

MHCC040032122022



Presented on	:	08-04-2022
Registered on	:	25-04-2022
Decided on	:	05-05-2026
Duration	:	4Y-0M-27D

Exh.26

**BOMBAY CITY CIVIL COURT, BORIVALI DIVISION AT
DINDOSHI, GOREGAON, MUMBAI**

**SHORT CAUSE SUIT NO.963 OF 2022
(CNR No.:MHCC040032122022)**

Mr. Ramdas Govind Gonbare

An adult aged 55 years, Occupation : Service, Indian
Inhabitant, Residing at B-3, Yashodhara Chawl
Committee, Ambedkar Nagar-2, Near Poisar Depot,
Gaondevi Road, Kandivali (East), Mumbai – 400
101, Maharashtra.

... Plaintiff

V/s.

1) Shri. Govind Sajana Gonbare

An adult, aged ___ years, Occupation : Nil,
Indian Inhabitant, Last known address at B-3,
Yashodhara Chawl Committee, Ambedkar Nagar – 2,
Near Poisar Depot, Gaondevi Road, Kandivali (East),
Mumbai – 400 101, Maharashtra.

2) The State of Maharashtra,

Through, the Collector, Mumbai Suburban District,
having office at : 10th floor, New Administrative
Building, Bandra (East), Mumbai – 400 051,
And
The Senior Inspector of Police, Samata Nagar Police
Station, Kandivali (East), Mumbai – 400 101.

3) Municipal Corporation of Greater Mumbai

‘R/South’ Ward Office Building, Mahatma Gandhi
Cross Road, Near Sardar V. Patel Swimming Pool,
Kandivali (West), Mumbai – 400 067.

... Defendants

Appearance :-

Ld. Advocate Sawant for plaintiff.

Ld. AGP Shanti Kadam for defendant No.2.

Ld. Advocate Smita Basudkar for defendant No.3.

**CORAM : H.H.JUDGE T. T. AGLAWE
(C.R.NO.06)**

Date : 05th MAY, 2026.

:: JUDGMENT ::

Plaintiff has instituted present suit for declaration of Civil death of Shri. Govind Sajana Gonbare and for mandatory injunction against defendant No.3 to register his death.

2. The case of plaintiff is that, Govind Sajana Gonbare is the father of plaintiff. His father was residing with him and at native place also. His father left the house on 10.12.2008 and did not return home. On 11.12.2008 plaintiff lodged missing complaint with Samata Nagar Police Station bearing No.187/2008. After lapse of considerable period of time, concerned Police authority issued Certificate dated 20.12.2016 regarding missing of Govind Sajana Gonbare. On 11.01.2020 Samata Nagar Police Station issued final certificate dated 11.01.2020. In spite of efforts, said Govind Sajana Gonbare is not traced out and plaintiff has not heard of him. Therefore, plaintiff has instituted present suit.

3. Defendant No.2 has filed Written Statement below Exh.10 and resisted the claim.

4. On the basis of rival pleadings issues were framed below Exh.24. Those issues are reproduced here under alongwith my findings and reasons.

Sr.No.	ISSUES	FINDINGS
1.	Does the plaintiff prove that, his father Govind Sajana Gonbare has gone missing and not been heard of since 10.12.2008 by those who have naturally heard of him?	Yes.
2.	Whether suit suffers from non-joinder of necessary parties?	No.
3.	Whether the plaintiff is entitled to the decree of declaration as claimed?	Yes.
4.	What Order and Decree?	Suit is decreed.

REASONS

AS TO ISSUE NO.1:-

5. Heard learned Advocate Sawant for plaintiff and learned AGP Shanti Kadam for defendant No.2.

6. Plaintiff has filed his own evidence affidavit below Exh.13. Besides the oral evidence, plaintiff is relying on following documentary evidence;

- | | | |
|------|--|---------|
| i) | Death certificate of Savitribai. | Exh-15 |
| ii) | Certificate of missing complaint dated 11.12.2008 issued by Samata Nagar Police Station. | Exh-16 |
| iii) | Certificate of Samata Nagar Police Station Dated 20.12.2016. | Exh-17 |
| iv) | Certificate of Samata Nagar Police Station Dated 11.01.2020. | Exh-18 |
| v) | Notice u/s 80 CPC @ postal receipt. | Exh. 19 |
| vi) | Notice u/s 527 of MMC @ postal receipt. | Exh. 20 |
| vii) | Copy of notice sent to Talathi @ postal receipt and acknowledgment. | Exh. 21 |

viii) Copy of letter address to Urban Co-op. Bank Exh. 22
@ acknowledgment.

7. It is the case of plaintiff that, his father was residing with him. His father left the home on 10.12.2008 and did not return back. Plaintiff has lodged missing complaint with Police Station on 11.12.2008 and concerned Police Station has issued Certificate dated 20.12.2016. In spite of efforts, said Govind Sajana Gonbare is not traced out and plaintiff has not heard of him. These, facts have not been disputed or challenged in the cross-examination of the witness.

