

GJPM090000262026



Filed On: 3/2/2026

Registered On : 3/2/2026

Decided On : 7/4/2026

Duration: Yrs. Months Days

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AT-MORVA(H),
DIST. PANCHMAHAL**

**PRESENT: Sri M.R.KOTHARIYA,
Civil Judge, Morva-Hadaf**

Tuesday , the 7th day of April , 2026

Regular Civil Suit no. 1 /2026

Exh.

Plaintiff: 1. PANDA ASHOKBHAI BHAGABHAI
Age- Occupation- Agriculturist
2. PANDA ARVINDBHAI BHAGABHAI
Age- Occupation- Agriculturist
3. PANDA RAMESHBHAI BHAGABHAI
Age- Occupation- Agriculturist
4. PANDA MAHESHBHAI BHAGABHAI
Age- Occupation- Agriculturist
5. PANDA RAKESHBHAI BHAGABHAI
Age- Occupation- Agriculturist
6. PANDA SHARDABEN BHAGABHAI
Age- Occupation- Household
All Res. Mori Faliyu ,Mora,Taluka-Morva(H)
Dist.Panchmahal

Versus

Defendant Talati cum Mantri, GramPanchayat Office,
Mora, Taluka-Morva(H) Dist.Panchmahal.

Appearance:

Mr. V.V.GANASAVA ,L.A., for the Plaintiff

Ex-Party

R.C.S 1/2026

Principal Civil Judge,Morva(H)

Subject :- Suit for Declaration under section 111 of
Bharatiya Sakshya Adhiniyam, 2023.

--:: J U D G E M E N T ::--

1. The facts giving rise to this suit are in a very narrow compass.

1.1 The husband of the plaintiff no.6 and father of plaintiff no. 1 to 5 herein viz. Shri Bhagabhai Nagabhai Panda. The father & husband of the plaintiff, all of a sudden went missing from 23rd September, 2018. Therefore they file an application in this regard at the Morva(H) Police Station. Despite best of the efforts, the whereabouts of the father & husband of the plaintiff could not be known. The husband of the plaintiff was the sole earning member of the family. With the sudden disappearance of the husband, the plaintiff and her family has landed-up in lot of difficulties.

From last 7 years her husband was known as result she Deprived of benefits of husband/father property as it is not clear whether the husband is dead or not. The father & husband property can be given to the plaintiff only on demise of the husband/father.

2. In such circumstances referred to above, the Plaintiff herein above preferred the present suit for a declaration that her husband is deemed to be dead as his whereabouts are not known past more than seven years.
3. The summons is duly served to defendant vide exh. 4, but as he failed to appear, the suit is ordered ex-parte.

4. In the present suit, the following evidences in kind of oral as well as documentaries are submitted by the plaintiff to prove it's case :-

Oral Evidence submitted by the plaintiff :-

Sr No.	Evidence	Exh.
1	Deposition of Plaintiff Ashokbhai Bhagabhai Panda	7

Documentary Evidences :

Sr No.	Documents	Exh.
1.	Genealogical Tree	10
2.	Morva(H) Certificate for not found	11
3.	Gram Panchayat Mora instance	12
4.	Bhagabhai Nagabhai Addhar card copy	13

5. Thereafter, no further evidence has been adduced on behalf of the plaintiff and the closing pursis has been adduced by the plaintiff vide Exh.14 .

Arguments :-

6. The plaintiff advocate vehemently argued that as the husband and father of plaintiff is wherefrom did not known since last seven years, and in absent of their father/husband death certificate, their rights of heirs is not created,hence he prayed to allowed suit.
7. In view of above facts and circumstances, Court has framed the following issue to decide the present suit on merit vide Exh.5 which are as under :-

1. Whether plaintiff proves that where about of their father Bhagabhai Nagabhai Panda are not known from 23/9/2018 ?
2. Whether plaintiff is entitled to get the relief as prayed for ?
3. What order and decree?

