

High Court Form No.-(J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT
BEFORE THE COURT OF THE MUNSIFF,
Margherita, Tinsukia

Present: *Sukanya Gogoi, A.J.S*

Friday, the 27th day of November, 2020

Title Suit No. 05 of 2018

M. Tata Rao Plaintiffs

-versus-

The State and Ors Defendants

This suit coming for final hearing on 24.2.2020 in presence of:

Mr. T.S Mukherjee

Advocate for the Plaintiffs

Asst. Public Prosecutor for the State

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

JUDGMENT

- 1.** The instant suit arises out of a petition filed by the plaintiff, M. Tata Rao who has prayed for a declaration as to the fact that, Shri. M. Dalliaya, who has not been heard of for more than seven years, is dead. He has brought the instant suit against the State of Assam, represented by the Collector of the Tinsukia District who has been impleaded as the Defendant and Smti. M. Santama, Sri. N. Nagbhusan, Sri N. Mohan Rao and Smti. D. Bharti as Pro-forma Defendants.
- 2.** Through his petition, the plaintiff states that his father, M. Dallaiya, was an employee of the North-Eastern Coalfields, Coal India Limited under Ledo Colliery. In support of his claim, he has filed a copy of the Identity Card issued by the North-Eastern Coalfields, Coal India Limited, Margherita as document Exhibit number 1. He further states that his father was a patient of epilepsy and has been untraceable since 5 June, 1999. He goes on to clarify that his mother had informed the Officer in Charge of Ledo Police Outpost under Margherita Police Station about the matter through an ejahar filed on 9 June, 1999 but, all possible attempts made to trace out the father of the plaintiff proved unsuccessful. He has added a copy of the ejahar dated 9.6.1999 as document exhibit number 2. He goes on to add that the Ledo police made a General Diary entry on the information regarding the missing father of the plaintiff vide GD entry number 414 dated 9.12.2002 and also issued a certificate with reference to the said GD entry on 19.12.2002, 20.12.2002 and 8.8.2007. Document exhibit number 3 and 4 are the copies of the certificate dated 19.12.2002 and 8.8.2007 issued by the Officer in Charge of Ledo police Outpost. He narrates that on 7.1.2007, the plaintiff approached the Registrar of Birth and Death, Ketetong, Margherita for the first time and again on 20.10.2011 and for the last time on 21.5.2015 for the issuance of a death certificate of M. Dallaiya but his request was flatly denied in the absence of a Court order. Accordingly, the plaintiff issued a notice to the Deputy Commissioner, Tinsukia vide legal notice dated 17.7.2017 under section 80, CPC requesting a declaration to the effect that the plaintiff's father, Pradip Kumar Pradhan, is dead and to direct the Registrar of death, Margherita to issue a death certificate in pursuance of the same. However, the same

was never issued. In support, the plaintiff has filed a copy of the notice under section 80, CPC and a postal receipt dated 20.7.2017 as document exhibit number 5 and 6 respectively. Finding no other alternative, the plaintiff approached this Court for relief praying for a declaration that Sri. M. Dallaiya, the father of the plaintiff is dead and a direction to the Registrar of birth and death, Margherita to issue a death certificate to that effect.

3. After registering the plaint as a title suit, summons were issued upon the defendants as well as the pro forma defendants which returned served on 5.4.2018. Defendant number 1 represented by the Assistant Government Pleader appeared and prayed for adjournment which was allowed. The suit was ordered to proceed ex parte against the pro forma defendants vide order dated 17.4.2018. On 26.6.2018, the defendant number 1 filed their written statement and a copy was furnished to the plaintiff. Neither party were inclined to opt for the ADR mechanism and as such issues were framed and tagged with the case record after hearing both sides vide order dated 10.7.2018. The plaintiff filed their evidence on affidavit of the witnesses along with a few exhibited documents and on 25.2.2019, plaintiff's evidence was closed. The defendants did not forward any evidence and the trial proceeded to the stage of arguments which were heard on 24.2.2020.
4. During trial and after a thorough perusal of the Plaint, the following issues were framed by this Court:
 1. Whether there is any cause of action for the suit?
 2. Whether the suit is maintainable in his present form and manner?
 3. Whether the suit is bad for non-joinder of necessary parties?
 4. Whether the plaintiff is entitled to a declaration that Sr. M. Dallaiya is dead?
 5. Whether the plaintiff is entitled to the other reliefs claimed?
5. In support of their case, the plaintiff, M. Tata Rao submitted his own statement as PW-1 as evidence on affidavit and his cross examination was conducted on 17.2.2020. The defendant neither produced any witness nor exhibited any document on its own or during the cross examination of P.W 1.

