

IN THE COURT OF THE DISTRICT MUNSIF, DEVAKOTTAI**PRESENT : Tmt.R.PREMI, B.A., L.L.B., (Hons).,**

District Munsif, Devakottai

Tuesday the 24th day of March, 2026**O.S.No.77/2022****CNR No: TNSV060000892022**

1. V.Karpagasundram

2. M.Lakshmi

...Plaintiffs

-Vs-

1. The District Collector, Sivagangai,

2. The Sub-Collector, Devakottai,

3. The Tahsildar, Devakottai,

...Defendants

This suit came up on 12.03.2026 for a final hearing, before me in the presence of R.Muthu, learned advocate for the Plaintiff, the Government Pleader Thiru.K.Ponmudi learned advocate for the Defendants and having stood over till this day for consideration, this court delivered the following...

JUDGMENT

The suit has been filed seeking prayer of Declaration, Permanent Injunction

1. The averments in the plaint in brief as follows:

The plaintiffs are husband and wife. The plaintiffs have retired from working in Education Department and are residing in Devakottai. The aadhard card copies and the ration card of the plaintiffs are produced as document numbers 1 to 3 respectively. The youngest son of the plaintiff's Mr.K.Vengadachalam @ Maruthavanan has gone missing on 10/09/2008. He is an M.SC graduate. The plaintiffs have filed a complaint in Devakottai Town Police Station regarding the same. Following that crime number

109/2009 was filed and on 06/02/2009, the FIR was filed under the head man missing case. The said FIR copy is produced as document number 4. Police officials have searched for the above said Mr.K.Vengadachalam @ Maruthavanan in several places. Regarding the same public notices and advertisement in Thinnathandhi Daily newspaper were also released. The said notices and copy of the paper publication is produced as document numbers 5 to 7 respectively. Despite several efforts being taken by the plaintiffs and the police officials the said Mr.K.Vengadachalam @ Maruthavanan could not be found. Since his whereabouts are not known for more than seven years he should be declared as a person who is civilly dead. The defendants in this case are Government parties. The 3rd defendant is the person entitled to give certificate stating that the said Mr.K.Vengadachalam @ Maruthavanan is dead. Hence a notice to provide the said certificate and a notice under section 80 of Civil Procedure of Code was sent to the defendants on 30/05/2022. The copy of the notice is produced as document number 8. The defendants have received the notice on 17/05/2022 but did not give the certificate as demanded by the plaintiffs. The acknowledgment card for the defendants receiving the notice are produced as document numbers 9 to 11 respectively. The suit has been filed after two months since the notice was served on the defendants as per section 80 of Civil Procedure of the Code. Hence the plaintiff prays for the suit to be decreed and declare the said Mr.K.Vengadachalam @ Maruthavanan as civilly dead and has also sought for the prayer of mandatory injunction against the 3rd defendant to issue the death certificate for the above said Mr.K.Vengadachalam @ Maruthavanan. Hence he prays for the suit to be decreed.

2. Averments in the written statement filed by the 3rd defendant:

The written statement was filed by the 3rd defendant on behalf of the other defendants as well. The defendants state that they have filed their own

statement based on the record files available with them. They have denied the contentions of the plaintiffs and have stated that the plaintiffs should prove their own case with facts and evidences. The plaintiffs Karpagasundaram and Lakshmi have been working in the Government aided schools and have retired. The said couple had Mr.Kasi Viswanathan and Mr.K.Vengadachalam @ Maruthavanan as two sons. Their elder son Kasi Viswanathan has been married and he has died before one and a half years. The said Mr.K.Vengadachalam @ Maruthavanan is unmarried and in the investigation made by the defendants it was known to them that the said Maruthavanan who has left the house before 14 years did not come back and that they are not aware of the fact whether the said Maruthavanan is alive or not. The defendants also state that since the details of the said Mr.K.Vengadachalam @ Maruthavanan are not known the certificate declaring him as dead cannot be granted. Hence they pray for this suit to be dismissed.

3. Issues framed:

1. Whether the plaintiffs are entitled to the relief of declaration of civil death of Mr.K.Vengadachalam @ Maruthavanan as prayed for ?
2. Whether the plaintiffs are entitled for the relief of mandatory injunction as prayed for?
2. To what other relief?

