

Judicial Administration Training Institute
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144th Refresher Course for the Joint District & Session Judges working in the
Artha Rin Adalat through Online/Distance Learning Process
(20, 22-24 & 27 February, 2022)

Oral Presentation on Case Study

All participants will be divided into 08 (eight) groups, each consisting of 06 (six) members, except group “A” which contains 8 (eight) members. Each of the group-members is requested to take part in the presentation since each member will be evaluated on her/his individual performance and presentation skill.

Formation of the Groups

Name of the Group	Roll Number according to the serial number of GO	Assigned Case Study Number according to the Fact Sheet
A	01-08	1
B	09-14	2
C	15-20	3
D	21-26	4
E	27-32	5
F	33-38	6
G	39-44	7
H	45-50	8

[Instructions for the participants: 1) Read the problem carefully, 2) Identify the legal and factual issues in the given circumstances, 3) Do necessary studies to find out relevant statutes, books, commentaries and law reports, 4) Note down arguments for and against, 5) Form your opinion and decide the case after having active discussion in your respective group, 6) Prepare your presentation in prescribed/ standard form (specimen format is attached herewith), 7) Send the soft copy (pdf) of the same to research.publication.jati@gmail.com by 22 February, 2022- 12 pm (sharp noon) to submit the same before the panel during the session. You may have to answer questions on the relevant issues, provisions of law and legal decisions. All participants shall be at liberty to join in the open discussion after presentation. Each Participant will be evaluated out of 50 marks on the criteria mentioned in Article 6 of the Training Evaluation Guidelines.]

Case study Fact Sheet for Oral Presentation on Case Study

Problem- 1

A developer company proposed Mr. "Y" to develop his land which he got from RAJUK by virtue of a lease agreement for 99 years. He informed the developer company that the title deed of his land had been deposited with the Trust Bank as equitable mortgage to secure credit facilities. By executing tripartite agreement dated 26.07.2007 between the developer company, Mr. "Y" and the Trust Bank, the sale price of the land had been settled. As per the agreement, the developer company made payment of taka six crore to the Trust Bank to make the land owner free from liability. On receipt of the amount the Trust Bank handed over the title deed of the land to the developer company. Subsequently, the land owner executed a General power of Attorney on 25.09.2007 in favor of the developer in order to facilitate the construction work of multistoried building over the said land and also for exercising his right relating to that land.

Mr "Y" also took loan from One Bank Limited by mortgaging the same property. The Bank filed Artha Rin Suit No. 7 of 2008 before an Artha Rin Adalat against the land owner Mr. "Y" claiming taka nine crore on 23.01.2008. On the same date the plaintiff One Bank Limited filed an application for attachment before judgment. The Court allowed the applications by making attachment before judgment.

After having aware of the order of attachment the developer company filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 for addition of party in the Artha Rin Suit which was rejected by the trial Court vide Order dated 19.01.2009 on the ground that the applicant (i.e. the developer company) had no *locus standi* under section 6(5) of the Artha Rin Adalat Ain, 2003.

The said order dated 19.01.2009 was challenged by the developer company.

Question:

Whether the order passed by the Artha Rin Adalat in rejecting the application for addition of party is in accordance with law or not.

Problem- 2

"A" company obtained a loan from a scheduled bank. In due course, the Bank instituted Money Suit No. 209 of 1997 in an Artha Rin Adalat for recovery of the loan money amounting to Taka twelve crore. The suit was decreed on 2.5.2005 and a preliminary decree was drawn up on 24.5.2005. Subsequently, the Bank filed Artha Execution Case No. 255 of 2005 on 18.07.2005. The executing Court by order dated 30.10.2005 fixed 12.01.2006 for receiving auction bid, but auction could not take place on that date i.e. 12.01.2006 as it was a public holiday. Then the record was placed before the executing Court on 15.01.2006. The Court noted that nobody

