

KAMS510049252021

FORM NO.9(CIVIL)



**TITLE SHEET FOR JUDGMENTS IN SUITS
(R.P.91)**

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC
NANJANAGUDU**

PRESENT

Sri. Sathisha K.G., B.A.,LL.B.

Principal Civil Judge & JMFC., Nanjanagudu

Dated: 2nd day of April, 2026

O.S.No.412/2021

- PLAINTIFFS** :: 1) Smt. Chinnamma W/o Mahadevappa,
S/o Late Devappa,
Aged about 55 years.
- 2) Smt. Mangamma W/o Shivamallappa,
D/o Late Devappa,
Aged about 46 years,
R/at Karya Village, Kowlande Hobli,
Nanjanagudu Taluk.
- 3) Smt. Indramma W/o Karya Swamy,
S/o Late Devappa,
Aged about 43 years,
R/at Karya Village, Hullahalli Hobli,
Nanjanagudu Taluk.
- 4) Sri. Mahadevappa W/o Late Devappa,
Aged about 51 years.

Petitioner No.1 & 4 are
R/at Hallare Village, Hullahalli Hobli,
Nanjanagudu Taluk.

(By Sri. Basavarajappa. M.B. Advocate)

- V/s -

DEFENDANTS :: 1) Chief Secretary,
Vidhana Soudha,
Bengaluru.
2) Deputy Commissioner,
Mysuru District,
Mysuru.
3) Thasildhar,
Nanjanagudu Taluk,
Nanjanagudu.
(By Assistant Government Pleader)

Date of Institution of the Suit	08.11.2021		
Nature of the Suit	Declaration		
Date of Commencement of Recording of Evidence	01.04.2022		
Date on which the Judgment was pronounced	02.04.2026		
Duration	<u>Years</u> 02	<u>Months</u> 02	<u>Days</u> 27

(SATHISHA. K.G.,)
Principal Civil Judge & JMFC,
Nanjanagudu.

J U D G M E N T

This is a case which the plaintiffs filed for seeking a Declaration about the death of Smt.Nagamma W/o Late.Devappa who was not heard alive for more than seven years prior to the date of filing of this case.

2. In narrow compass, the brief facts necessary for the

disposal of the present case, are as under: The plaintiffs are the children of Smt.Nagamma W/o late.Devappa. On 09.01.2014 Smt.Nagamma left the house without intimation and thereafter the plaintiffs have searched her, but she was missing and efforts have been made in search of said Smt.Nagamma by her family members. On 27.10.2021 the revenue officials visited the Village of said Nagamma and enquired the villagers about the missing of said Nagamma. Since 7 years said Smt.Nagamma has not been heard off or seen. Neither the plaintiffs nor other relations of Smt.Nagamma have not seen her for last 7 years. There has been no correspondence whatsoever with her for the past seven years. All the efforts made by the plaintiffs in securing the whereabouts of Smt.Nagamma, are in vain. Hence plaintiffs have constrained to file this suit for declaration.

3. Pursuant to the service of summons for settlement of issues, the suit summons was served upon defendants No.1 to 3. Though Defendant No.1 to 3 appeared through Assistant Government Pleader, but they did not contest the suit by filing written statement. Hence, suit proceeded exparte.

4. Heard the arguments of learned Counsel for plaintiffs and perused the materials on record.

5. As there is no written statement in the suit, no issues are framed, but in order to arrive at a definite finding as regards the matter in issue, this court formulated the following points for determination:-

POINTS FOR DETERMINATION

- 1. Whether the plaintiffs are entitled for a decree of declaration thereby declaration qua the death of Smt.Nagamma W/o Late Devappa, mother of plaintiffs as civilly dead after expiry of statutory period of Seven Years?**
- 2. What order or decree?**

6. In order to prove their case, the 4th plaintiff examined himself as P.W.1 and marked documents at Ex.P1 to Ex.P.6 and also examined one more witness by name Sri.Mahadevaswamy as Pw-2. The defendants did not contest the suit despite opportunity. The Learned Counsel for the plaintiffs has argued that the plaintiffs have proved their case by adducing oral and documentary evidence and as such they are entitled for a decree.

7. Having heard arguments, my findings to above points are:

Point No.1 : In the Affirmative

Point No.2 : As per the final order
for the following:

REASONS

8. **Point No.1:-** The brief and relevant facts for filing of this suit has already been mentioned at the outset.

9. The plaintiffs herein are seeking a declaration to the effect that their mother has expired as she has not been heard off for the last more than 7 years. The applicability of the presumption of life and death as contained in Section 107 and 108 of Indian Evidence Act is the relevant question for deciding the matter in issue.

10. It is undisputed that a declaration as to civil death is a declaration as to the status of a person. Therefore, it can be safely asserted that a declaration as to civil death can be granted by a civil court under Section 34 of the Specific Relief Act 1963 r/w Section 9 of CPC, 1908.

