

<b>GJDW050010022021</b>   सत्यमेव जयते	केस रजु तारीख	<b>21/06/2021</b>		
	केस दाखल तारीख	<b>21/06/2021</b>		
	केसल तारीख	<b>24/04/2026</b>		
	सभयगाणो	वर्ष	भास	दिवस
	<b>4</b>	<b>10</b>	<b>4</b>	

**IN THE COURT OF ADDITIONAL SENIOR CIVIL  
JUDGE, DWARKA**

**RCS/28/2021**

**(1) Bhartiben Manharbhai Patel**

Residing at Pipla Faliya,  
Village : Chijgam, Ta.Jalalpor,  
Dist. Navsari

**....Plaintiff**

**vs.**

**(1) Collector**

Office of the Collector  
Lalpur Bypass Road, Khambhaliya

**(2) Birth and Death Registration Officer**

Okha Nagarpalika, Okha

**....Defenda  
nts**

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Suit for Civil Death Declaration  
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Ld. Advocate Mr.DS Chudasama for the Plaintiff  
Ld.Advocate Mr.RA Sheth for the Defendant No.2  
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## **JUDGEMENT**

### **(1) Facts of the plaint and Reliefs claimed by the plaintiff**

The plaintiff has by filing the present suit prayed:  
(A) To direct the defendants to register death of the plaintiff's husband Manhar Bhanabhai Patel and issue death certificate accordingly.

### **2. The facts of the plaints and grounds for reliefs :**

**(2.1)** As per the facts of the plaint, the plaintiff's husband, Manhar Bhanabhai Patel, was employed as a crew member (khalasi) on a fishing vessel named "*Annapurna*", owned by Govind Durlabhbhai Tandel, bearing Registration No. GJ-15-MM-1113. On 10/09/2010, he had set sail into the sea from Okha in the course of his employment. Subsequently, due to a sudden storm at sea, the said vessel *Annapurna* capsized and sank, resulting in the death of the Plaintiff's husband, Manhar Bhanabhai Patel, at Okha.

**(2.2)** It is further pleaded by the plaintiff that as the said vessel sank in the Okha sea and the Plaintiff's husband was on board at the relevant time, he too drowned in the incident. In

connection with the said occurrence, the Okha Marine Police recorded the statement of the vessel owner, Govind Durlabhbhai Tandel. Inquest Panchnama and Register of missing persons corroborate this fact.

**(2.3)** It is further pleaded by the plaintiff that the plaintiff's husband gone missing on account of sea storm, the Collector, Jamnagar has also granted aid to the heirs of the missing persons. Such aid is also received by the plaintiff.

**(2.4)** It is argued by Ld.Advocate for the plaintiff that many years have passed, the said Manhar Bhanabhai Patel is not found and not being heard of from anywhere till date. All this has given rise to cause of action to file the present suit.

**(3) Defence set up by the Defendant :**

**(3.1)** In spite of service of summons of this suit, the defendant No.1 has not appeared and has not contested this suit. However, the defendant No.2 has appeared and contended that there is no evidence as to at what distance in the sea of Okha, the boat capsized, the issue of jurisdiction is required to be proved by the plaintiff.

**(3.2)** It is further disputed by the defendant No.2 that the suit has been filed 11 years after the so

called death in the year 2010 and therefor the suit is barred by limitation. It is therefore requested to dismiss the suit with costs.

