

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District North 24 parganas

In the Civil Judge (Junior Divn.) 2nd Court, Barrackpore,
North 24 Parganas

Present :- Smt. Gopa Das
J.O. Code WB1476

Friday, the 06 th day of October, 2023

TITLE SUIT. 170 OF 2022 (CIS No. 1701 of 2022)
CNR No. WBNP160012712022

1. Smt. Anindita Dutta nee Basak

Plaintiff

Petitioner

-----Versus-----

2. Aditya Sundar Basak

Defendant

Opposite Party

(1) Gives date on dates:- This Suit/Case coming on for final hearing
on 29.09.2023.

Abhijit Kumar Saha

.....Advocate for the plaintiff.

Payel Saha Banerjee

.....Advocate for the Defendant.

and having stood for consideration to this day, the Court delivered the
following judgment :-

This is the suit for Declaration of Death of Aniruddha Basak, so of Late
Asutosh Basak & Sandhya Basak valued of Rs. 100/-.

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Brief Facts of the Plaintiffs' Case:-

The substantive case of the Plaintiffs in a nutshell is that one Anirudhha Basak, son of Late Asutosh Basak and Sandhya Basak is the elder brother of the plaintiff and cousin brother of the defendant. On and from 27.01.2013 and from that said Aniruddha Basak was missing. The parents of Anirudhha Basak, namely Asutosh Basak and Sandhya Basak have tried their best effort to find said Aniruddha Basak everywhere but having failed to search the conclusive proof regarding the missing of Aniruddha Basak, they have intimated or communicated all the relatives well-wishers with a intent to get return said Aniruddha Basak but no relation or familiar could provide the information and suggest anyway to find said Aniruddha Basak. Resultantly the parents namely Ashutosh Basak having no other alternative option have communicated or narrated the fact before the Khardah Police Station and lodged a General diary vide G.D.E No. 2393/2013, dated 27.01.2013 in respect of the missing but the plaintiff has not taken any steps to inform the same to the proper authority as she was to minor at the time of missing of her older brother namely Aniruddha Basak and subsequently both father and mother of Anirudhha Basak passed away leaving behind themselves, plaintiff and her elder brother namely Anirudhha Basak as their legal heir.

Subsequently, the plaintiff herein informed the incident of missing of her older brother in written to the Commissioner of Police on that on early occasion after lodging the General Diary the parents of Aniruddha Basak had published for communicated the matter before CID Bhabani Bhaban through a written complain vide file No. 59/2013/1A/N(12) soon after the parents of the Aniruddha Basak had published in the local news papers like "Protidin" and "Bartaman" on 13.03.2013 through memo no. 7/8, dated 06.02.2013. Father of Aniruddha Basak namely Asutosh Basak has died on 04.02.2022 and also mother of Aniruddha Basak namely Sandhya Basak has died on 30.12.2021. Anirudhha Basak is still untraced and the Plaintiff has not heard of him for more than 7 years. If the said Anirudhha Basak had been alive, the Plaintiff would have heard of him. Therefore, it is presumed U/S. 108 of Indian Evidence Act that the said Anirudhha Basak is dead and the cause of his death is 'Civil Death'.

Hence, the suit is filed the cause of action of which arose on 27.01.2013.

The Plaintiff prays for a decree of declaration that Anirudhha Basak is dead and cause of death is Civil Death under the provision of under Section 108 of the Indian Evidence Act.

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On perusal of the pleadings, that is the plaint filed by the Plaintiff and written statement filed by the Defendant and contents of the documents as submitted in this case, this Court is of the view that there is no necessity to frame any issues, since the Defendant has admitted the claim of the Plaintiff. However, this Court is inclined to formulate points of determination of this case which are as follows :-

POINTS OF DETERMINATION

1. Whether suit for declaration of Civil Death is maintainable in the eye of law?
2. Has the plaintiff got any cause of action to bring this suit against the defendant?
3. Whether the Plaintiff is entitle to get a decree of 'CIVIL DEATH' as prayed for ?
4. To what other relief, if any, is the Plaintiff entitle ?

Evidence on record

The plaintiff namely Anindita Dutta in support of her case adduced as P.W.1 and produced the following documents were marked as exhibits **1 to 7** :

1.	Exhibit -1	Letter sent by CID dated 29.04.2022.
2.	Exhibit -2	Paper Publication at Pratidin dated 14.02.2013.
3.	Exhibit -3	Copy of GDE vide no. 2393/2013.
4.	Exhibit -4 collectively	Death certificates dated 04.02.2022 and 30.12.2021 .
5.	Exhibit -5	Voter identity card.
6.	Exhibit -6	Adhar Card.
7.	Exhibit -7	Complaint dated 24.03.2022.

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On behalf of the defendant, Aditya Sundar Basak deposed as DW1 but no document is produced.

Decision with Reason

Issue no. 1:-

Whether suit for declaration of Civil Death is maintainable in the eye of Law?

