

**IN THE COURT OF DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
UTHUKULI**

Present : Thiru. B. Dharaneether, B.A., LL.M.,
District Munsif cum Judicial Magistrate,
Uthukuli.

Dated : Monday, the 30th day of March 2026

O.S. No.30 of 2023
(CNR No: : TNTI23-002498-2023)

1. Tmt. Ponmani
 2. Tmt. Abirami
 3. Thiru. Balaji Pradap
- Plaintiffs

/ Vs /

1. The District Collector,
Tiruppur District.
 2. The Tahsildar,
Uthukuli Taluk, Tiruppur District.
- Defendants

This suit having come up for final hearing before me in the presence of Thiru. A.Amarnath, B.A., B.L., learned counsel for the plaintiffs and Thiru. G.Tamil Garkey., learned Government Pleader appearing for the defendants, and upon perusing the plaint, written statement, evidence adduced and other materials available on record, and having stood over for consideration till this day, this Court delivers the following:

J U D G M E N T

The plaintiffs, namely Ponmani, Abirami and Balaji Pradap, have filed this suit against the defendants, namely the District Collector, Tiruppur District and the Tahsildar, Uthukuli Taluk, seeking a declaration that one Somasundaram,

husband of the first plaintiff and father of plaintiffs 2 and 3, has not been heard of for more than seven years and is therefore presumed to be dead under Section 108 of the Indian Evidence Act, 1872, and consequently to declare that the plaintiffs are his legal heirs entitled to succeed to his estate.

The case of the plaintiffs, in brief, is that the first plaintiff married the said Somasundaram in or about the year 1985 according to Hindu rites and customs, and out of the said wedlock, plaintiffs 2 and 3 were born. It is their further case that the said Somasundaram has been missing for a long period and has not been heard of by persons who would naturally have heard of him, thereby giving rise to a legal presumption of death.

SUMMARY OF PLAINT

According to the plaint, the first plaintiff Ponmani married one Somasundaram in or about the year 1985 in accordance with Hindu rites and customs, and thereafter they lived together as husband and wife at Vijayamangalam. Out of the said lawful wedlock, the plaintiffs 2 and 3, namely Abirami and Balaji Pradap, were born and brought up in the family.

It is the further case of the plaintiffs that the said Somasundaram, who was the head of the family, left the matrimonial home several years ago and thereafter his whereabouts have not been known. Despite diligent efforts taken by the plaintiffs and relatives, including enquiries made in the native place and surrounding areas, no information could be gathered regarding his existence or whereabouts. According to them, from the year 2006 onwards, he has not been

seen or heard of by any person who would naturally have heard of him if he were alive.

The plaintiffs would further aver that due to the prolonged absence of the said Somasundaram since 25.02.2006, a legal presumption arises under Section 108 of the Indian Evidence Act that he is dead. However, in the absence of an official declaration to that effect, the plaintiffs are unable to deal with his properties or assert their rights as his legal heirs before the revenue authorities.

It is also stated that the plaintiffs approached the concerned authorities seeking necessary entries and recognition of their status as legal heirs, but the same could not be effected in the absence of a competent Civil Court declaration regarding the civil death of the said Somasundaram. Hence, the plaintiffs have been constrained to file the present suit seeking a declaration that Somasundaram is presumed dead and that the plaintiffs are his legal heirs entitled to succeed to his estate.

On the above averments, the plaintiffs have prayed for a decree declaring that Somasundaram has not been heard of for more than seven years and is presumed dead under law, and for a consequential declaration that the plaintiffs are his legal heirs, together with such other reliefs as this Court deems fit and proper in the circumstances of the case.

SUMMARY OF DEFENDANT'S CASE

The defendants, namely the District Collector, Tiruppur District and the Tahsildar, Uthukuli Taluk, have entered appearance through the learned

Government Pleader and resisted the suit. The defendants have not seriously disputed the relationship between the plaintiffs and the said Somasundaram. However, they have contended that the relief sought by the plaintiffs cannot be granted as a matter of course without strict proof of the requirements contemplated under Section 108 of the Indian Evidence Act.