#### **(4) Plaintiff Evidence**

**(4.1)** The oral and documentary evidence produced by the plaintiffs is as under:

<b>Ex h.</b>	<b>Evidence</b>
11	Deposition of plaintiff Bhartiben Manharbhai Patel
25	Public Notice pursis
27	Non-Registration Certificate
28	Police Statement of Govindbhai Tandel
29	Inquest Panchnama
30, 41	Extract of Missing Persons' Register
31	Order of Collector granting aid from CM Relief fund
32	Aadhar Card of plaintiff
33	Affidavit of Govindbhai Durlabhbhai Tandel
42	Closing Pursis

#### **(5) Defendant Evidence**

**(5.1)** The defendant No.2 has produced the following oral and documentary evidence in this case.

<b>Ex h.</b>	<b>Evidence</b>
45	Deposition of defendant No.2 Ashvinbhai Gadhvi

46	Closing Pursis
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### **(6) Issues**

The following issues have been framed by my predecessor at Exh.10 and my findings on the issues are given as under:

	<b>Issues</b>	<b>Decision</b>
<b>1</b>	Whether the plaintiff proves that her husband is unknown ( <b><i>unheard of</i></b> ) from the date 10/09/2010?	In the affirmative
<b>2</b>	Whether the plaintiff proves that her husband went to sea for fishing and due to hurricane the boat along with her husband sank and till then her husband is still unknown ( <b><i>unheard of</i></b> )?	In the affirmative
<b>3</b>	Whether the defendant proves that the suit of the plaintiff is false and got up?	In the negative
<b>4</b>	Whether the defendant proves that this Court has no jurisdiction to try the suit?	In the negative
<b>5</b>	Whether the plaintiff to get the relief as prayed?	In the affirmative
<b>6</b>	What order and decree?	As per final order

### **(7) Reasons for Decision**

**(7.1)** Issues No.1 to 5 are closely connected and overlapping, the same are discussed together to avoid repetition and for brevity and consistency. It is the specific case of the plaintiff that her husband was on board the vessel *Annapurna* which sank in the Okha sea and the Plaintiff's husband too drowned along with others in the incident. The police statement and affidavit of the storm survivor and owner of the vessel Govindbhai Durlabhbai Tandel corroborates other evidence on record confirming death of the plaintiff's husband on 10/09/2010 at sea. The plaintiff has also received aid from the CM relief fund. The order of the Collector, Jamnagar, Exh.31 confirms the disaster and missing of 16 fishermen and that dead bodies of 7 fishermen were found.

**(7.2)** It is held by the Hon'ble Gujarat High Court in the decision in the case of ***Pooja Vijay Raichandani w/o Vijay M.Raichandani vs. State Bank of India [2009(1) GLH 164]*** as under:

“7. As per the aforesaid provisions of law, for proving the factum of the death of the person concerned, if direct evidence is not available, two things may be required to be proved, first is that he was alive for 30 years before his death and while proving the question

whether a person is alive or dead, **if it is proved that he has not been heard for 7 years by those who would naturally have heard of him that he is alive, the burden of proving that he is alive would be shifted to the other side.** Therefore, if the whereabouts of the person concerned are not known from the other persons who are naturally supposed to know about him for about 7 years or more, the presumption can be drawn that the person concerned is not alive. In the present case, the wife, son and the daughter, brother, father and mother of the person concerned are the relatives who may be aware about the whereabouts of the person concerned. It has been stated by all the aforesaid persons who are in blood relations of Shri Vijay Raichandani that he has left the home and his whereabouts are not known. Even as per the police record, his whereabouts are not known and he is missing. Therefore, under these peculiar circumstances, no evidence being available to the contrary on record, it would be reasonable to proceed on the basis that Vijay

Raichandani is not alive and his first degree legal heirs viz. Pooja Vijay Raichandani, Neeta Vijay Raichandani and Satish Vijay Raichandani would be entitled to inherit the property by way of succession in absence of Shri Vijay Raichandani.”

**(7.3)** If it is proved that the plaintiff’s husband has not been heard for 7 years by those who would naturally have heard of him that he is alive, the burden of proving that he is alive would be shifted to the other side. As pleaded and deposed by the plaintiff, her husband is missing since 10/09/2010 and even as per the police record, his whereabouts are not known and he is missing. Therefore, under these peculiar circumstances, no evidence being available to the contrary on record, it would be reasonable to proceed on the basis that Manhar Bhanabhai Patel is not alive Nobody has even appeared and objected to the public notice published by the plaintiff. The said person appears to have remained continually absent from home for more than 7 years and his own family members have not received any news of his being alive. The defendant and nobody in response to the public notice has appeared and falsified or rebutted the above evidence. Therefore, the answers to the issues No.1 and 2 is

given in the affirmative and the answer to issues No.3 and 4 is given in the negative.

