

MHKO020000432022 	Received on : 05 . 01 . 2022
	Registered on : 06 . 01 . 2022
	Decided on : 24 . 05 . 2022
	Duration : <u>Y</u> <u>M</u> <u>D</u> 00 . 04 . 19

IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION,
KOLHAPUR, AT : KOLHAPUR.
(Presided over by M. S. Kakade)

Regular Civil Suit No.33/2022

Exhibit No. 19 / A

Shri. Ananda Shripati Patil,)
Age – 57 Years, Occu. Centring,)
R/o. Plot No.75, Lane No.2, “E” Ward,)
Mahalaxmi Nagar, Kadamwadi,)
Kolhapur.) ... Plaintiff

.. Vs. ..

The State of Maharashtra,)
THROUGH – The Collector, Kolhapur,)
Swarajya Bhavan, Nagala Park,)
Kolhapur.) ... Defendant

Claim : Suit for death declaration.

.....
Learned advocate for the plaintiff - Shri. R. P. Patole,
Defendant – Ex-parte.
.....

JUDGMENT

(Delivered on 24th May, 2022)

This is the suit for declaration of death of plaintiff's mother, Sundarabai @ Sugandha Shripati Patil.

02. Plaintiff's case is as follows :

Plaintiff came with the case that he is residing at given address with his family. Plaintiff's mother, Sundarabai @ Sugandha Shripati Patil went missing on 25.07.2006 from Plot No.75, Lane No.2, "E" Ward, Mahalaxmi Nagar, Kadamwadi, Kolhapur.

03. Since last 15 years, Sundarabai @ Sugandha Shripati Patil is missing. Plaintiff and his relatives have searched for Sundarabai @ Sugandha Shripati Patil. Plaintiff was to Shahupuri Police Station for to lodge missing compliant of his mother, Sundarabai @ Sugandha Shripati Patil, however, the concern police officer told him as, "तुम्ही थोडे दिवस नातेवाईकांकडे तसेच आजुबाजुचे परिसरात चौकशी करा मग या" and did not take missing complaint. Plaintiff has published proclamation in daily, Punya-Nagari, dt.17.02.2022 (Exhibit No.12) about missing of Sundarabai @ Sugandha Shripati Patil. Since last 15 years he has not heard about Sundarabai @ Sugandha Shripati Patil.

04. Plaintiff has contended that since 25.07.2006 nobody has seen or heard about Sundarabai @ Sugandha Shripati Patil. On search, plaintiff could not find her so, Sundarabai @ Sugandha

Shripati Patil may be declared as dead. Accordingly, plaintiff prayed for declaration of civil death of Sundarabai @ Sugandha Shripati Patil.

05. On receipt of the suit, suit summon was issued to defendant. In spite of paper publication and receipt of summon by defendant, it failed to appear. So, matter has been proceeded ex-parte against them.

06. Considering the plaint and documents on record, following points arise for my determination for which I have discussed them and given my findings for reasons to follow as under-

<u>Points</u>	<u>Findings</u>
1. Whether plaintiff is entitled for ... declaration as prayed ?	<u>In the affirmative</u>
2. What order ?	... <u>As per final order</u>

REASONS

07. To prove his case, plaintiff, Ananda Shripati Patil has filed his affidavit of examination-in-chief at Exhibit No.13 and almost repeated all the contents of the plaint on oath. Plaintiff has examined witnesses on his behalf, Khanderao Baburao Mane at Exhibit No.14, Ravindra Narayan Patil at Exhibit No.15 and Sou. Mangal Prakash Salokhe at Exhibit No.16. Plaintiff has filed evidence close pursis vide Exhibit No.17.

08. Here I would like to mention that under Section 108 of the Evidence Act, presumption is limited confirmed only to presuming factum of death of person whose life or death is in question and only if it is proved at the time when presumption is sought to be raised that the person concerned was not heard for 7 years by those, who would have naturally heard of him if he would have alive. Section 108 is only a rule or procedure to be followed when the question arise before a Court whether a person is alive or dead. Now it is necessary to see that whether plaintiff has proved that his mother went missing and for seven years or more the persons have not heard about her who would have heard of her if she would have alive.

09. It is came in the evidence of plaintiff and witness on his behalf Khanderao Baburao Mane (Exhibit No.14), Ravindra Narayan Patil (Exhibit No.15) and Sou. Mangal Prakash Salokhe (Exhibit No.16) that from 25.07.2006 Sundarabai @ Sugandha Shripati Patil is missing, they searched for her and nobody has heard about her. That the matter has been proceeded ex-parte. So, considering the unchallenged oral evidence of plaintiff supported with documents reveals that plaintiff is succeeded in proving that since 25.07.2006 his mother went missing and nobody has heard about his mother, Sundarabai @ Sugandha Shripati Patil. So, considering the ambit of Section 108 of the Law of Evidence and unchallenged evidence of plaintiff, I answer point No.1 'in the affirmative'.

10. As plaintiff has proved that nobody has heard about Sundarabai @ Sugandha Shripati Patil that she is alive since 25.07.2006, I come to the conclusion that plaintiff is entitled for declaration as prayed by him. So in the culmination of above discussion, I proceed to pass the following order-

ORDER

- 1) Suit is hereby decreed.
- 2) It is hereby declared that there is civil death of Sundarabai @ Sugandha Shripati Patil.
- 3) Decree be drawn up accordingly.
- 4) No order as to costs.
(Pronounced in the open court).

Kolhapur.
Dt. 24th May, 2022.

(M. S. Kakade)
Civil Judge Senior Division,
Kolhapur.