

**THE COURT OF DISTRICT MUNSIF, GUDIYATTAM,**  
**VELLORE DISTRICT.**

**Present: Tr.K.Karthick Asath, B.A.,B.L.,(Hons),LLM.,**  
District Munsif,  
Gudiyattam.

Thursday, this the 16<sup>th</sup> day of April 2026

**O.S.No.79/2022**  
**(CNR.No.TNVL10-000075-2022)**

1. Gomathi @ M.Shanass
2. S. Chitra

Rep.by her guardian and grandmother Govindhammal

(Amended as per Order in IA.04/2025, Dt: 13.03.2025)

.... Plaintiffs

// Versus //

1. The state of Tamilnadu,  
Rep.by its District Collector of Vellore District,  
Collectorate Office, Sathuvachari,  
Vellore – 9.
2. The Tahsildar,  
Taluk Office,  
Gudiyattam Taluk.

.... Defendants

This suit came up before this court on 08.04.2026 for final hearing in the presence of Thiru.K.Moganaraju, Advocate for the plaintiffs and Thiru.K.Loganathan, Advocate for the defendants and upon perusing the case records and having stood over for consideration till this day, this court delivered the following.

**JUDGMENT**

Suit filed Under Order 7, Rule 1 & 2 and Section 26 of Code of Civil Procedure to declare the said Sampath, S/o.Kannan is not heard for the past 17 years and he deemed to be civilly dead and declare the plaintiffs are alone legal heirs of the said Sampath and directing the 2<sup>nd</sup> defendant to issue legal heirship certificate of the said Sampath accordingly by way of mandatory injunction and for cost.

**1. The Brief averments of the Amended plaint :-**

The plaintiffs stating that their father Sampath missing from 2005 even after all efforts the Sampath is not traceable. The Sampath wife Rani also died on 05.09.2013. Hence the plaintiffs alone legalheirs of the said Sampath. The SAmopath was not heard for past 17 years hence deemed to be civil death. Whenever the plaintiffs approached the 2<sup>nd</sup> defendant to issue legal heir certificate they orally proved that to approach court of law on that the plaintiffs filed the present suit to declare the Sampath not heard for the past 17 years and deemed to be civilly dead and declare the plaintiffs alone are the legalheirs of said Sampath and directing the 2<sup>nd</sup> defendant to issue legal heirship certificate by way of mandatory injunction. For considering the present issue the plaintiffs are entitled to prayed for declaration to declare his father Sampath is civil dead. On considering the prayer of declaring the status of legal heir the plaintiffs not filed any application before the 2<sup>nd</sup> defendant and it was not rejected by passing any order. Even though the plaintiffs stated that the 2<sup>nd</sup> defendant orally told to approach this court, then the burden upon the plaintiffs to

prove their plaint pleadings. The defendants failed to prove that how the suit is not maintainable. Hence this suit filed by the plaintiffs is maintainable.

**2. The Brief Averments of Written Statement filed by the 1<sup>st</sup> defendant:- (Adopted by the 2<sup>nd</sup> defendant)**

The defendant submits that after receipt of summons from this Hon'ble court this defendant enquired about the missing of Sampath, S/o.Kannan through their Sub-ordinates namely Village Administrative Officer and came to know that the said Sambath was missing before 17 years and and he is where about not known to the Village peoples including the plaintiffs. Further the wife of Sambath namely Rani also died on 9 years bach. The said Sambath has two daughters namely Chitra and Gomathi. Chitra was a mentally disabled person, infact this defendant could not receive the application regarding legal heir certificate without the death certificate of concern person. The said Sambath was missing person and he is not died as per averments made in the plaint. Hence the defendant could not receive and issue legal certificate of missing person by deemed to be he is civil dead without order from the court of law. There is no personal enmity with the plaintiffs by this defendant. Hence the present suit as such filed by the plaintiffs is not maintainable under law.

**3. Issues:-**

On the basis of plaint and written statement filed by both parties the following issues were framed on 30.11.2022.

- i) Whether the suit is maintainable ?
- ii) Whether the Sampath S/o.Kannan truly unheard of for the past 17 years ?
- iii) Whether the plaintiffs are alone legalheirs of the said Sampath ?
- iv) Whether the plaintiffs are entitled to reliefs as prayed for ?
- v) To what other relief ?

#### **4. Evidence :-**

On plaintiffs side the 1<sup>st</sup> plaintiff Gomathi examined herself as PW1 and marked Ex.A1 to Ex.A5 and one Rathinam examined as PW2 and one Chinnaraj examined as PW3 and one Subramani examined as PW4. On defendants side their counsel endorsed no evidence on their side.