4. The evidence adduced by the Plaintiffs:-

a. **Oral Evidence**

The plaintiffs in order to prove their case has examined the 2nd plaintiff as PW1 and has marked the exhibits A1 to A10 through her. They have also examined one Mrs.Uma as PW2 and no exhibits were marked through her.

b. **Documentary Evidence**

To substantiate their case the plaintiff has marked the following;-

(I) Exhibit A1 is the Aadhar card copy of the 1st plaintiff (compared with original)

(II) Exhibit A2 is the Aadhar card copy of the 2nd plaintiff (compared with original)

(III) Exhibit A3 is the attested copy of the ration card of the plaintiffs compared with original).

(IV) Exhibit A4 is attested copy of the FIR filed in crime number 139/2009 by the Sub-Inspector of Police, Devakottai Town Police Station dated 6/02/2009.

(V) Exhibit A5 is the public notice.

(VI) Exhibit A6 is the legal notice sent by the plaintiff to the defendants dated 13/05/2022.

(VII) Exhibit A7 is acknowledgment card of the 1st defendant for the above said notice dated 17/05/2022.

(VIII) Exhibit A8 is acknowledgment card for the 2nd defendant for the above said notice dated 17/05/2022.

(IX) Exhibit A9 is acknowledgment card for 3rd defendant for the above said notice dated 17/05/2022.

(X) Exhibit A10 is the advertisement in Tamil daily Nallasiriyar Kural.

5. **The evidence adduced by the Defendants:-**

a. **Oral Evidence :** Nil

b. **Documentary Evidence:** Nil

6. **Discussion:-**

a) **Issue No.1:**

1. **Whether the plaintiffs are entitled to the relief of declaration of civil death of Mr.K.Vengadachalam @ Maruthavanan as prayed for ?**

(i). It is the case of the plaintiffs that their youngest son Mr.K.Vengadachalam @ Maruthavanan who is an unmarried M.SC graduate has been missing from the home for more than seven years and his whereabouts were not to be found. Hence the burden of proving the same is on the plaintiffs. Plaintiffs in order to prove their case has examined the 2 witnesses and has marked 10 exhibits. The PW1 who is the 2nd plaintiff in her examination in chief has deposed as to how their youngest son Mr.K.Vengadachalam @ Maruthavanan has left the house on 10/09/2008 and is nowhere to be found since then. She has also deposed as to how police complaints were filed regarding the same and how advertisements and notices were issued. But all of the efforts went in vain. She has also deposed as to how the plaintiffs have applied for the certificate of death of the said Mr.K.Vengadachalam @ Maruthavanan and how the same was denied by the 3rd defendant. Similarly PW2 who is a 3rd party to the suit has deposed as to how she is the wife of the elder son of the plaintiffs and how the elder son of the plaintiffs Mr.Kasi Viswanathan has died on 11/05/2021 due to covid. She has also deposed that when their marriage took place on 08/02/2006 the said Mr.K.Vengadachalam @ Maruthavanan was alive and on 10/01/2008 the said Mr.K.Vengadachalam @ Maruthavanan has went missing. Regarding the same the father-in-law who is the 1st plaintiff has filed a complaint with Devakottai Town Police Station on 06/08/2009. Despite several efforts being taken the said Mr.K.Vengadachalam @ Maruthavanan could not be found.

(ii). Exhibits A1, A2 are the Aadhar Card copies of the plaintiffs. Exhibit A3 is the ration card copy of the plaintiff, on perusal of which it becomes clear that the plaintiffs Karpagasundaram and Lakshmi had two sons named Mr.Kasi Viswanathan and Vengadachalam @ Maruthavanan. On perusal of Exhibit A4, which is the copy of the FIR it becomes clear that the plaintiffs have filed a complaint with Devakottai Town Police Station stating

that their son Mr.K.Vengadachalam @ Maruthavanan has went missing on 10/09/2008. The said complaint was filed on 06/02/2009. On perusal of Exhibit A5 it becomes clear that notices were given regarding the man missing case in crime.no. 139/09 regarding the missing person Mr.K.Vengadachalam @ Maruthavanan. On perusal of exhibit A6 it becomes clear that the plaintiffs have sent a legal notice to the defendants for issuing of death certificate for the above said Mr.K.Vengadachalam @ Maruthavanan as his whereabouts are not known for more than seven years. Exhibits A7 to A9 makes the fact clear that the above said legal notice was received by the defendants. On perusal of exhibit A10, which is a copy of the Tamil Daily New Nallasiriyar Kural it becomes clear that paper publications were issued regarding the missing person Mr.K.Vengadachalam @ Maruthavanan.

