



Judgment

IN THE COURT OF CIVIL JUDGE AND JMFC, LAXMESHWAR

Presided over by:

Shri. Satisha M.

B.A.L., L.L.B.

Civil Judge and JMFC, Laxmeshwar

DATED THIS 05TH DAY OF AUGUST, 2026

O.S.No.202/2025

PLAINTIFF:

Shri. Shivappa S/o. Parasappa Kabber,
Age: 42 Yrs., Occ: Agriculture,
R/o. Balehosur, Tq: Laxmeshwar, Dt: Gadag.

(By Shri. V.S.P. Adv.)

- Vs -

DEFENDANTS:

1. The Chief Secretary,
Government of Karnataka,
Vidhana Soudha, Bengaluru.
2. The District Commissioner,
Gadag District, Gadag.
3. The Tahashildar,
Laxmeshwar, Tq: Laxmeshwar,
Dist: Gadag.

(Through AGP)

Date of Institution of Suit	–	09.10.2025
Nature of Suit	–	For Declaration
Date on which commencement of recording of evidence	–	03.06.2026
Date on which closing of recording of evidence	–	03.06.2026
Date of pronouncing of Judgment	–	05.08.2026
Total Duration	–	Year/s Month/s Day/s 00 09 27

Civil Judge & JMFC, Laxmeshwar

J U D G E M E N T

This is a suit for declaration of civil death of one Shri. Parasappa S/o. Govindappa Kabbera.

2. THE PLEADED FACTS OF THE CASE OF THE PLAINTIFF-

The plaintiff is a resident of Balehosur Village, Lakshmeshwar Taluk. His father, Parasappa Govindappa Kabber, left his residence on 03.02.2018 at about 11:30 a.m. and did not return thereafter. Despite extensive searches by the plaintiff, his family members, relatives, and

well-wishers, no information regarding his whereabouts could be traced. Consequently, on 23.10.2018, the plaintiff lodged a missing person complaint before the Lakshmeshwar Police Station, which was registered in Crime No.157/2018. During investigation, the police circulated the photograph and details of the missing person to various police stations and made efforts to trace him. However, no information could be secured, and the police ultimately submitted a final report treating the case as a “C-Missing” case. More than seven years have elapsed since Parasappa went missing. During this period, neither the plaintiff nor any of his family members, relatives, friends, or persons who would naturally have heard from him have received any information regarding his existence. The plaintiff, being the son of the missing person, contends that had his father been alive, his whereabouts would ordinarily have become known to the family.

3. Parasappa owned agricultural properties in Balehosur Village, and the plaintiff requires a death

certificate to effect succession and mutation of the said properties. As Parasappa has not been heard of for more than seven years, the plaintiff seeks a declaration that Parasappa Govindappa Kabber is presumed to be civilly dead and deemed to have died on 03.02.2018, together with consequential directions for issuance of his death certificate.

4. Upon registration of suit, suit summons issued to the defendants, learned AGP filed memo of appearance on behalf of defendants, but did not choose to file written statement.

5. In order to prove the case of the plaintiff, the plaintiff was examined as PW-1 and got marked as examined 7 documents as per Ex.P.1 to P.7 and closed his side evidence. The defendants have not lead any evidence, hence the evidence of defendants is taken as nil.

6. Heard the arguments of the learned Advocate for the plaintiffs. Perused the records.

7. Points that arise for consideration-

P O I N T S

- 1) *Do plaintiff proves that his father, "Parasappa S/o. Govindappa Kabbera" has not been heard of for the last 7 years ?*
- 2) *Whether the suit of the plaintiff maintainable for want of notice as required under Section 80 of Code of Civil Procedure before institution of suit ?*
- 3) *Do plaintiff entitle for the reliefs as prayed for ?*
- 4) *What order or decree ?*

8. This court findings on the above points are as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Negative

Point No.3 : Partly in the Affirmative

*Point No.4 : As per the final order
for the following:*

R E A S O N S

9. **POINT NO.1** :- So far as the missing aspect is concerned, the plaintiffs ought to prove the following facts -
- (a) *Whether missing person is residing within the jurisdiction of this court.*
 - (b) *Police complaint is lodged in time.*

- (c) *Police has properly made enquiry and filed report.*
- (d) *Direction has to be given by the Hon'ble Court regarding the date of death as per Section 4, 5 of the Registration of Birth and Death Act 1959, the rules made thereunder.*

10. If the above conditions are not fulfilled, the plaintiffs are not entitled for declaration of civil death of Sri.Parasappa S/o Givindappa Kabbera.

11. Another question arise for consideration is that, whether suit is not maintainable for want of notice under Section 80 of the Code of Civil Procedure, 1908 (the CPC).

12. At the very outset, it would be useful to place on record the law declared by the Hon'ble Supreme Court regarding appreciation of evidence in a matter like the one on hand and regarding the final relief that this Court can grant in the present case.

13. In ***AIR (2004) SC 2070*** Between '***LIC of India V/s. Anuradha***', the Hon'ble Supreme Court had ruled thus regarding Sections 107 and 108 of the Indian Evidence Act, at para-14:

“14. On the basis of the above said authorities, we unhesitatingly arrive at a conclusion which we sum up in the following words. The law as to presumption of death remains the same whether in Common Law of England or in the statutory provisions contained in Sections 107 and 108 of the Indian Evidence Act, 1872. In the scheme of Evidence Act, though Sections 107 and 108 are drafted as two Sections, in effect, Section 108 is an exception to the rule enacted in Section 107. The human life shown to be in existence, at a given point of time which according to Section 107 ought to be a point within 30 years calculated backwards from the date when the question arises, is presumed to continue to be living. The rule is subject to a proviso or exception as contained in Section 108. If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years the presumption raised under Section 107 ceases to operate. Section 107 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108, subject to its applicability being attracted, has the effect of shifting the burden of proof back on the one who asserts the fact of that person being alive. The presumption raised under Section 108 is a limited presumption confined only to presuming the factum of death of the person who's 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. ”

14. The relief that the plaintiffs have sought is to declare that, Sri. Parasappa has suffered a civil death. There is no law available on this aspect. However, the appropriate provision applicable to the circumstances is the provision of Indian Evidence Act. Which is as follows;

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 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.