#### **5. Arguments:-**

##### **5.1. Plaintiffs side Argument:-**

The plaintiffs counsel argued that the said Sampath is father of plaintiffs. The 2<sup>nd</sup> plaintiff is unsound person under the care of her grandmother Govindammal. The Sampath missing from 2005 and the same is admitted by the defendants. The Sampath wife Rani died on 05.09.2013 and his parents are predeceased him hence the plaintiffs alone are the legalheirs of said Sampath. The VAO also given certificate as Ex.A3. The plaintiffs prove their case by examining PW1 to PW4 and marked Ex.A1 to Ex.A5. Hence prayed to decreed the suit.

**5.2. Defendants side Argument:-**

The defendants counsel argued that the plaintiffs failed to prove the missing of said Sampath from 2005 and the plaintiffs failed to plead and prove that they alone are the legalheirs of said Sampath hence the suit should be dismissed.

**6. Discussion:-**

This court after considering the argument of both sides and perusing the pertinent records this court proceed to delineate the findings based on the following discussion.

**Issue No.1:-** Whether the suit is maintainable ?

The plaintiffs filed this case stating that their father Sampath missing from 2005 even after all efforts the Sampath is not traceable. The Sampath wife Rani also died on 05.09.2013. Hence the plaintiffs alone the legalheirs of the said Sampath. The Sampath was not heard for past 17 years hence deemed to be civil death. Whenever the plaintiffs approached the 2<sup>nd</sup> defendant to issue legal heir certificate they orally told that to approach court of law on that the plaintiffs filed the present suit to declare the Sampath not heard for the past 17 years and deemed to be civilly dead and declare the plaintiffs alone are the legalheirs of said Sampath and directing the 2<sup>nd</sup> defendant to issue legal heirship certificate by way of mandatory injunction. For considering the present issue the plaintiffs are entitled to prayed for declaration to declare his father Sampath is civil dead. On considering the prayer of declaring the status of legal heir the plaintiffs not

filed any application before the 2<sup>nd</sup> defendant and it was not rejected by passing any order. Even though the plaintiffs stated that the 2<sup>nd</sup> defendant orally told to approach this court, then the burden upon the plaintiffs to prove their plaint pleadings. The defendants also failed to prove that how the suit is not maintainable. Hence this suit filed by the plaintiffs is maintainable.

**7. Issue No.2:-** Whether the Sampath S/o.Kannan truly unheard of for the past 17 years ?

**7.1.** The case of the plaintiffs is that their father Sampath missing from 2005 to till today. They taken all the efforts to find him but ended in vain and the said Sampath is not traceable on that they filed the suit to declare that he deemed to be civil dead. The defendants filed written statement stating that while they enquiry through Village Administrative Officer then they came to know about that the said Sampath was missing before 17 years and his where about not known to the village people including the plaintiffs. On considering the pleadings of defendants they themselves admitted that the said Sampath was missing before 17 years.

**7.2.** For proving the plaintiffs case the 1<sup>st</sup> plaintiff examined as PW1 and marked Ex.A1 to Ex.A5 documents. The Ex.A1 and Ex.A2 are the copies of registered will and sale deed. The Ex.A3 is the certificate issued by the VAO on 21.04.2022 by stating that on enquiry he found that Sampath S/o.Kannan is missing from the year 2005 and not yet traced out. The Ex.A4 is the xerox copy of plaintiffs Aadhar card. The Ex.A5 is the

death certificate of plaintiffs mother and wife of missing Sampath namely Rani. On perusing the Ex.A5 it is proved that she died on 05.09.2013.

**7.3.** The PW1 in her proof affidavit she stated as per the plaint pleadings and she was cross examined by the defendants but no contrary evidence regarding the missing of Sampath is revealed by them. The plaintiffs also examined one Rathinam as PW2. He is non other than elder brother of said Sampath. In his proof affidavit he stated that the said Sampath missing before 19 years and he is not traced out and the said information once again confirmed at the time of cross examination. On plaintiffs side they also examined third party witnesses namely one Chinnaraj as PW3 and one Subramani as PW4. The PW3 in his cross examination deposed that the said Sampath missing from his house on 2005. The PW4 in his chief examination deposed that the said Sampath missing for the past 19 years and no contrary evidence regarding the missing of said Sampath is extracted at the time of cross examination.

**7.4.** Hence, this Court carefully gone through the Sections. While the suit filed before the enactment of Bharathiya Sakshya Abhiniyam, 2023 according to the Section 108 of the Indian Evidence Act burden proving that person is alive who has not been heard for 7 years, provided that when the question is whether a man is alive or, dead, it is the burden of proof lies upon the person who affirms it and if the person claimed to be alive naturally, it is the burden of proving the same shifted the person who denies it. The presumption under section 108 of Indian Evidence Act can be drawn

only if the person has not been heard of since last 7 years or more before the date of filing of the suit is established by the plaintiff through chief evidence and oral evidence of PW1 to PW4. Further, defendants 1 and 2 have not disputed the missing of the Sampath, S/o.Kannan. On considering the above discussion the plaintiffs pleaded and proved that the said Sampath, S/o.Kannan is missing from the year 2005 that is nearly 21 years from today hence as per the presumption of law the said Sampath is presumed to be civil dead. Accordingly this issue is decided.