7.1 Findings of above issues are as under :-

Issue No. 1 In Positive

Issue No. 2 & 3 As per Final Order

-: R E A S O N S :-

8. As regard Issue No.1 & 2 :-

8.1 Since all the above points of determination and issues are interconnected and co-related, the discussion for the reasons for its findings, is done simultaneously. Consider the position of law as regards the Sections- 110 and 111 of the Bharatiya Sakshya Adhinyam is concerned. Sections 110 and 111 (old 107 &108 Evidence Act) of the Bharatiya Sakshya Adhinyam reads as under :

"110. Burden of proving death of person known to have been alive within thirty years.-

When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it."

"111. Burden of proving that person is alive who has not been heard of for seven years.-

Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it."

- 8.2 In *N. Jayalakshmi Ammal and Ors. V. R. Gopala Pathar and Anr.*, [1995] Supp 1 SCC 27, the Supreme Court went in-depth into the jurisprudential concept underlying Section 107 and 108 of the Evidence Act and referred to the commentaries of settled authority by the eminent jurists such as Sri John Woodroffe and Amir All's Law of Evidence, M. Monir's Principles and Digest of the Law of Evidence, Sarkar on Evidence as also the leading authority of Judicial Committee of the Privy Council in *Lal Chand Marwari v. Mahant Ramrup Gir*, AIR (1926) PC 9, which has stood the test of the times for over three quarters of a century by now. The law laid down in *N. Jayalakshmi Ammal and Ors.'s case (supra)* has been reiterated in *Darshan Singh and Ors. v. Gujjar Singh (D) by Lrs. and Ors.*, [2002] 2 SCC 62.
- 8.3 Further Hon'ble Gujarat High Court in *SUSHILABEN PRABHASHANKAR DHRUV Versus COLLECTOR, AHMEDABAD, R/FIRST 2018(3) GLH 434 ; 2018 (0) AIJ-GJ 239714* held that held that;

18. A presumption assists a party in discharging the burden of proof by taking advantage or presumption arising in his favour dispensing with the need of adducing evidence which may or may not be available. Phipson and Elliott have observed in 'Manual of the Law of Evidence' (Eleventh Edition at p.77) that although there is almost invariably a logical connection between the basic fact and presumed fact, in the case of most presumptions it is by no means intellectually compelling. In my opinion, a presumption of fact or law which has gained recognition in the statute or by successive judicial pronouncements spread over the years cannot be stretched beyond the limits permitted by the statute or beyond the contemplation spelled out from the logic, reason and sense prevailing with the Judges, having written opinions valued as precedents, so as to draw such other inferences as are not contemplated.

20. If an issue may arise as to the date or time of death the same shall have to be determined on evidence direct or circumstantial and not by assumption or presumption. The burden of proof would lay on the person who makes assertion of death having taken place at a given date or time in order to succeed in his claim. Rarely it may be permissible to

proceed on the premise that the death had occurred on any given date before which the period of seven years' absence was shown to have elapsed. [See: LIC of India Vs. Anuradha; 2004 LawSuit (SC) 378].

22. In Mukunda Behera v. Subarna Bewa, AIR 1962 Orissa 3, reliance was placed on Lal Chand v. Ramrup Gir AIR 1926 PC 9, and it was held that if a person has not been heard of for seven years, there is a presumption of law that he is dead but at what time within that period he died is not a matter of Presumption but of evidence, and the onus of proving that the death took place at any particular time within the seven years lies upon the person who claims a right to the establishment of which that fact is essential. In Huseinny J. Bhagat's case (AIR 1965 Mad 440) (supra), **it was again held that the only presumption under Section 108 of the Indian Evidence Act that can be raised is that the young man was dead at the time when the question arose (date of plaint).**

