 : C.I. of police

Examination in chief

Prepared Ext. P4 scene mahazar. M.O. 1 knife was recovered from the place of occurrence. He filed the final report.

Cross-examination

M.O. 1 was not sent for chemical analysis. There is no reason for it. As there was no eye witness none was interrogated.

ഇതിലെ പ്രതിക്ക് തന്റെ അയൽക്കാരനായിരുന്ന ബിനു തന്റെ (പ്രതിയുടെ) സഹോദരിയെ പരസ്യമായി കളിയാക്കിയതിലുള്ള മനോവിഷമത്തിൽനിന്നുണ്ടായ മുൻ വിരോധം നിമിത്തം ടിയാനെ മന:പൂർവ്വം കൊലചെയ്യണമെന്ന ഉദ്ദേശ്യത്തോടും കരുതലോടും കൂടി 2011 ഫെബ്രുവരി മാസം 2-ാം തീയതി പകൽ 3 മണിക്ക് ടി ബിനു കുടുംബമായി താമസിച്ചിരുന്ന കണയന്നൂർ താലൂക്ക്, എറണാകുളം വില്ലേജിൽ കോമ്പാറ കരയിൽ എറണാകുളം നോർത്ത് റെയിൽവേ സ്റ്റേഷനിലേക്ക് പോകുന്നതും കിഴക്കു-പടിഞ്ഞാറായി സ്ഥിതിചെയ്യുന്നതുമായ ടാറിട്ട റെയിൽവേ സ്റ്റേഷൻ റോഡിന്റെ വടക്കുതിരു ചേർന്ന് തെക്കുദർശനമായി പുറമ്പോക്കിൽ സ്ഥിതിചെയ്യുന്ന നമ്പറിടാത്ത വീടിന്റെ തെക്കുവശം വരാന്തയിൽനിന്ന് ഒരു മീറ്റർ തെക്കുമാറിയും ടി ടാറിട്ട റോഡിന്റെ വടക്കുതിരിൽ നിന്നും 1/2 മീറ്റർ വടക്കു മാറിയും ഉള്ള റോഡ് മാർജിനിൽ വെച്ച് ഇരുവശവും മുർച്ഛയുള്ള ഒരു കത്തികൊണ്ട് പ്രതി ടി ബിനുവിന്റെ നെഞ്ചിൽ ഇടതുവശം 5 പ്രാവശ്യം കുത്തി പരിക്കേല്പിച്ചും പരിക്കിന്റെ കാഠിന്യത്താൽ ബിനുവിനെ തൊട്ടടുത്തുള്ള ആശുപത്രിയിൽ കൊണ്ടുപോവുന്ന വഴി ടിയാൻ മരിക്കുന്നതിനിടയാവുകയും ചെയ്ത് പ്രതി ഇന്ത്യൻ ശിക്ഷാനിയമം 302-ാം വകുപ്പുപ്രകാരം കുറ്റം ചെയ്തിട്ടുള്ളതാണ്. പ്രതിയെ വിചാരണ ചെയ്യുന്നതിനായി എറണാകുളം സെഷൻസ് കോടതിയിലേക്ക് അയക്കണമെന്ന് അപേക്ഷ.. പ്രതിക്കുള്ള രേഖകളുടെ കോപ്പി ഇതുസഹിതം ഹാജരാക്കുന്നു.