



CNRNO.MHSN150009752020			
Received on	:	30/01/2018	
Registered on	:	04/04/2018	
Decided on	:	08/03/2022	
Duration	:	Yrs. 03	Ms. 11 Ds. 04
Exh.		44	

IN THE COURT OF JOINT CIVIL JUDGE SR. DN., VITA.
(PRESIDED OVER BY A.N.KULKARNI)
REGULAR CIVIL SUIT NO.63/2020
 (Old Regular Civil Suit No. 136/2018)

- | | | |
|--|---|---------------|
| <ol style="list-style-type: none"> 1. Smt. Vijaya Nandkumar Gaikwad,
Age : 53 Yrs. Occup. Household, 2. Shri. Mahesh Nandkumar Gaikwad
Age : 26 Yrs. Occup. Agri. & Service
R/o. Vita, Tasgaon Road,
Parerod Corner,
Tal. Khanapur, Dist. Sangli | } | ...Plaintiffs |
|--|---|---------------|

V/s.

- | | | |
|---|---|---------------|
| <ol style="list-style-type: none"> 1. Sou. Varsharani Sandip Salunkhe
Age : 22 Yrs. Occup. Household,
R/o. Umalwad, Tal. Shirol,
Dist. Kolhapur 2. State of Maharashtra
The Collector, Sangli | } | ...Defendants |
|---|---|---------------|

Suit for Declaration of Civil Death

Advocate for plaintiffs : S. K. Sanadi / S. S. Jadhav

Advocate for def. No.1 'Ex-parte'

Advocate for def. No.2 : S. R. Hingmire, Ld. AGP for State

JUDGMENT

(Delivered on 08/03/2022)

(1). Plaintiffs have filed present suit for declaration of Civil Death of Nandkumar Shankar Gaikwad and to declare that the plaintiffs and defendant No.1 are legal heirs of Nandkumar Gaikwad.

The case of plaintiffs, in short, is as under :-

(2). Nandkumar Shankar Gaikwad who is husband of plaintiff No.1 and father of plaintiff No. 2 and defendant No.1 was permanent resident of Vita, Tal. Khanapur, Dist. Sangli. According to plaintiffs, in the month April-2007, said Nandkumar Gaikwad had left the house and thereafter he was not heard of or seen by anybody since then. In spite of taking his search with the relatives and friends, his whereabouts were not found.

(3). It is contended that though, since long, said Nandkumar Shankar Gaikwad did not return back, plaintiff No.1 being lady and there was no other male member, she had not filed any complaint in the police station alleging that her husband has been missing. According to plaintiffs, period of almost nine years has been lapsed, since missing of said Nandkumar Shankar Gaikwad and now plaintiffs have lost their hope that said Nandkumar Shankar Gaikwad would have been alive. Hence, it is prayed to declare Civil death of said Nandkumar Shankar Gaikwad on the ground that he has not

been heard of last 7 years and plaintiffs and defendant No.1 be declared as his legal heirs. Hence, the suit.

(4). In pursuance of the suit summons, defendant No.1 was served but she failed to appear and contest the suit. Hence, the suit proceeded *ex-parte* against her. On the other hand, defendant No.2 has appeared and contested the suit *vide* written statement at Exh.25. In its written statement, defendant No.2 has categorically denied all the material pleadings put forth in the plaint. It is the defence of the defendant No.2 that in order to substantiate the fact that, said Nandkumar Gaikwad went missing, the plaintiffs ought to have filed the missing complaint in the concerned police station. However, the plaintiff has not given any cogent reason as to why that procedure has not been followed. Hence, on that ground itself the suit is liable to be dismissed. Hence, it is prayed to dismiss the suit with costs.

(5). On the basis of rival pleadings of the parties, following issues are framed at Exh.28 and I have recorded my findings on them for the reasons to follow :-

<u>Sr. No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Do plaintiffs prove that Nandkumar Shankar Gaikwad is unheard for more than seven year ?	...In the Negative
2.	Do plaintiffs entitled for the relief of declaration as sought ?	...In the Negative
3.	What order and decree ?	As per final order

REASONS

(6). To substantiate their claim, plaintiffs have examined plaintiff No.1 – Smt. Vijaya Nandkumar Gaikwad as **PW1** at Exh.34. Apart from oral evidence, plaintiffs have relied upon office copy of notice dated 14/10/2016 issued under Section 80 of CPC to defendant No.2 at Exh.36 and its receipt and acknowledgement at Exh.37 and Exh.38 respectively and certified copy of death certificate of Anusaya Gaikwad filed along-with list at Exh.41. Plaintiffs have closed their evidence *vide pursis* Exh.42.

(7). Per contra, in order to refute the claim of the plaintiffs, defendant No.2 has not adduced any oral or documentary evidence and closed evidence *vide pursis* at Exh.43. Heard Ld. Advocates for both the sides at length.

AS TO ISSUE NO.1 :-

(8). In order to prove their claim, it is for the plaintiffs to prove that said Nandkumar Shankar Gaikwad is unheard for more than seven years since the day he went missing. In that context, oral evidence of PW1 – Vijaya Gaikwad at Exh.34 reveals that said Nandkumar Shankar Gaikwad was her husband and in the month of April-2007, he left the house. However, he did not return thereafter. She has also deposed that he was not heard of or seen by anybody since then. In-spite of taking his search with the relatives and friends, his whereabouts were not found. Her oral evidence further reveals

that, she being lady and there was no other male member, she had not filed any complaint in the police station alleging that her husband has been missing.

(9). PW1 has further deposed that properties described in para 1A and 1B of the plaint were originally belonged to Shankar Gaikwad and after his demise, name of her husband - Nandkumar Shankar Gaikwad has been mutated in revenue record.