The pleading of the plaintiff reveals that this is a declaratory suit wherein the Plaintiff has prayed for declaration of civil death of Aniruddha Basak.

In respect of issue no. 1, this Court is of the view after thorough perusal of the pleading of the both sides and materials on record that the suit is within the pecuniary and territorial jurisdiction of this Court. There is no specific denial by the adversary against this issue to hold the adverse presumption. So, this Court is of the view that the suit is maintainable in its present form and nature. Thus, the issue no. 1 is decided in favour of the plaintiff.

Hence, the issue no. 1 is answered affirmative in favour of the plaintiff and disposed of accordingly.

Issue no. 2:-

Has the plaintiff got any cause of action to bring this suit against the defendant?

In respect of issue no. 2 i.e., cause of action of the suit, the Plaintiff in her plaint stated that the cause of action arose on 27.01.2013. On the perusal of the plaint, other materials on record and after going through the submission made by the both sides at the time of argument this court finds that there is no specific contention regarding the cause of action. Moreover, nothing was submitted by the adversary to hold the adverse presumption regarding the said issue. Thus, this court finds that the plaintiff has the cause of action to institute the instant suit before this court.

Hence, the issue no.2 is answered affirmative in favour of the plaintiff and disposed of accordingly.

Issue no. 3 & 4:-

Whether the Plaintiff is entitle to get a decree of 'CIVIL DEATH' as prayed for and To what other relief, if any, is the Plaintiff entitle ?

These issues are taken together for the sake of convenience and

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brevity of discussion as because they are interrelated to each other. Plaintiff brought the suit U/S. 108 of Indian Evidence Act, 1872 on the ground that elder brother of Plaintiff namely, Aniruddha Basak was not found since 27.01.2013 so she seeks a relief in the form of declaration of death under above mentioned provisions.

In order to prove her case plaintiff examined herself as PW1 in evidence and produced some documents which were marked and exhibited 1 to 7. The statements made in the plaint was neither challenged nor controverted by the defendant in his pleading.

I have gone through the provision under Section 107 read with Section 108 of Evidence Act to find out whether a suit for the declaration of civil death simpliciter is maintainable under above provision.

Evidence Act is a law of procedure and it does not create any substantial right and liability in favour of anyone. It simply facilitates the Courts in trial of a matter. It is established principle of law for Section 108 of Evidence Act that presumption under above provision could only be raised in any proceeding in which question arises that any person is dead or alive. Section 108 enables to draw a presumption that a person who has not been heard of for a period of seven years is dead. But however, no presumption can be raised at what time within that period he died as it is matter of fact which has to be proved by means of evidence and the burden of proving that any such person who is not heard of died at a particular time is on that person who asserts it.

The rule in section 108 of the Evidence Act is a rule of presumption. By reason of the language applied in sec 108 of the Evidence Act, the burden to prove that such person is alive, lies on the person who affirms it, despite the person having not been heard of for 7 years by persons who would have heard of him if he were alive. The presumption of civil death or fictitious death by reason of sec 108 of Evidence Act tantamounts to physical death in the eye of law.

In **Parikhit vs Champa, AIR 1967 Ori 70**, The Hon'ble Orissa High Court hold that the presumption is a rule of evidence. By fiction the death is presumed in such circumstances unless otherwise proved by him who controverts it.

In the instant suit, the date of disappearance of Aniruddha Basak is certain.

The principle on which the Court presumes the death of a person of whom no tidings have been received for a long period of time, is this- that if

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he were living, he would probably have communicated with some of his friends and relatives. It is a conclusion which the Court draws from the probabilities of the case. It is quite clear, therefore, that, when no such probability exists, the presumption cannot arise. In the instant suit, the evidence such as exhibit 1 and exhibit 3 expressly makes it clear that the Aniruddha Basak was missing in connection of G.D.E vide no. 2393 of 2013. From Exhibit 2 it appears to this Court that a paper publication was done after missing of and before institution of this suit in the year 2013. In the light of above evidence as produced by the plaintiff, this Court may presume/assume that Aniruddha Basak is missing since 27.01.2013.

In the view of above discussion this Court holds an observation on the basis of judgment and the evidence on records that plaintiff is entitled to get a decree as prayed for.

Hence, the issue no. 3 and 4 are answered affirmative in favour of the plaintiff and disposed of accordingly.

As a result, suit succeeds.

Court Fee paid is correct.

Hence, it is

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that the suit be and the same is decreed on contest and disposed of accordingly. The Plaintiff namely Anindita Dutta nee Basak entitled to get a decree of declaration that elder brother of Plaintiff namely, Aniruddha Basak is presume to be dead in the eye of law.

Note in relevant Register.

D/c by me

CJJD 2nd Court

Barrackpore

(Gopa Das)
Civil Judge(Jr.Divn.),2nd Court,
Barrackpore