



-: P R E S E N T :-

OS.No.340/2025

PLAINTIFFS : 1. B.N.Drakshayani(Asha), 52 yrs,
W/o K.R.Harishkumar,
R/at Bellarahalli Village,
Kodlipete Hobli, Hadli Post,
Somavarapete Taluk,
Kodagu District.

2. Drakshayani, 83 yrs,
W/o late K.V.Rajashekaraiah,
R/at No.137, B.M.Road,
Periyapatna Town.

3. P.H.Santhosh, 30 yrs,
S/o K.R.Harishkumar,
R/at Bellarahalli Village,
Kodlipete Hobli, Hadli Post,
Somavarapete Taluk,
Kodagu District.

4. K.R.Giriraj, 64 yrs,
S/o late K.V.Rajashekaraiah,
R/at No.137, B.M.Road,
Periyapatna Town,
Periyapatna Taluk,
Mysuru District.

[By Sri.KAS, Adv.,]

V/s.,

DEFENDANTS :

1. Deputy Commissioner,
Mysuru Distirct,
Mysuru.

2. The Tahasildhar,
Periyapatna Taluk,
Periyapatna.

[Dft-1 & 2 Represented by AGP]

Date of Institution of the suit : **16.09.2025**

Nature of the suit : **DECLARATION**

Date of the commencement of
recording of evidence : **17.02.2026**

Date on which the Judgment
was pronounced : **29.04.2026**

Total Duration : **YEAR/S MONTH/S DAY/S**
00 07 14

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
PERIYAPATNA.

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

This suit has been filed by the plaintiffs to declare K.R.Harish Kumar S/o K.V.Rajashekaraiah as dead w.e.f. 13.03.1996 as he went on missing and prayed for a direction to the defendant No.2 to enter the death of K.R.Harish Kumar as died on 13.03.1996 and to issue death certificate to that effect.

2. The brief facts of the plaintiffs case are hereunder:-

(a). The plaintiff No.1 is the wife of the K.R.Harish Kumar S/o K.V.Rajashekaraiah. The plaintiff No.2 is the mother and plaintiff No.3 is the father of the said K.R.Harish Kumar S/o K.V.Rajashekaraiah. The husband of plaintiff No.1 has left the home on 13.03.1996. Thereafter, the said K.R.Harish Kumar S/o K.V.Rajashekaraiah not returned to house till 02.05.1996 at about 8.00 PM. The plaintiffs have made their earnest

efforts to trace the whereabouts of K.R.Harish Kumar, all the efforts went in vain. After that, the plaintiffs have approached the Periyapanta Police Station and given the first informant statement with regard to the missing of husband of plaintiff No.1. In pursuance of the same, the SHO of Periyapatna police have registered the FIR No.163/1996. Even till today the whereabouts of the said K.R.Harish Kumar is unknown. *Hence, this suit has been filed to declare him as dead.*

3. In pursuance of suit summons, defendants have appeared through AGP. But not filed any written statement from their side.

4. On the basis of the pleadings the following points arises for consideration ;

-.: P O I N T S :-

1. *Whether the plaintiffs prove that, they have not heard about husband of the plaintiff No.1*

*by name K.R.Harish Kumar S/o
K.V.Rajashekaraiah, right from 13.03.1996 ?*

2. *Whether the plaintiffs are entitled for the relief of declaration of the presumption of Civil death of K.R.Harish Kumar S/o K.V.Rajashekaraiah ?*
3. *Whether the plaintiffs are entitle for the reliefs as sought for ?*
4. *What order or decree ?*

5. In support of the plaintiffs case, the plaintiff No.1 examined herself as PW.1 and adduced as many as 14 documents as per Ex.P1 to P14. On the other hand the defendants not lead any evidence from their side.

6. Heard the arguments and perused material available on record.

7. This court answered the above points is as follows;

POINT NO.1 : **“AFFIRMATIVE”**
POINT NO.2 : **“AFFIRMATIVE”**
POINT NO.3 : **“AFFIRMATIVE”**
POINT NO.4 : As per final order
for the following;

- : R E A S O N S : -

POINT NO.1 :-

8. In support of the plaint averments, the plaintiff No.1 examined herself as PW.1 and reiterated the averments of the plaint and also adduced as many as 14 documents as per Ex.P1 to P14. Ex.P1 Certified copy of FIR; Ex.P2 Marriage Invitation Card; Ex.P3 Marriage Photo; Ex.P4 Ration Card Coupon; Ex.P5 Certified copy of Voter List; Ex.P6 Certified copy of Letter Dated 13.06.2025; Ex.P7 Endorsement Dated 24.06.2025; Ex.P8 to 11 Notarized copy of Aadhar Card of plaintiffs; Ex.P12 G-tree. Ex.P13 News Paper; Ex.P14 News Paper.

9. The plaintiffs adduced G-tree as per Ex.P9. As per the G-tree, the K.R.Harish Kumar S/o K.V.Rajashekaraiah is the husband of the plaintiff No.1, son of the plaintiff No.2, father of the plaintiff No.3 and brother of the plaintiff No.4 respectively. The Ex.P8 to 11 are the Notarized copy of the Aadhar Card of the plaintiff No.1 to 4. Hence, it is clear that, the plaintiff No.1 is the wife and plaintiff No.3 is the son of the said K.R.Harish Kumar S/o K.V.Rajashekaraiah.