15. Bearing in mind the pleadings and the position of law noted supra, let me examine the oral and documentary evidence. The plaintiff has examined himself as PW-1 and has reiterated the averments made in the plaint. His evidence discloses that his father, Parasappa S/o. Govindappa Kabbera, left his residence on 03.02.2018 and thereafter never returned. Despite diligent efforts made by the plaintiff, his family members, relatives, and well-wishers to trace him, no information regarding his whereabouts could be secured. The testimony of PW-1 has remained unchallenged and there is no material on record to disbelieve his version.

16. The documentary evidence produced by the plaintiff corroborates his oral testimony. Ex.P-1 is the complaint lodged before Lakshmeshwar Police Station regarding the missing person. Ex.P-2 is the FIR registered pursuant thereto. Ex.P-3 is the spot panchanama, while Ex.P-4 consists of e-mail communications sent by the police authorities to various police stations seeking information

about the missing person. Ex.P-5 is the letter forwarding the “C” report, which reveals that despite investigation the police could not trace the missing person. Ex.P-6 is the memorandum relating to the missing case and Ex.P-7 is the RTC extract standing in the name of the missing person. These documents establish that sincere efforts were made to trace Parasappa, but no information regarding his existence or whereabouts has been received.

17. The suit has been instituted after the lapse of more than seven years from the date on which Parasappa was last seen. There is no evidence on record to show that he has been heard of by any person who would naturally have received information from him had he been alive. In view of Section 108 of the Indian Evidence Act, a presumption of death arises when a person has not been heard of for seven years by those who would naturally have heard of him. Accordingly, the Court holds that the plaintiff has successfully proved that his father, Parasappa S/o. Govindappa Kabbera, has not been heard of for more than

seven years. Hence, **Point No.1 is answered in the Affirmative.**

18. POINT NO.2:- In view of section 107 and 108 of the evidence act, whether or not a notice is given either under section 482 of the kmc act or under section 80 of the cpc, it would make no difference at all. The reason is that the factum of civil death is required to be declared by a competent civil Court. Unless such declaration is there, nobody else can grant any relief regarding the civil death of Sri. Parasappa Kabbera. In that view of the matter, non-issuance of such notice is not fatal to the suit and the suit is very much maintainable. The defendants have every opportunity to prove the person to be alive. Admittedly the initial burden is always on the person who asserts that a person is presumed to be dead, to prove that his whereabouts are not known to the near relatives who would have known it and only if that initial burden is discharged, defendants have a duty to establish that he was alive. The defendants having sufficient opportunity and authority to

demonstrate the claim of the Plaintiff have failed to do so.

For these reasons, **Point No.2 is held in the Negative.**

19. POINT NO.3:- The plaintiffs are entitled for the relief claimed to the extent that, death of Sri.Parasappa S/o Govindappa Kabbera can be declared and no date, time and place of death can be declared by this court. Hence, **Point No.3 is held in Partly Affirmative.**

20. POINT NO.4:- For the forgoing reasons stated supra, this court to pass following -

ORDER

Suit of the plaintiff is hereby decreed in part.

It is declared that since the father of the plaintiff by name **'Shri. Parasappa S/o Govindappa Kabbera'** is not heard of for more than 07 (seven) years period by those who would have heard of his whereabouts, if at all he is alive, it is declared that the said 'Sri.Parasappa S/o Govindappa Kabbera' is deemed to have died.

The defendant No.3 is directed to register only about the factum of civil death of 'Shri.

Parasappa S/o Govindappa Kabbera' by collecting prescribed fee if any. It is clarified that the defendant No.3 need not deal with the other details like place of death, cause of death, date of death, etc., (while making entry in the register of death regarding the factum of death of 'Shri. Parasappa S/o Govindappa Kabbera', if the prescribed register of deaths providing for filling up such particulars).

Considering the nature of relief claimed by the plaintiffs and the suit is against the Government in respect of official acts no order as to costs.

Office to draw decree accordingly.

(Dictated to the steno directly on computer typed by her, corrected, signed & then pronounced by me in open Court on this **05th day of August, 2026**)

(SATISHA M.)
Civil Judge & JMFC, Laxmeshwar

- ANNEXURES -

I. LIST OF WITNESSES EXAMINED ON BEHALF OF PLAINTIFF

PW-1 : Shri. Shivappa S/o. Parasappa Kabber

II. LIST OF DOCUMENTS MARKED ON BEHALF OF PLAINTIFF

Ex.P-1 : Complaint
Ex.P-2 : FIR
Ex.P-3 : Spot Panchanama
Ex.P-4 : E-Mail Massage
Ex.P-5 : "C" Report Submission Letter
Dtd: 29.07.2020
Ex.P-6 : Memorandum
Ex.P-7 : RTC Extract

III. LIST OF WITNESSES EXAMINED ON BEHALF OF DEFENDANT/S

- Nil -

IV. LIST OF DOCUMENTS MARKED ON BEHALF OF DEFENDANT/S

- Nil -

Civil Judge & JMFC, Laxmeshwar