submitted any tender and fixed 09.03.2006 for taking steps under section 33(4) stating clearly that no tender was dropped on that date. On that date the decree holder filed an application under section 33(7) of the Artha Rin Adalat Ain, 2003 for a certificate of title to the mortgaged property in its favour. The application was heard on **31.05.2006** and the same was allowed and the Court passed order for issuing certificate. In fact, the certificate was issued on 02.08.2006 and on this date further order was passed to send a copy of the certificate to the concerned Sub-Registrar. Thereafter on 29.01.2008 the decree holder Bank filed an application under Order, XXI, rules 95, 96, 98 and 99 of the Code of Civil Procedure, 1908 read with sections 26 and 57 of the Artha Rin Adalat Ain, 2003 to deliver the actual possession of the property acquired by it pursuant to the certificate. The Court by its order dated **26.02.2008** allowed the prayer and issued writ of delivery of possession fixing 27.04.2008 for the return of the writ of delivery of possession.

Orders dated 31.05.2006 and 26.02.2008 passed by the Artha Rin Adalat are challenged by "A" company, invoking the writ jurisdiction of the High Court Division.

Question:

Whether the Artha Rin Adalat, in this case, is justified in passing the orders dated 31.05.2006 and 26.02.2008 and consequently issuing the writ of delivery of possession.

Problem- 3

In a Sessions case one of the Prosecution Witnesses was declared hostile and thereafter he was cross-examined. The learned Sessions Judge was of the view that the Prosecution Witness gave false evidence in the court and as such he lodged complaint to the concerned Magistrate to proceed against that witness under sections 193/212 of the Penal Code, 1860 for giving false evidence.

The learned Magistrate took cognizance under sections 193/212 of the Penal Code. At the time of hearing on framing charge, an application was filed on behalf of the accused to discharge him on the following two grounds:

- 1) That no complaint for giving false evidence can be entertained before disposal of the concerned case in which false evidence was allegedly given;
- 2) That in this case the complaint was lodged in violation of the provisions of section 476 of the Code of Criminal Procedure, 1898 because no inquiry was held before lodging the complaint.

The learned advocate on behalf of the accused has argued that the learned Sessions Judge should not have lodged the complaint before completing the trial. He has pointed out that by this time the trial of the session's case is completed and the

accused persons of that case were convicted. So, according to him, the evidence of the accused P.W. had no bearing in the result of the Sessions case. He has also submitted that before lodging complaint the Judge in whose court false evidence was given was required to hold an inquiry but in this case the learned Sessions Judge did not hold any inquiry.

Questions:

- (a) Whether lodging of the complaint before conclusion of the trial of the sessions case was proper and legal.
- (b) Whether lodging of the complaint without holding any formal inquiry was legal.

Problem- 4

Mr "X" took loan from a scheduled bank but failed to repay the same as per stipulation and consequently on 28.4.2004 the loan granting bank filed Artha Rin Suit No. 574 of 2004 in an Artha Rin Adalat for recovery of taka two crore against Mr. "X" and others. On the date of filing of that suit the plaintiff-bank could not pay the requisite court fee and prayed for time. The Adalat allowed that prayer and fixed 11.5.2004 for filing the deficit court fee. On 11.5.2004 the plaintiff bank paid the deficit court fee. Mr. "X" appeared in the Suit and filed written statement and ultimately the trial was commenced. At that stage, on 25.9.2008, the defendant filed an application under section 47 of the Artha Rin Adalat Ain, 2003 praying for allowing him to pay the principal loan along with 200% of the principal loan amount as interest as per section 47 of the Artha Rin Adalat Ain, 2003. The learned Judge of the Adalat by the order dated 14.10.2008 rejected that application stating that there was no scope to consider the said application as this suit is instituted before the provision of section 47 of the Artha Rin Adalat Ain, 2003 came into force on 01.05.2004.

Being aggrieved by that order dated 14.10.2008 passed in Artha Rin Suit 574 of 2004 the defendant petitioner filed a Writ petition before the High Court Division and obtained Rule.

It was argued on behalf of the petitioner that since according to the section 6(2) of the Artha Rin Adalat Ain, 2003 the plaintiff requires to pay the *ad valorem* court fee along with the plaint and since in this case the *ad valorem* court fee was not paid on the date of filing of the plaint but it was paid on a subsequent date i.e. on 11.5.2004 the plaint should be deemed to have been registered on that date i.e. on 11.5.2004 and in the circumstances the borrower-defendant is entitled to get benefit of section 47 of the Artha Rin Adalat Ain, 2003.