24. I am unable to agree with the view taken by the trial Court that in the absence of an F.I.R. or any police investigation or police record or in absence of any public notice, the presumption under Section-108 of the death cannot be drawn. I am saying so because Section-108 of the Evidence Act does not provide any particular procedure to be followed for the presumption of death. In view of the presumption of continuance of life, it was thought necessary to provide for the counter-presumption whether a person's death would seem more likely from the nature and circumstances of the case than the continuance of life. In such circumstances, where a person is continually absent from home for a period of seven years unheard of by persons known other than his own family members, who would have naturally received intelligence from him, he is presumed to be dead. The burden of proving that he is alive thereafter is shifted to the person, who affirms that he is not dead. It is a rebuttable presumption. The defendant in the present case has not appeared and contested the suit. The defendant has failed to rebut the presumption by leading any evidence. The presumption is embodied in Section-108 which is a proviso to Section-107. If a case comes within the four corners of Section-108, it is taken out of Section-107.

8.4 Further Hon'ble Gujarat High Court in MANSINH AMARSINH DEVDHARA Versus STATE OF GUJARAT, R/SECOND APPEAL NO. 315 of 2021 held that;

13. Section 108 of the Evidence Act clearly provides only for raising presumption. It is a limited n who's life or death is in issue. There is no presumption as to the facts and circumstances under which the persons may have died. The only inference permissible to be drawn and based on the presumption is that question the man arose, was subject dead to a at the period time of when seven the years absence, and being unheard of having elapsed before that time. 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.

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. human They have lost sight of the facts that it is a 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 the 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.

15. Admittedly in the present case, the young son was missing and appropriate information was provided to the police and even by advertisement in the newspaper and yet the Police could not find out him nor the missing son returned back to the family. Under these circumstances, if the father has waited for many years for returning of his son, his claim for declaration cannot be turned down solely based upon the presumption under Section 108 of the Indian Evidence Act. The cause of action for declaration of death of such missing son would arose, as and when, it is admittedly believed by the father and the family members that he might be dead. Therefore, under the facts and circumstances of this case, it clearly shows that the suit is not barred by the law of limitation. The entire approach of the learned Trial Court as well as the learned Appellate Court are not sustainable in the eyes of law. Therefore, the judgments and decrees passed by both the Courts below need to be set aside and the suit of the plaintiff deserves to be allowed. Therefore, I have decided point No.1 in affirmative accordingly.

8.5 Section- 2(j) of Bharatiya Sakshya Adhinyam prescribes the standard of proof by defining the word 'proved' as follows:

“Proved -

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”

9. If the test of preponderance of probability laid down by Section 2 (j) (old 3) of the 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 Bhagabhai Ngabhai Panda has died sometime in 2018 or soon thereafter. If he was alive after 23/9/2018 , there was no reason for him not to contact his immediate family members. It is not the case that Bhagabhai left the house in distress or he was under some disability which prevented him from returning home or even contacting his family members. Nor is it shown that Bhagabhai was missing in such circumstances or could be at such place wherefrom he could not even contact his Children/parents/wife or close family members.

Thus, the holistic appreciation of pleadings of the parties and documentary and oral evidence adduced by the parties, clearly transpire that Bhagabhai was not under any distress or disability nor was he in the situation wherefrom he could not contact his family members coupled with the fact that he has not contacted his family members at all since 2018 makes this court , as a man of ordinary prudence, believe that Bhagabhai Nagabhai Panda must have died in

23/9/2018 or soon thereafter.

10. In view of the above, this court has reason to believe to hold that Bhagabhai nagabhai panda is presumed to be dead. For all these reasons, this court held Issue nos. 1 & 2 in the affirmative and present suit is deserved to be partly decreed. Hence following order pass in reply of issue no. 3 in the interest of justice;

:: FINAL ORDER ::-

- (1) The present suit is hereby allowed in light of Sections 110 & 111 of the Bharatiya Sakshya Adhinyam.
- (2) It is hereby declared that the husband of the plaintiff Bhagabhai Nagabhai Panda could be said to be dead from the date of plaint i.e 3/02/2026.
- (3) An appropriate decree shall be drawn in accordance with law.

Pronounce in open court today.

Date-7 /04/2026
Morva(H)

(M.R.Kothariya)
Principal Civil Judge,
Morva-Hadaf.