8. It is also the evidence of PW-1 that his father gone missing since 10.12.2008. He searched him everywhere and thereafter lodged the complaint with the police. Neither his father has returned home nor he has heard of him since he left the home. The certificates issued by Police Station below Exh.17 and Exh.18 do support oral evidence of PW-1. There is nothing to disbelieve the evidence of plaintiff that he has not heard of Govind Sajana Gonbare since 10.12.2008.

9. From the oral and documentary evidence, it is established on record that, Govind Sajana Gonbare has not been heard of for more than 7 years by the plaintiff who would naturally have heard of him. It is also established that plaintiff has made diligent search of missing person, he lodged police complaint and the police machinery issued certificate. Thus, there is no evidence suggesting that said Govind Sajana Gonbare is alive, and plaintiff has discharged initial burden. I, therefore, answer issue No.1 in the affirmative.

AS TO ISSUE NO.2 :-

10. Learned AGP has argued that, the plaintiff has not joined

all children of Govind Sajana Gonbare as party to the suit and therefore suit is not maintainable. In his cross-examination Pratik PW-1 had admitted that he has not joined other children of Govind Sajana Gonbare as party to the suit as his father was residing with him. In **Raeesa Bano V/s. Tabassum Jahan And Ors. Second Appeal No.428 of 2016**, the Hon'ble High Court of Judicature at Allahabad has held thus;

11. From the above mentioned judgments, it is clear that though there is no bar under Section 34 of the Act, 1963, for filing a suit for declaration of a civil death of another person, if the plaintiff is a legal heir and such legal character of civil death is for his benefit and the same is attributed to such legal character, Section 9 of CPC permits all suits of a civil nature except the suits which are expressly or impliedly barred."

11. In the present case, it is not disputed that Govind Sajana Gonbare is the father of Ramdas Govind Gonbare. By way of present suit plaintiff is not seeking exclusive succession or inheritance of the property of missing person. The suit is for declaration to meet out the procedural requirements for and in respect of property of said Govind Sajana Gonbare. Therefore, it cannot be said that the suit is bad for non-joinder of all children of Govind Sajana Gonbare. I, therefore, answer issue No.2 in the negative.

AS TO ISSUE NO.3 :-

12. So far as limitation for institution of suit is concerned, in **Mansinh Amarsinh Devdhara V/s. State of Gujarat, R/Second Appeal No.315 of 2021** Hon'ble Gujarat High Court has held as under;

"14. Recourse to the provision of Section 108 cannot be made for deciding starting of point of cause of action, as when any member of family is missing, for whatever reasons, the other members of the family will definitely waiting for return of such missing person. Such waiting period may be ever for

decades. There cannot be any assumption or presumption that after certain period of time, the family members would automatically consider that the missing person has died on a particular date or within a particular point of time. Therefore, if father is waited for returning of his son before previous day of filing of the suit, it cannot be held that limitation period has started after seven years of date of missing of his son. The entire approach as adopted by both the Courts below in deciding the question of limitation is completely erroneous. They have lost sight of the facts that it is a human tendency to wait for returning of a missing member of the family for many years. Therefore, in the suit for declaration of the fact that they person be declared as a dead since he is missing for many years cannot be based upon the presumption or assumption arose under Section 108 of the Evidence Act.”

13. In view of above authority, it cannot be stated that, the suit is instituted beyond limitation.

14. In **LIC of India vs. Anuradha: AIR 2004 SC 2070** the Hon'ble Apex Court has laid down that the presumption raised under Section 108 of the Evidence Act is a limited presumption confined only to presuming the factum of death of the person whose life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to the date or time of death. As plaintiff has discharged his burden, he is entitled for relief sought. I, therefore, answer issue No.3 in the affirmative and proceed to pass following order in answer to issue No.4.

ORDER

1. The suit is decreed.
2. It is hereby declared that, “Govind Sajana Gonbare” is

presumed to be dead as he is not heard of since 10.12.2008.

3. Defendant No.3 to record fact of death in terms of above declaration.
4. Decree be drawn up accordingly.

(Dictated and pronounced in open Court.)

(T. T. Aglawe)
Judge City Civil Court,
Borivali Division, Dindoshi.

Date : 05.05.2026

Direct dictated on Computer on	: 05.05.2026
Corrected on	: 05.05.2026
Signed on	: 05.05.2026

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER”

Date : 05.05.2026

Time : 04.58 p.m.

UPLOAD DATE AND TIME

Mr. B. S. Pandit

(Stenographer Grade-I)

NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)

HHJ Shri.T. T. Aglawe
Court Room No.6

Date of Pronouncement of
JUDGMENT/ORDER

05.05.2026

JUDGMENT/ORDER signed by P.O. on

05.05.2026

JUDGMENT/ORDER uploaded on

05.05.2026