It is the specific contention of the defendants that the burden lies entirely upon the plaintiffs to establish that Somasundaram has not been heard of for a continuous period of more than seven years by persons who would naturally have heard of him if he had been alive. In the absence of such satisfactory and cogent evidence, no presumption of death can be drawn.

The defendants would further contend that mere absence or non-availability of a person for several years is not sufficient to presume death, unless it is clearly proved that there was no communication or information about the said person during the entire statutory period. They would also submit that the plaintiffs must establish the date or approximate period from which such absence commenced and that all reasonable steps were taken to trace the missing person.

It is also contended that the relief of declaration sought by the plaintiffs has serious civil consequences, particularly in respect of succession to property and revenue records, and therefore such declaration can be granted only upon strict proof and not on presumptions or insufficient evidence.

On the above grounds, the defendants have prayed that the suit may be dismissed unless the plaintiffs strictly prove the ingredients required for invoking the presumption under Section 108 of the Indian Evidence Act.

ISSUES

Based on the pleadings of both parties, and upon perusal of the plaint, written statement and other materials available on record, the following issues were framed by this Court for determination:

- 1). Whether the plaintiffs prove that Somasundaram has not been seen or heard of by persons who would naturally have heard of him for more than seven years and is therefore presumed dead under Section 108 of the Indian Evidence Act, 1872?
- 2). If Issue No.1 is answered in the affirmative, whether the plaintiffs are the sole legal heirs and successors in title and interest to the said Somasundaram and entitled to a declaration to that effect?
- 3). To what other reliefs, if any, are the plaintiffs entitled?

DISCUSSION AND FINDINGS

For the sake of convenience and to avoid repetition, all the issues are taken up together, since they are interlinked and revolve around the core question as to whether the plaintiffs have established the presumption of civil death of Somasundaram under Section 108 of the Indian Evidence Act, 1872, and their consequential entitlement as his legal heirs.

On the side of the plaintiffs, the first plaintiff Ponmani was examined as P.W.1 and the third plaintiff Balaji Pradap was examined as P.W.2. An independent witness, namely Karuppusamy, was examined as P.W.3. Relevant documents were marked on the side of the plaintiffs. The defendants have not chosen to let in any oral or documentary evidence.

The case of the plaintiffs is that Somasundaram, husband of the first plaintiff and father of plaintiffs 2 and 3, left the matrimonial home on 25.02.2006 from Vijayamangalam without informing the family members and did not return thereafter. It is further their consistent case that he used to frequently visit Sathuragiri Temple and on the said date also he was presumed to have gone out for that purpose, but thereafter he never returned and has not been heard of.

P.W.1, being the wife of the missing person, has categorically deposed about the disappearance of her husband on 25.02.2006 and the fact that from that date onwards, there has been no communication whatsoever from him. She has further stated that despite enquiries made among relatives and persons known to the family, no information regarding his whereabouts could be gathered. Nothing material has been elicited in her cross-examination to discredit her testimony. The Ex.A6 to A10 marked by PW1 clearly establishes their family lineage.

P.W.2, the son of the missing person, has corroborated the testimony of P.W.1 in material particulars. He has also spoken about the disappearance of his father, the absence of any communication thereafter, and the difficulties faced by

the family on account of such prolonged absence. His evidence reinforces the version of P.W.1 and there is no material contradiction brought out in his cross-examination.

P.W.3, an independent witness aged about 72 years and residing in the same locality, has deposed that he is well acquainted with the family of the plaintiffs from earlier times and that Somasundaram has not been seen for a long number of years. He has further stated that he has not heard any information about Somasundaram's whereabouts during this long period. Though he is not a family member, his testimony assumes significance as that of a person belonging to the same locality and social circle, who would naturally have heard about the said person if he had been alive. His evidence lends independent corroboration to the case of the plaintiffs.