(iii). On perusal of all these evidences and documents it becomes clear that the plaintiffs had two sons namely Mr.Kasi Viswanathan and Mr.K.Vengadachalam @ Maruthavanan and that their elder son, Kasi Viswanathan has already died and that their younger son Mr.K.Vengadachalam @ Maruthavanan has been missing since 10/09/2008. It also becomes clear that several initiatives were taken by the plaintiffs to find out the whereabouts of the above said Mr.K.Vengadachalam @ Maruthavanan but all those efforts went in vain. It also becomes clear that it has been more than 17 years since the person has been missing and his own family who would have naturally heard from him, have not heard about him for the past 17 years. Hence, the court hereby concludes that the plaintiffs have discharged the initial burden of proof imposed on them. On the other hand, the defendants did not provide any evidence or documents to prove their case nor did they elucidate anything contravening to the case of the plaintiffs by cross examination of the plaintiffs side witnesses. Also since the suit being one for declaration of civil death the only relevant factor here is to

prove the fact that the person sought to be declared as deceased has been missing for more than seven years and that nobody has heard from the person who is to be declared as such. It is a well settled principle that as per Section 108 Indian Evidence Act, 1872 when a person has not been heard of for seven years by those who would naturally have heard about the person if he had been alive the burdens of proving that the concerned person is alive is on the person who states the same.

(iv). In the case at hand, since the said Mr.K.Vengadachalam@Maruthavanan has went missing in the year of 2008 and it has been nearly 17 years since the person has went missing and his family members have not heard about his whereabouts, it shall very well be presumed under Section 108 Indian Evidence Act, 1872 that the person is dead and the burden of proving that he is alive shifts to the person who asserts the fact that he is alive. At this juncture, it is important to take note of the judgment of the Honorable Supreme Court of India in the case of **LIC of India vs Anuradha (2004) 10 SCC 131. The Hon'ble Apex Court has held as follows:-**

".....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 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".

In the case at hand, the defendants did not provide any relevant evidence to prove that the said Mr.K.Vengadachalam@Maruthavanan is alive. Hence, on perusal of the facts and evidences, it becomes clear that the plaintiffs have discharged the burden of proof imposed on them. Thus, the court hereby concludes that the plaintiffs are entitled to the reliefs claimed for. Hence, this issue is answered in affirmative.

b) Issue No.2:

2. Whether the plaintiffs are entitled for the relief of mandatory injunction as prayed for?

In view of the discussion made above it has become clear that the whereabouts of the said Mr.Vengatachalam @ Maruthavanan was not known for more than 17 years. Hence, the person has been presumed to be civilly dead. The plaintiff in the present case has asked for the relief of mandatory injunction directing the authorities concerned to issue the death certificate for the deceased person. It is to be made clear that it is the duty of the authorities concerned who are defendants in the case at hand to abide by the order of the court and separate mandatory injunction for the same is not necessary. The court cannot compel the authorities concerned to do their duty which they are bound to do so. Hence a mandatory injunction compelling the defendants to do their duty is not necessary as it is their duty to abide by the order of the court. Hence, the court does not find any need to grant this relief. Hence, this issue is answered in negative.

c) Issue No.3:

3. To what other relief?

Apart from the relief stated above the parties are not entitled to any other relief. Hence the issue is answered accordingly.

7. Decision:

In the end, the suit is partly decreed and the said Mr.K.Vengadachalam@Maruthavanan who is missing from 10/09/2008 is presumed to be civilly dead. No order as to cost.

This judgment was dictated by me, typed by the Steno typist, corrected by me and pronounced by me in the open Court on 24th day of March 2026.

sd/-Tmt.R.Premi

**District Munsif,
Devakottai.**

Plaintiff side witness:

PW1 - M.Lakshmi

PW2 – Mrs.Uma

Plaintiffs side witness:

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(X) Exhibit A10 is the advertisement in Tamil daily Nallasiriyar Kural.

Defendants side witness: Nil

Defendants side documents: Nil

sd/-Tmt.R.Premi

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Devakottai.**