10. Further, on perusal of the Ex.P1, it is evident that the father-in-law of the plaintiff No.1 given a complainant before the Jurisdictional police with respect to missing of her husband by name K.R.Harish Kumar S/o K.V.Rajashekaraiah on 13.03.1996. Further, it is evident that, based on the complaint the police have registered the FIR No.163/1996. Therefore, it is clearly pleaded in the plaint that, the plaintiffs have made their earnest efforts to

trace the said K.R.Harish Kumar. Despite of the same, they were unable to trace K.R.Harish Kumar, this fact has been reiterated in the examination in chief affidavit of PW.1.As such this court can safely hold that the plaintiffs have proved that K.R.Harish Kumar is not heard of from 13.03.1996. Further, the plaintiffs have taken paper publication as per Ex.P13 & 14.

11. As per section 108 of Indian Evidence Act, 1872 when the question is raised in the court that whether a man is alive or dead and it is proved that he has not been heard for 7 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.

12. Since, the plaintiff No.1 is the wife of K.R.Harish Kumar, if at all if K.R.Harish Kumar had been alive, naturally the plaintiffs would have been heard of him from past 7 years. It is sufficiently proved that, the plaintiffs have

not heard about the said K.R.Harish Kumar from 13.03.1996. Therefore, the burden to show that, K.R.Harish Kumar is alive is certainly on the defendants.

13. As per section 102 of Indian Evidence Act, 1872, the burden of proof lies with the party in a lawsuit who would lose if no evidence were presented by either side. In the present case, it is sufficient for the plaintiffs to prove that, the husband of the plaintiff No.1 was not heard from past 7 years and it attracts section 108 of Indian Evidence Act. Once the plaintiffs have proved this, the burden is shifted on the defendants. However, the defendants neither cross examined the PW.1 nor lead any evidence from their side. *Hence, this court answered the Point No.1 in the Affirmative.*

POINT NO.2:-

14. It is well settled law that, the consent of the parties can neither create the jurisdiction when there is

none in law nor oust the jurisdiction when there is one in law. Hence, it is the bounden duty of this court to look into the point of jurisdiction also.

15. At this juncture, this court relied upon the ruling of the Hon'ble High court of Judicature of Bombay of Nagapur Bench in Second Appeal No.18/2016(DD 26.02.2016) between Sou. Swati W/o. Abhay deshmukah and Vs., Shri.Abhay S/o. Purushottam in which it was held as hereunder:-

“I am of the opinion that the Civil court acting under section 9, has inherent powers in its plenary jurisdiction de hors with reference to Section 34 of the Specific Relief Act to grant relief qua Section 108 of the Evidence Act. Therefore, the reason that Section 34 of the Specific Relief Act was required to be called in aid does not appear to be sound”.

16. Therefore, this court can safely conclude that this court has jurisdiction to entertain the suit of this nature. After due investigation, the Periyapatna police were unable to find the husband of the plaintiff No.1. The state machinery through police itself was unable to find the husband of the plaintiff No.1 who is missing from 13.03.1996. For the reasons mentioned above, the plaintiffs have proved that the said K.R.Harish Kumar S/o K.V.Rajashekaraiah is missing from 13.03.1996. *Hence, this court answered the Point No.2 in the **Affirmative**.*

POINT NO.3 :-

17. The plaintiffs have filed this suit to declare the K.R.Harish Kumar S/o K.V.Rajashekaraiah as dead w.e.f. 13.03.1996 and also prayed for a direction to the defendant No.2 to enter the death of the K.R.Harish Kumar S/o K.V.Rajashekaraiah and issue death certificate to that effect. The plaintiffs have proved that, they have not heard

about the K.R.Harish Kumar S/o K.V.Rajashekaraiah right from 13.03.1996. As discussed above, the plaintiffs have proved the point No.1 and 2. Therefore, the plaintiffs are entitle for the reliefs as sought in the plaint. *Hence, this court answered the Point No.3 in the **Affirmative**.*

POINT NO.4:-

18. For the reasons discussed on point No.1 to 3, this court proceed to pass the following ;

ORDER

The suit of the plaintiffs is hereby decreed.

Since, the whereabouts of K.R.Harish Kumar S/o K.V.Rajashekaraiah, who is none other than the husband of the plaintiff No.1 being unheard since 13.03.1996, he is hereby presumed to be dead in the eye of law w.e.f 13.03.1996.

This order is subject to review in the event of any report being made by any persons to the effect that K.R.Harish Kumar S/o K.V.Rajashekaraiah is found alive and credible proof is produced.

Accordingly, the Defendant No.2 is hereby directed by way of mandatory injunction to enter the date of death of K.R.Harish Kumar S/o K.V.Rajashekaraiah as died on 13.03.1996 at Periyapatna Town, Mysuru District, in the concerned death register and issue the death certificate to the plaintiffs upon payment of fee in accordance with law.

No order as to cost.

Draw decree accordingly.

*(Dictated to the Stenographer directly in computer, revised, corrected by me and then pronounced in the open court on this the **29th day of APRIL, 2026**)*

(YOGESHA M.R)
PRL.CIVIL JUDGE AND JMFC.,
PERIYAPATNA.

- : A N N E X U R E S : -

Witnesses Examined On Behalf Of The Plaintiff/S:-

PW1 : B.N.DRAKSHAYANI

Documents Marked On Behalf Of The Plaintiff/S:-

Ex.P1 : Certified copy of FIR

Ex.P2 : Marriage Invitation Card

Ex.P3 : Marriage Photo

Ex.P4 : Ration Card Coupon

Ex.P5 : Certified copy of Voter List

Ex.P6 : Certified copy of Letter Dated 13.06.2025

Ex.P7 : Endorsement Dated 24.06.2025

Ex.P8to11: Notarized copy of Aadhar Card of plaintiffs

Ex.P12 : G-tree

Ex.P13 : News Paper

Ex.P14 : News Paper

Witnesses Examined On Behalf Of The Defendant/S: Nil

Documents Marked On Behalf Of The Defendant/S: Nil

(YOGESHA M.R)

PRL.CIVIL JUDGE AND JMFC.,
PERIYAPATNA.