**8. Issue No.3:-** Whether the plaintiffs are alone legalheirs of the said Sampath ?

**8.1.** The plaintiffs also prayed to declare that they alone are the legalheirs of said Sampath and directed to issue legal heirship certificate. While the plaintiffs claiming that they alone are the legal heirs of said Sampath then burden upon the plaintiffs to prove the birth and to prove that no other legal heirs are available. On perusing the plaint pleadings the plaintiffs failed to plead about the status of Sampath parents. The plaintiffs not filed any document to prove the death of Sampaths parents. At the time of cross examination of PW1 she stated that the details of Sampaths parents mentioned in the pleadings. But in reality she failed to disclose the same in the plaint pleadings. Without specific pleadings the oral evidence given by the third party witnesses are not strong enough to granting the declaration relief.

**8.2.** It is further submit the plaintiffs failed to file any document to prove that the Sampath married the Rani and for them only the plaintiffs are born. Without furnishing the necessary details in the pleadings and without filing those documents the plaintiffs cannot claim for declaration. On perusing the evidence of PW1 she herself stated that she converted into Muslim religion in the name of Shanas then burden upon her to prove that she is the one named as Gomathi born to Sampath is converted into Muslim and named as Shanas. But the PW1 failed to file documents to prove the same.

**8.3.** It is further submit that as per procedure the plaintiffs has to apply for legal heirship certificate before the 2<sup>nd</sup> defendant if the said application is rejected by the 2<sup>nd</sup> defendant then only the plaintiffs can approach the civil court for legal remedy. But in this case the plaintiffs not applied for legal heirs certificate and the same was not rejected by the 2<sup>nd</sup> defendant hence there is no cause of action for claiming declaration. The plaintiffs cannot bypass the procedures. Because the 2<sup>nd</sup> defendant is the authorized person for granting legal heirship certificate after conducting proper enquiry.

**8.4.** On considering the above discussion the plaintiffs failed to plead and prove the status of Sampaths parents and failed to produce necessary documents to prove the marriage between Sampath and Rani and birth of plaintiffs. The plaintiffs also approached this court directly without filing necessary application before the 2<sup>nd</sup> defendant is consider as abuse of process of law. Hence for deciding the issue it is decided that the plaintiffs

are not alone legal heirs of the said Sampath. Accordingly this issue is decided.

**9. Issue No.4:-** Whether the plaintiffs are entitled to reliefs as prayed for ?

As discussed and decided the Issue No.2 infavour of the plaintiffs by declaring the Sampath S/o.Kannan is presumed to be civil death on that the plaintiffs entitled for the declaration that the said Sampath, S/o.Kannan is deemed to be civilly dead. Since the issue No.3 is decided against the plaintiffs and decided that they are not alone the legal heirs of said Sampath then the plaintiffs are not entitled for declaration regarding the legal heirs and mandatory injunction. Accordingly this issue is decided.

**10. Issue No.5:-** To what other relief ?

While the issue No.2 is decided infavour of the plaintiffs on considering the nature of the suit and claims this court thinks the plaintiffs are not entitled for any other reliefs.

**11. Result :-**

As a result this suit is partly decreed without cost, on that

i) The missing Sampath, S/o.Kannan is not heard for the past 17 years on the date of the suit be and hereby presumed and declared Sampath, S/o.Kannan as Civilly dead.

ii) The suit regarding to declare the plaintiffs are alone legalheirs of said Sampath and for mandatory injunction to direct the 2<sup>nd</sup> defendant to issue the legal heirship certificate of the said Sampath is dismissed without cost.

Dictated to Steno typist directly, typed by him in the desktop, corrected and pronounced by me in the open Court on this the 16<sup>th</sup> day of April 2026.

Sd/- K.Karthick Asath,  
**District Munsif,**  
**Gudiyattam.**

**Plaintiffs side Witnesses :-**

|     |           |
|-----|-----------|
| PW1 | Komathi   |
| PW2 | Rathinam  |
| PW3 | Chinnaraj |
| PW4 | Subramani |

**Plaintiffs side Exhibits :-**

|       |            |  |
|-------|------------|--|
| Ex.A1 | 14.12.1979 | Xerox copy of the registered Will deed<br>(Doc.No.4944/1979) |
| Ex.A2 | 26.07.1985 | Xerox copy of the registered sale deed<br>(Doc.No.3708/1985) |
| Ex.A3 | 21.04.2022 | VAO Certificate  |
| Ex.A4 | -          | Xerox copy of the Aadhar cards                               |
| Ex.A5 | -          | Xerox copy of the Death certificate of Rani                  |

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**Defendants side witnesses:-** Nil

**Defendants side Exhibits :-** Nil

Sd/- K.Karthick Asath,  
**District Munsif,  
Gudiyattam.**