Contrary argument was that since the suit was filed on 28.4.2004 the provision of section 47 of the Artha Rin Adalat Ain, 2003 was not applicable to this suit and that

the provision of sub-section (2) of the section 6 of the Artha Rin Adalat Ain, 2003 being merely a guideline and directory provision only the plaintiff is at liberty to pay the *ad valorem* court fee within the period prescribed by the court.

Questions:

- a) Is the registration of the Artha Rin Suit in question, in the given facts and circumstances, legal? Which will be the proper date of registration of the suit in question?
- b) Whether the plaintiff is entitled to get the benefit of section 47 of the Artha Rin Adalat Ain, 2003.

Problem- 5

An Artha Rin Adalat decreed a suit for an amount of taka ten lac. In execution of that decree, the decree holder took steps to sell the property of the judgment debtor in auction but failed due to various reasons. Then the decree holder filed an application under section 33(7) of the Artha Rin Adalat Ain, 2003 praying for an order vesting the title of the concerned property of the judgment debtor in his favour and for issuing a certificate to that effect and treating the certificate as a title deed in respect of the property. The court issued the certificate. Thereafter, the decree holder went to the premises to take possession of the property to which the judgment-debtor resisted. Then the decree holder made a prayer under Order 21, Rule 98 of the Code of Civil Procedure, 1908 read with section 57 of the Artha Rin Adalat Ain, 2003 for deploying police force for taking possession of the property. The prayer was rejected on the ground that with the issuance of certificate title has been vested to the decree holder, the execution case was disposed of finally and, therefore, there is no scope of taking any other steps for delivery of possession of the property to the decree holder.

Question:

Whether the rejection of the prayer for deploying police force for delivery of possession was proper.

Problem- 6

'A' filed a suit for specific performance of contract alleging that 'B' entered into a contract with him for sale of the suit land and after receiving advance of Tk. two lac executed a *bainapatra* on 10.05.2014 and ultimately refused to execute and register a sale deed in his favour. 'B' contested the suit mainly contending that the *bainapatra* was false and he neither entered into any contract with 'A' nor received any amount from him as advance.

The plaintiff led oral evidence and proved the contract and payment of advance. The defendant though denied execution of the *bainapatra* did not take any step for examining the signature in the *bainapatra* by a handwriting

expert. The court did not itself also compare the signatures. However, the suit was decreed.

Then an appeal was filed by the defendant taking the main ground that without ascertaining the genuineness of the signature in the *bainapatra*, the court should not have decreed the suit.

It was argued on behalf of the appellant that the suit should be sent back to the trial court on remand for ascertaining the genuineness of the signature either by comparing the signatures by the court itself or through expert examination.

Question:

In view of such argument, if the appeal is before you, shall you send back the suit on remand or shall you decide the appeal on merit? Give reasons.

Problem- 7

A scheduled bank instituted Artha Rin Suit No. 05 of 1997 in an Artha Rin Adalat for recovery of loan which was decreed *ex-parte* in preliminary form. The decree-holder bank then put the decree into execution. In due course, an auction was held. After completion of auction formalities, the sale was confirmed in favor of the auction-purchaser Mr. "Z". Accordingly, a sale certificate was prepared and duly registered. Thereafter, "Z" got delivery of possession of the mortgaged land sold in auction with the help of police force.

On 07.09.2004, one Mr. "A", who is the brother of the judgment-debtor, filed an application under Order XXI Rule 100 of the Code of Civil Procedure, 1908 read with section 57 of the Artha Rin Adalat Ain, 2003 for restoration of possession of .75 decimal of land of the same plot. He also prayed for appointing a survey knowing commissioner to ascertain his property. Mr. "X" contended that at the time of taking over possession of the mortgaged property, the auction purchaser in collusion with the decree holder and others illegally and fraudulently has also taken over possession of the personal inherited property of him which is contiguous to the suit property and that the said land is neither the mortgaged nor sold in auction.

