

MHCC040115672023



Presented on	:	20-12-2023
Registered on	:	02-01-2024
Decided on	:	06-08-2026
Duration	:	2Y-7M-17D

Exh.19

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

S.C. SUIT NO.3 OF 2024
(CNR No.:MHCC040115672023)

1) **Mrs. Philomina Santan D'sa**]
 Age : 71 years, Occupation : Housewife,]
 R/o. Plot No.702, Building No.9, Konkan Kinara,]
 Konkan Nagar, Jogeshwari (East), Mumbai – 400]
 060.]
]
 2) **Mr. Albert Santan D'sa**]
 Age : 50 years, Occupation : Service,]
 R/o. Plot No.702, Building No.9, Konkan Kinara,]
 Konkan Nagar, Jogeshwari (East), Mumbai – 400]
 060.]

... Plaintiffs

V/s.

1) **The State of Maharashtra**]
 Through the Senior Inspector of Police, Meghwadi]
 Police Station, Jogeshwari (East), Mumbai,]
 Maharashtra – 400 060.]
 Through the Government Pleader]
 3rd Floor, At City Civil and Session Court at Dindoshi,]
 Goregaon (East), Mumbai – 400097.]
]
 2) **The Municipal Corporation Greater Mumbai**]
 K/East Ward, Andheri, Mumbai.]

... Defendants

Appearance :-

Ld. Advocate Sushma Vishwakarma for plaintiff.
 Ld. AGP Shanti Kadam for State/defendant No.1.
 Ld. Advocate Smita Basudkar for defendant No.2.

CORAM : H.H.JUDGE SMT. YASMIN G. DESHMUKH
(C.R.NO.06)

Date : 06th AUGUST, 2026.

:: JUDGMENT ::

Plaintiff has instituted present suit for declaration of Civil death of Mr. Santan Bastin D'sa and for mandatory injunction against defendant No.2 to record his death and to issue death certificate.

2. The case of plaintiffs' is that, plaintiff No.1 is wife of Mr. Santan Bastin D'sa. Plaintiff No.2 is the son of Mr. Santan Bastin D'sa. Mr. Santan Bastin D'sa, who was living with plaintiffs is missing from 01.04.2004. On 01.04.2004 Mr. Santan Bastin D'sa left from his house for business purpose and did not come back. After searching the whereabouts, plaintiff No.2 lodged the missing complaint in Meghwadi Police Station. In the year 2014, Meghwadi Police Station issued the Missing Certificate to plaintiff No.2. Plaintiffs were unaware about the civil death declaration. Thereafter, in the year 2020, plaintiff No.2 applied for Death Certificate of his missing father. Concerned authority directed plaintiffs to get Court Order. Therefore, plaintiffs have instituted present suit for death declaration of Mr. Santan Bastin D'sa.

3. Defendants have not filed Written Statement. Therefore, suit proceeded without Written Statement against them.

4. Following points arise for my determination and I have recorded my findings against them for the reasons to follow :

Sr.No.	POINTS	FINDINGS
1.	Do plaintiffs prove that Mr. Santan	

Sr.No.	POINTS	FINDINGS
	Bastin D'sa has not been heard of for 7 years by those who would naturally have heard of him if he had been alive?	Yes.
2.	Is plaintiffs are entitled to the decree of declaration as prayed?	Yes.
3.	Is plaintiffs are entitled to the mandatory injunction as prayed?	Yes.
4.	What order and decree?	Suit is decreed.

R E A S O N S

AS TO POINT NOS.1 TO 3 :

5. Since these points are inter related I will discuss them together.

6. To establish their claim plaintiffs filed evidence affidavit of plaintiff No.2 Mr. Albert Santan D'sa below Exh.8. In his evidence affidavit Mr. Albert Santan D'sa PW-1 has reiterated the plaint averments on oath. Besides oral evidence plaintiff is relying on following documentary evidence;

- | | |
|---|----------|
| i) Power of Attorney. | Exh-P-10 |
| ii) Missing certificate dated 26.05.2006. | Exh-P-11 |
| iii) Copy of letter dated 10.01.2020 addressed to birth and death department. | Exh-P-12 |
| iv) Share certificate and possession letter. | Exh-P-13 |
| v) Electricity Bill. | Exh-P-14 |
| vi) Ration Card | Exh-P-15 |

7. It is the case and evidence of plaintiff No.2 that, his father went missing on 01.09.2004. He filed missing complaint on 03.09.2004. His mother and father was residing with him. These facts

have not been disputed or challenged in the cross-examination of witness. The documents do support the oral evidence of plaintiff regarding his relationship with Mr. Santan Bastin D'sa and their residence.