(10). PW1 – Vijaya Gaikwad is thoroughly cross-examined by Ld. AGP, wherein she has admitted that she is living with her three brother-in-laws and their families in the house situated at Tasgaon Road, Vita. She has categorically admitted that after knowing that her husband Nandkumar Shankar Gaikwad went missing, she had not lodged any police report or complaint in the police station nor she has not published any notice in the newspaper regarding her grievance of missing of her husband. However, during her further cross-examination, she has denied all other material suggestions put to her.

(11). This is all the oral evidence available on record. During the course of argument the Ld. Advocate for plaintiffs Shri. Jadhav has argued that since April-2007, husband of plaintiff No.1 namely, Nandkumar Shankar Gaikwad had left the house and went missing since then. So also, according to him, in-spite of issuing citation to the Court, nobody has taken objection regarding the claim of the plaintiffs that since April-

2007 and thereafter a period of more than seven years, said Nandkumar Shankar Gaikwad was unheard. Thus, according to him, the plaintiffs are entitled for the declaration of civil death of said Nandkumar Shankar Gaikwad as prayed for.

(12). Per contra, the Ld. AGP for State Shri. Hingmire has argued that plaintiffs have not lodged any missing complaint to substantiate the fact that on the relevant date, said Nandkumar Shankar Gaikwad went missing. According to him, the plaintiffs have also not submitted any documentary evidence to show that plaintiffs and defendant No.1 are the only legal heirs of said Nandkumar Shankar Gaikwad.

(13). As the claim of plaintiffs regarding civil death of said Nandkumar Shankar Gaikwad is based on the presumption under Section 107 and 108 of the Indian Evidence Act, it is necessary to have a look at these sections. The sections read as under :-

"107. 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.

108. Burden of proving that a person is alive who has not been heard for the 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."

(14). Thus, after perusal of above two sections, it becomes clear that, Section 108 is an exception to the Rule enacted in Section 107. If the persons who would have naturally heard of the person in question, have not so heard of him for seven years, the presumption raised under Section 107 becomes in-operative. So also, presumption under Section 107 shifts the burden of proving that a person is dead on him who affirms the same. Furthermore, in the Judgment of **L.I.C. of India V/s. Anuradha** reported in AIR 2004 SC 2070, the Hon'ble Apex Court has held that *"The presumption raised under Section 108 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. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by reference to Section 108 would arise only on lapse of seven years and would not by applying any logic or reasoning be permitted to be raised on expiry of 6 years and 364 days or at any time short of it. An occasion for raising the presumption would arise only when the question is raised in a Court, Tribunal or before an authority who is called upon to decide as to whether a person is alive or dead. So long as the dispute is not raised before any forum and in any legal proceedings the occasion for raising the presumption does not arise."*

(15). If that being so, in order to lay down the foundation of the averment that since April-2007, the said Nandkumar Shankar Gaikwad went missing, it was the duty of the plaintiffs to prove the same by adducing cogent and believable evidence such as report of the complaint lodged to the concerned police station regarding the same. However, no such evidence has been produced on record. So also, the plaintiffs have specifically pleaded that when they came to know that said Nandkumar Shankar Gaikwad went missing, they enquired with their relatives, friends and with all the persons where said Nandkumar Shankar Gaikwad used to visit.

(16). However, except the above bare pleadings, plaintiffs have not adduced any evidence of those friends, relatives or any other person to show that any such efforts were taken. For that purpose, I may beneficially refer the Judgments of **L.I.C. of India V/s. Anuradha** reported in AIR 2004 SC 2070 and **Swati Deshmukh & Ors. V/s. Abhay Deshmukh** decided on 26 February, 2016. In both these cases, a report regarding missing of the concerned person was lodged in the police station after that person allegedly went missing. Not only that, in the above cases, at the time of evidence, the concerned police station officer was also examined. However, in the present case at hand, no such attempt has been shown to be made by the plaintiffs at any point of time. Thus, in the present case at hand, the plaintiffs have miserably failed to prove all the primary requirements to show that since April-2007 said Nandkumar

Shankar Gaikwad went missing from his house and since then for the period of seven years and more he is not heard of anybody. Thus, the presumption as contemplated under Section 108 of Indian Evidence Act cannot be raised as burden imposed in the said presumption has not been duly discharged by the plaintiffs. Hence, considering all these aspects, I am of the opinion that, plaintiffs have failed to prove that said Nandkumar Shankar Gaikwad is unheard for more than seven years. I, therefore, record my findings to issue No.1 in the Negative.

AS TO ISSUE NO.2 :-

(17). As I have recorded finding to issue No.1 in the negative, the question of relief of declaration, claimed by the plaintiffs will not arise. I, therefore, record my finding to issue No.2 in the negative.

AS TO ISSUE NO.3 :-

(18). The cumulative effect of my findings on issue Nos. 1 and 2 is that the suit fails and deserves to be dismissed. Considering the peculiar facts and circumstances of the case, it would be just and proper to direct the parties to bear the costs of the suit on their own. Hence, in the result, in answer to issue No.3, I pass the following order :-

ORDER

- (1). The suit stands dismissed.
- (2). Parties to bear their own costs.
- (3). Decree be drawn up accordingly.

Vita.

Date:- 08/03/2022.

(A.N.Kulkarni)

Jt. Civil Judge Sr.Dn.,Vita.

CERTIFICATE

I affirm that, the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of Stenographer : S. A. Mane (Grade-II)

Court : Jt. Civil Judge Senior Division, Vita.

Date : 08/03/2022

Judgment signed by the : 08/03/2022
Presiding Officer on

Judgment uploaded on : 09/03/2022