11. The grant of decree of declaration to declare a civil death of a person is structured on the presumption envisaged in Section 108 of the Indian Evidence Act, 1872. The said provision propounds that if a person 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 upon the person who affirms it.

12. Sections 107 and 108 of the Indian Evidence Act, 1872 are drafted as two sections, in effect, Section 108 of the Indian Evidence Act, 1872 is an exception to the rule enacted in Section 107 of the Indian Evidence Act, 1872. The human life shown to be in existence, at a given point of time which according to Section 107 of the Indian Evidence Act, 1872 ought to be a point within thirty years calculated backwards from the date arises. The rule is subject to a proviso or exception as contained in Section 108 of the Indian Evidence Act, 1872. 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 of the Indian Evidence Act, 1872 ceases to operate. Section 107 of the Indian

Evidence Act, 1872 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108 of the Indian Evidence Act, 1872 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 of the Indian Evidence Act, 1872 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 of the Indian Evidence Act, 1872 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 six 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.

13. This view is affirmed in LIC of India V Anuradha (2004) 10 SCC 131; 2004 AIR SCW 2017 wherein it was held that:

"Neither Section 108 of the Indian Evidence Act, 1872 nor logic, reason or sense permits 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."

14. Upon the bare perusal of record, the factum of Smt.Nagamma, mother of plaintiffs been missing since 09/01/2014 is circumstantiated and sufficient evidence has already been led on behalf of plaintiffs to support their submissions. The plaintiffs have produced Exs.P1 to P6 in support of their case. It is the case of the plaintiffs that Smt.Nagamma who had left the house without intimation and subsequently went missing. There is no dispute that Nagamma is the mother of plaintiffs. Ex.P1-Requisition of issue death certificate of Nagamma, ExP.2 and P3- Reports of Revenue officials. Said documents discloses that the revenue officials visited the Hallare Village and enquired about the missing person by name Nagamma and submitted report. These documents clearly disclose that the plaintiffs have made all possible efforts to trace the whereabouts of Smt.Nagamma. These documents indicate that though the plaintiffs have made their efforts to trace Smt.Nagamma they were not successful in their attempts.

15. As per Ex.P2 and 3 Smt.Nagamma is missing since 09/01/2014. Subsequently, she has been unheard off. The plaintiffs are none other than the children of Smt.Nagamma.

They are the people who would hear the whereabouts of Smt.Nagamma in the ordinary course of business. Since, they have not heard of her for the last 7 years there is a presumption that Smt.Nagamma is no more. The burden to prove that Smt.Nagamma is alive would be on the person who asserts that she is alive.

16. The Pw.1 has produced sufficient oral and documentary evidence and defendants have failed to cross examine PW1 despite opportunity and defendants have failed to prove that the plaintiffs have not exercised the required diligence in tracing Smt.Nagamma. Under such circumstances, it is to be held that Smt.Nagamma is missing for the last 7 years and the people who normally come in contact with her have not heard from her. Consequently, there are valid grounds to draw the presumption that Smt.Nagamma has demised. There are sufficient reasons to draw the presumption of death as contemplated under the Law. The plaintiffs being legal heirs of Smt.Nagamma are entitled for a declaration in this regard.

17. In view of above discussion, the plaintiffs herein succeeds in the present case. Resultantly, the plaintiffs are

entitled a decree of declaration that their mother Smt.Nagamma W/o Late.Devappa is presumed to be dead under Section 108 of Indian Evidence Act, 1872, as she is unheard to be alive since 09/01/2014, who had left the house of plaintiffs on the said day. Accordingly Point No.1 is answered in the Affirmative.

18. **Point No.2:-** In the result this court proceed to pass the following:

ORDER

The suit of the plaintiffs is decreed.

It is declared that Smt.Nagamma W/o Late.Devappa being unheard off for the last 7 years is presumed to be dead.

Parties to bear their own cost.

Draw decree accordingly.

File be consigned to record room after necessary compliance.

(Dictated to the Stenographer directly on computer, typed by him, the same is corrected, revised, signed and then pronounced by me in the open Court, on this the **02nd day of April, 2026**)

(SATHISHA K.G.)
Principal Civil Judge & JMFC,
Nanjanagudu.

ANNEXURE

List of witnesses examined on behalf plaintiff/s:

PW.1 : Sri. Mahadevappa.
PW.2 : Sri. Mahadevaswamy.

List of documents exhibited on behalf of plaintiff/s:

Ex.P1 : Requisition of issue death certificate of
Smt. Nagamma.
Ex.P2 & 3 : Reports of Revenue officials.
Ex.P4 to 6 : Aadhaar Cards.

List of witnesses examined on behalf of defendant/s:

- N I L -

List of documents exhibited on behalf of defendant/s:

- N I L -

(SATHISHA K.G.)
Principal Civil Judge & JMFC,
Nanjanagudu.