8. It is also the evidence of PW-1 that on 01.04.2004 Mr. Santan Bastin D'sa left the residence and did not return home. PW-1 searched him and thereafter lodged the complaint with the police. Neither his father has returned home nor PW-1 has heard of him since he left the home. The certificate issued by Police Station below Exh.P-11 do support oral evidence of PW-1. There is nothing to disbelieve the evidence of plaintiff that she has not heard of Mr. Santan Bastin D'sa since 01.04.2004.

9. It is well settled that under Section 108 of the Indian Evidence Act, 1872, where a person has not been heard of for seven years by those who would naturally have heard of him had he been alive, a presumption of death arises. The burden then shifts to the person who asserts that such person is alive. In the present case, the evidence of PW-1 clearly establishes that Mr. Santan Bastin D'sa has remained missing since 01.04.2004. The plaintiffs, being his wife and son residing with him prior to his disappearance, is undoubtedly a person who would naturally have heard from them if he were alive. The oral testimony of PW-1 inspires confidence and finds corroboration from the documentary evidence produced on record, including the missing complaint and the certificate issued by Meghwadi Police Station. There is no material on record to rebut the statutory presumption.

10. The defendants have neither filed their Written Statement nor led any evidence to contest the plaintiff's case. The testimony of

PW-1 has remained unchallenged on all material particulars. There is nothing on record to indicate that the missing person was seen or heard of after 01.04.2004. Consequently, the statutory presumption regarding his death stands attracted. It is pertinent to note that the Court declares only the civil death of the missing person by operation of law. The exact date or time of death cannot be presumed merely because seven years have elapsed from the date of disappearance. The presumption is only that the person is no longer alive when the question arises before the Court.

11. The plaintiffs have sought consequential relief directing the concerned authority to record the death and issue a death certificate. Once the declaration regarding the civil death of the missing person is granted, the plaintiffs becomes entitled to such consequential relief so that the official records may be brought in conformity with the declaration of this Court. There is no legal impediment in granting such mandatory direction.

12. In view of the foregoing discussion, this Court is satisfied that the plaintiffs have successfully established that Mr. Santan Bastin D'sa has not been heard of by persons who would naturally have heard of him for a period exceeding seven years. Accordingly, the plaintiffs are entitled to the declaration and consequential mandatory injunction as prayed. Hence, Point Nos. 1 to 3 are answered in the affirmative.

AS TO POINT NO.4 :

13. In view of my finding and above reasoning the suit is to be decreed. Hence I pass the following order.

ORDER

1. The suit is decreed with no order as to cost.
2. It is hereby declared that Mr. Santan Bastin D'sa, who has not been heard of since **01.04.2004**, shall be presumed to be dead.
3. Defendant No.2 is directed to record the fact of such presumed death in the relevant register and issue the death certificate in accordance with law on the basis of this declaration.
4. Decree be drawn up accordingly.

(Dictated and pronounced in open Court.)

Date : 06.08.2026

(Yasmin G. Deshmukh)
Judge City Civil Court,
Borivali Division, Dindoshi.

Direct dictated on computer on	: 06.08.2026
Corrected on	: 06.08.2026
Signed on	: 06.08.2026

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
Date : 06.08.2026 Time : 05.10 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 Smt. Y. G. Deshmukh Court Room No.6
Date of Pronouncement of JUDGMENT/ORDER	06.08.2026
JUDGMENT/ORDER signed by P.O. on	06.08.2026
JUDGMENT/ORDER uploaded on	06.08.2026