**(7.4)** As regards date of death of the person unheard of for more than seven years, it is held by the Hon'ble Supreme Court in its decision in the case of ***Life Insurance Corporation of India vs. Anuradha [2004 (0) AIJEL-SC 15190]*** as under:

**“12.** Neither Section 108 of Evidence Act nor logic, reason or sense permit a presumption or assumption being drawn or made that the person not heard of for seven years was dead on the date of his disappearance or soon after the date and time on which he was last seen. The only inference permissible to be drawn and based on the presumption is that the man was dead at the time when the question arose subject to a period of seven years absence and being unheard of having elapsed before that time. The presumption stands unrebutted for failure of the contesting party to prove that such man was alive either on the date on which the dispute arose or at any time before that so as to break the period of seven years counted

backwards from the date on which the question arose for determination. **At what point of time the person was dead is not a matter of presumption but of evidence, factual or circumstantial, and the onus of proving that the death had taken place at any given point of time or date since the disappearance or within the period of seven years lies on the person who stakes the claim, the establishment of which, will depend on proof of the date or time of death."**

**(7.5)** When there is no dispute regarding the fact that Manhar Bhanabhai Patel was alive and not being heard of more than seven years, these facts stand proved. The presumption stands un-rebutted for failure of the contesting party to prove that such man was alive either on the date on which the dispute arose or at any time before that so as to break the period of seven years counted backwards from the date on which the question arose for determination. The plaintiff is the wife of the said Manhar Bhanabhai Patel, she would have naturally received intelligence from him, if he had been alive. **If the test of preponderance of probability laid down by**

**S.3 of the Evidence Act is applied, that is to say a fact is said to be proved, if the Court considers its existence to be so probable that a prudent man ought under the circumstances of the particular case, to act upon certain supposition that it exists,** then it would have to be held that the said Manhar Bhanabhai Patel has died on 10/09/2010. If he was alive after 2010, there was no reason to prevent him from returning home or even contacting his family members. Nor is it shown by evidence that, in spite of being alive, the said Manhar Bhanabhai Patel has refrained from contacting his family members or he was seen or heard to be alive by anybody. S.108 of the Evidence Act has the effect of shifting the burden of proof back on the one who asserts the fact of that person being alive. Exh.28 is the police statement of the storm survivor and owner of the vessel Govindbhai Durlabhbai Tandel which corroborates other evidence Exh.29 Inquest Panchnama of the dead body of Bhikhabhai Mangabhai Hadpati who was on board along with the deceased Manhar Bhanabhai Patel. The owner of the vessel Govindbhai Durlabhbai Tandel is an eye witness of the mishap occurred on 10/09/20210 and he has also given his affidavit, Exh.33, on record confirming death of the plaintiff's husband at sea. Therefore, the plaintiff

being wife of the said Manhar Bhanabhai Patel is entitled to the reliefs as claimed. As such, as per the above facts, law and evidence, issue no.5 is answered in the affirmative and the final order is passed as under:

**FINAL ORDER**

- (1) The suit of the plaintiff is hereby allowed.
- (2) The plaintiff's husband Manhar Bhanabhai Patel is declared to be dead.
- (3) The defendant No.2, Registering Authority concerned is directed to register the death of the plaintiff's husband Manhar Bhanabhai Patel and date of death as 10/09/2010, on payment of prescribed fees by the plaintiff.
- (4) No orders as to costs.
- (5) Decree be drawn accordingly.

Signed and Pronounced in the open Court  
today.

**Date: 24/04/2026**

**(Jagdish.S.Prajapati)  
Additional Senior Civil  
Judge,  
Dwarka  
GJ01227**

*Self*