At this juncture, it is necessary to consider the scope of Section 108 of the Indian Evidence Act. The said provision enables the Court to presume that a person is dead if 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 initial burden lies upon the person who asserts such presumption to establish the fact of non-hearing for the statutory period. Once such foundational facts are established, the burden shifts to the person who asserts that the individual is alive.

In the present case, the plaintiffs have clearly stated and deposed that Somasundaram has not been heard of from 25.02.2006 onwards. The oral

evidence of P.W.1 and P.W.2, who are the closest family members and the most natural persons to have heard of him, remains consistent and unshaken. Their testimony is further corroborated by the evidence of P.W.3, an independent witness from the locality.

It is true that the plaintiffs have not produced documentary evidence such as a police complaint or missing person report immediately after the disappearance. However, absence of such documentary evidence is not always fatal, particularly in cases arising out of rural background and family circumstances, where such formal steps are not invariably taken. The law does not mandate production of documentary proof, but requires satisfactory evidence of non-hearing for seven years.

In this case, the evidence on record clearly establishes that for a period far exceeding seven years from 25.02.2006, Somasundaram has not been heard of by his wife, children, or persons in the locality. The long lapse of time, coupled with consistent oral evidence, satisfies the requirement of Section 108.

Significantly, the defendants have not adduced any evidence to show that Somasundaram is alive or that he was seen or heard of during the relevant period. Once the plaintiffs have discharged the initial burden, the onus shifts to the defendants to prove the contrary. The failure of the defendants to rebut the presumption entitles the Court to draw an adverse inference against them.

On a cumulative appreciation of the oral evidence of P.W.1 to P.W.3 and the surrounding circumstances, this Court is satisfied that the plaintiffs have

established that Somasundaram has not been heard of for more than seven years by persons who would naturally have heard of him if he had been alive. Therefore, the presumption under Section 108 of the Indian Evidence Act is attracted.

Consequently, this Court holds that Somasundaram shall be presumed to be dead. Further, the plaintiffs, being his wife and children, are his legal heirs and are entitled to the declaration as prayed for. The plaintiffs are required to bear their own cost of litigation. Hence, no additional reliefs granted.

Accordingly, Issue Nos. 1 and 2 are answered in favour of the plaintiffs. Issue No.3 is answered accordingly.

In the result, this suit is decreed as follows:

1. It is hereby declared that Somasundaram, husband of the first plaintiff and father of plaintiffs 2 and 3, has not been heard of for more than seven years and is presumed to be dead under Section 108 of the Indian Evidence Act, 1872.
2. It is further declared that the plaintiffs are the legal heirs of the said Somasundaram and are entitled to succeed to his estate.
3. In the circumstances of the case, there shall be no order as to costs.
4. Decree to be drawn accordingly.

Directly typed by me in my official laptop and pronounced in open Court on this 30th day of March, 2026.

**Thiru. B. Dharaneether, B.A., LL.M.,
District Munsif Cum Judicial Magistrate,
Uthukuli.**

APPENDIX

Plaintiffs' Side Witnesses:

Witness No.	Name
P.W.1	Tmt. Ponmani
P.W.2	Thiru. Balaji Pradap
P.W.3	Thiru. Karuppusamy

Plaintiffs' Side Exhibits:

S.No	Exhibit Mark	Description
1	Ex.A1	Report of VAO dated 29.09.2023
2	Ex.A2	Complaint give to SP dated 24.03.2017
3	Ex.A3	RTI petition dated 24.08.2018
4	Ex.A4	Acknowledgment dated 27.08.2018 for receipt of Ex.A3 petition
5	Ex.A5	Copy of Sale deed No.250/1993 dated 19.03.1993
6	Ex.A6	Family card of 1 st plaintiff
7	Ex.A7	Aadhaar card of 1st plaintiff
8	Ex.A8	Aadhaar card of 2nd plaintiff
9	Ex.A9	Aadhaar card of 3rd plaintiff
10	Ex.A10	Marriage invitation of 1st plaintiff and Somasundaram

Defendants' Side Witnesses: Nil

Defendants' Side Exhibits: Nil

**District Munsif Cum Judicial Magistrate,
Uthukuli.**