Consequently, an advocate commissioner was appointed who surveyed the disputed land and submitted his report and was examined by the Court. On consideration of the advocate commissioner report together with submission during hearing by parties concerned, the Artha Rin Adalat found that applicant Mr "A", in fact, was dispossessed from his land which is not the subject matter of the mortgage. Then the Adalat directed the auction purchaser to restore possession of .75 decimal of land in favour of the applicant, Mr "A".

In the backdrop of aforesaid facts and circumstances, the auction purchaser, being aggrieved, took recourse to the Writ jurisdiction of the High Court Division and obtained rule.

It is argued *inter alia* on behalf of the auction-purchaser that Mr. "A" being a third party cannot file any application under section 32 of the Artha Rin Adalat Ain, 2003 without depositing 25% of the decretal amount. It is further argued that the issue raised by Mr. "A" before the Artha Rin Adalat in the execution case can only be resolved in a properly framed suit and not on an application under Order XXI Rule 100 of the Code of Civil Procedure.

Questions:

- a) Under the given facts and circumstances of the suit, whether application by Mr. "A" under Order XXI Rule 100 of the Code of Civil Procedure without depositing 25% of the decretal amount as envisaged in sub-section (2) of section 32 of the Ain, 2003 is maintainable.
- b) Can the Artha Rin Adalat resolve the disputed question of fact under Order 21 Rule 100 of the Code of Civil Procedure?

Problem- 8

Plaintiff "X" instituted Title suit No. 2 of 2005 in a court of Joint District Judge for declaration that the auction sale in execution of the decree passed by an Artha Rin Adalat is illegal, mala fide, fraudulent and not binding upon the *plaintiff*. The plaintiff claims that he is the owner of the suit land by inheritance and has been possessing the same by constructing two storied building thereon. For business purpose, he took loan of eight lac from the defendant No. 1, a bank, upon mortgaging the suit property. It is stated that the plaintiff paid off the entire interest accrued on the said loan and was ready to pay off the entire amount of loan money. But the defendant-bank, being influenced by defendant no. 2, a locally influential and greedy person, to grab the property, refused to receive the due payment of loan from the plaintiff. Accordingly, the defendant-bank without informing anything to the plaintiff, published tender notice in a national daily newspaper on 21.05.2005 under section 12 of the Artha Rin Adalat Ain, 2003 for selling the mortgaged properties in auction fixing 04.06.2005 as the date of auction and 03.06.2005 as last date of depositing 25% of the bid money by the tender participants. Mr "X" came to know about the auction on 02.07.2005. He also came to know that the defendant No. 2 deposited 25% of the bid money on 04.06.2005 quoting 12,50,000/- as the bid money in violation of the terms and condition of the tender notice. Even then, the defendant No. 2's bid was accepted as the highest. Since the auction was held in violation of Section 12, 33 and 48 of the Artha Rin Adalat Ain, 2003, the plaintiff instituted the said Title suit.

The defendants contested the suit claiming *inter alia* that the auction was held in compliance with the provisions of law. The defendant No. 2's bid having been found to be the highest the same was accepted and the mortgaged property was legally sold to him in auction.

The defendants raised the legal question of maintainability of the Title suit.

Question:

Whether Title Suit No. 2 of 2005 is maintainable or not under the given facts and circumstances.

Specimen Format for Submission

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Oral Presentation on Case Study

Case Study Number:

Submitted by:

Group Name- A/B/C/D.....

Sl.	Name of group members	Designation	Work station	Roll number

Submitted to:

Mr. Md Golam Kibria (Senior District Judge)
Course Director,

144th Refresher Course for the Joint District & Sessions Judges working in the Artha
Rin Adalat through Online/Distance Learning Process

And
Director (Training)
JATI

Short Facts:

(Brevity is an art. Please maintain that by stemming and striking unnecessary fact. Be brief and specific as far as practicable)

Question to be decided:

(Specific question given)

Relevant laws:

The case involves following laws.....

Decision: (with main reasoning)

Reasoning:

(Analysis of the facts, analysis of the law, argument for and against, decision relied)

Reference: (case laws by the AD)

(Case laws by the HCD)

Name & signature of the trainee judge