

IN THE COURT OF GARIMA YADAV, ADDITIONAL CIVIL
JUDGE (SENIOR DIVISION), HATHIN

HRPLB00006152025



CNR No. : HRPLB0-000615-2025
CIS Number : CS-482-2025
Case No. : 502/05.09.2025
Date of Decision : 24.07.2026

Smt. Sushila wife of Udayvir son of Sh. Deviram, 2- Abhishek son of Sh. Udayvir, 3- Priyanka, 4- Anshu daughters of Sh. Deviram, all resident of village Bhanguri, Tehsil Hathin, Distt. Palwal.

-----Plaintiffs

Vs

1. General Public

-----Defendant

2. Udayvir (disappear as well as invisible so, presumed to be dead) S/o Sh. Devi Ram, R/o Village Bhanguri, Tehsil Hathin, Distt. Palwal.

... Proforma as well as formal defendant

SUIT FOR DECLARATION.

Present: Sh. Mukesh Kumar, Advocate for the plaintiff
Defendants exparte vod 16.12.2025.

JUDGMENT

1. Plaintiff has filed the present suit for declaration to the effect that defendant no. 2 has died civil death and plaintiffs being the only legal heirs of defendant no. 2 (Udayvir) are owner in possession of all movable/immovable property stand in the name of said Udayvir throughout India and the mutation

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of inheritance is liable to be entered and sanctioned in favour of the plaintiffs.

2. Brief facts of the case as stated in plaint are that the husband of plaintiff no. 1 and father of plaintiffs no. 2 to 4 namely Sh. Udayvir (performa defendant no. 2) was suffering from mental sickness and in spite of best efforts of treatment by plaintiffs and his family members he could not be cured. On 15-10-2016 Udayvir left the village and since then he has not been seen by anyone, anywhere and ultimately disappeared. All the family members & relatives, villagers tried their level best but he could not be searched. Therefore Udayvir is presumed to be no more after the lapse of more than Seven Years in the eyes of law. The family members of the Udayvir approached the local police on dated 19-10-2016 and gave application to report the matter. But local police did not register any FIR or D.D. Plaintiff no. 1 being wife and plaintiffs no. 2 to 4 being the real children of the said Udayvir are the only legal heirs of performa defendant no. 2 and the performa defendant no. 2 left the village more than 09 years ago and since then no one knows that the performa defendant no. 2 is dead or alive and since then plaintiffs are cultivating his land as owners in possession of the same. Plaintiffs went to the office of the Halqa Patwari and asked to enter and sanction the mutation of inheritance. But the revenue officials have refused to enter and sanction the mutation in favour of plaintiffs without the orders of any competent court of law regarding the civil death of defendant no. 2. As per provisions of law when a person is missing for more than 7 years and has not been seen or heard by any person and his whereabouts are not known to any person including his family members and relative. Such person is presumed to have civil death and he should be declared

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as dead in the eyes of law. Name of plaintiffs are liable to be incorporated in the revenue records as owner in possession of the suit land. Plaintiffs requested the revenue authorities to enter and sanction the mutation of civil death of defendant no. 2 in the name of plaintiffs regarding the land detailed in para no. 1 of the plaint. But they declined the request of plaintiffs and stated that only civil court is competent to do so. Hence the present suit.

3. Notice of this suit was given to the defendants but defendants failed to appear before the Court despite services. Hence, defendants were proceeded against ex parte on 16.12.2025.

4. To prove his ex parte case, plaintiff examined only three witnesses.

5. Plaintiff Smt. Sushila appeared before the court as PW-1. In her evidence she tendered her affidavit Ex. PW1/A. In her affidavit she reiterated the contents of plaint which are not reproduced here for sake of brevity.

6. PW-2 Abhishek tendered his affidavit Ex. PW2/A in his evidence. He supported the version of plaintiff.

7. PW-3 Parveen Kumar tendered his affidavit Ex. PW3/A in his evidence. In his affidavit he reaffirmed the case of plaintiff.

8. Beside oral evidence, plaintiff has placed reliance upon following documents: -

Ex. P-1	Complaint given to police
Ex. P-2	Ration card
Ex. P-3	Copy of Aadhar Card of Udayvir
Ex. P-4	Copy of Aadhar Card of Sushila
Ex. P-5	Copy of Aadhar Card of Priyanka
Ex. P-6	Copy of Aadhar Card of Anshu Sehrawat
Ex. P-7	Copy of Aadhar Card of Abhishek

9. Ex parte evidence was closed by learned counsel for the plaintiffs

vide his separately recorded statement dated 10.02.2026.

10. I have heard the learned counsel for the plaintiffs and perused the case file carefully. Present suit is filed by the plaintiffs against the General Public praying for a decree of declaration of civil death of Udayvir and plaintiffs are the legal heirs.

Section 108 of the Indian Evidence Act provides that :

When the question is whether a man is alive or dead and 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 burden of proving that he is alive is shifted to the person who affirms it.

Sections 107 and 108 of the Evidence Act must be read together because the later is only proviso to the rule contained in the former and both constitute one rule when so read together. If a person is not heard of for seven years, the burden is on the person who claims that he is alive. Section 108 of Evidence Act applies where death of a person is in issue and not in all the situation. Declaration of death would only be considered for the civil rights only. If a person has not been heard of for seven years, there is a presumption of law that he is dead under section 108 and the burden of proving that he is alive is shifted to the other side.

11. Plaintiffs have stepped into the witness box and has also examined Parveen Kumar, Sarpanch of Gram Panchayat Bhanguri as PW2 to prove that Udayvir had not been heard since last 9 years and prior to the institution of the suit by the inhabitants of the locality and her family members, who would have naturally heard of her if he had been alive. There is none to contest plaintiff's

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case that Udayvir is alive.

12. Oral as well as documentary evidence clearly reflects that Udayvir is missing since dated 19.10.2016. In this regard application was given to local police to search the missing persons Udayvir. This fact is brought on record by the plaintiffs by adducing cogent and convincing evidence, but no-one came forward to object the relief of the plaintiffs. Therefore, in the considered view of this Court, it is a fit case to declare civil death of Udayvir. Evidence led on record goes unrebutted and unchallenged. Therefore, this Court left with no alternative rather to believe version of the plaintiffs as true.

13. As a sequel to findings, suit of the plaintiffs are hereby ex-parte decreed with no order as to cost. Accordingly, a decree for declaration to the effect that the defendant no. 2 had civil death and the plaintiffs are the legal heirs of defendant no. 2 in accordance with law is passed in favour of plaintiffs. However it is clarified that any right, title or interest of the third party arising out of property shall not be effected by this decision. Counsel fee be calculated as per table given in High Court Rules & Orders. Summoned files, if any, be detached and sent to the quarter concerned. Memo of cost be prepared accordingly. File be consigned to the record room after due compliance.

Announced in open Court. (GARIMA YADAV),
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Note: This judgment contains five pages and each page has been checked and signed by me.

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Suman Stenographer

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