Discussion, decision and reasons thereof

6. I have heard the arguments forwarded by both sides at length and have perused the case record in its entirety. Having done so and in the light of the arguments placed before me, I have arrived at the following observations.

Decision on issue number 1: Whether there is any “cause of action” for the suit?

7. The plaintiff has through his submission has asserted that his father, M. Dallaiya, has not been seen or heard of since 5.6.1999 and that in spite of repeated attempts to trace him, his family has failed to do so. He pleads that more than two decades have passed since his disappearance but they have been repeatedly denied the issuance of a death certificate in his name by the concerned authority. The plaintiff’s prayer for the issuance of a death certificate was flatly refused by the Registrar of Births and Deaths, Ketetong, Margherita for the lack of a Court’s order regarding the same and his similar request to the Deputy Commissioner, Tinsukia vide a legal notice dated 17.7.2017 was also left unanswered. The plaintiff has submitted a copy of the postal receipt dated 20.7.2017 and has exhibited it as document exhibit number 6 that proves that legal notice had indeed been served upon the defendant.
8. Before delving into the intricacies of the existing situation, let us first recapitulate what the term “Cause of action” denotes in law. Construed in legal terms as the pivotal ingredients for successfully establishing a legal claim, ***‘cause of action’ symbolizes the basis for claim.*** As the redressal in the court would be based upon the whether the grievance can be justified given the provisions of law, the cause of action must also appear to raise a legal claim, sans which the action would fail. It can also be said to be referring to the bundle of essential facts and refers entirely to the media upon which the plaintiff asks to arrive at the conclusion in

their favour.¹ The cause of action is made up of a number of facts which are necessary to be pleaded and which, if established would enable the plaintiff to obtain from the Court the remedy against the defendant.²

9. In the instant suit, we see that the plaintiff has clearly staked his claim for the issuance of a certificate of death in his father's name, M. Dallaiya, who has not been heard of for more than 7 years since his disappearance on 5.6.1999. The plaintiff has thus placed his prayer under the scope of Section 108 of the Indian Evidence Act, 1872 which deals with the burden of proving that a person is alive who has not been heard of for seven years. Before we read the aforementioned provision, let us first look into the related provision i.e Section 107 that precedes it and deals with the burden of proving death of a person known to have been alive within thirty years and reads as follows:

"When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it".

Section 108, Indian Evidence Act lays down the following provision, *"Provided 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".*

10. Before we dissect the two provisions and analyze them, we need to recall that the Evidence Act is a procedural law that establishes the procedure to be followed while appreciating evidence in a case and is not a substantive law by any stretch that can bequeath a legal right to a party. It merely facilitates the Courts during trial of a matter. Both the provisions come under the ambit of Chapter VII of the Evidence Act and deals exhaustively with the concept of burden of proof and on whom such a burden would lie in different scenarios. To explain the co-relation between the two sections, I bring forth decision of the Hon'ble Supreme Court in ***LIC of India vs. Anuradha AIR 2004 SC 2070***; the relevant portion from the said judgment is quoted below: *"On the basis of the above said authorities, we unhesitatingly arrive at a conclusion which is summed up*

¹ Mannappa v. Bhaskaraapa, AIR 1987 Kant. 113, Jain, Tarun, *Examining the Concept of 'Cause of Action' in India* (December 1, 2007) available at SSRN: <http://dx.doi.org/10.2139/ssrn.1087352> visited on 25.11.2020 at 11.35 A.M

² Orientirion Publicity v. Golden Plastics, 92 Mad LW 78, ibid

*in the following words. The law as to presumption of death remains the same whether in Common Law of England or in the statutory provisions contained in Sections 107 and 108 of the Indian Evidence Act, 1872. **In the scheme of Evidence Act, though Sections 107 and 108 are drafted as two Sections, in effect, Section 108 is an exception to the rule enacted in Section 107.** The human life shown to be in existence, at a given point of time which according to Section 107 ought to be a point within 30 years calculated backwards from the date when the question arises, is presumed to continue to be living. The rule is subject to a proviso or exception as contained in Section 108. If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years the presumption raised under Section 107 ceases to operate. Section 107 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108 subject to its applicability being attracted, has the effect of shifting the burden of proof back on the one who asserts the fact of that person being alive. The presumption raised under Section 108 is a limited presumption confined only to presuming the factum of death of the person whose 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 or 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 that 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.**"*

11. The Apex Court in its infinite wisdom has beautifully and precisely elucidated the entire scope and purview of both the provisions and their operation. In simple terms, we begin our understanding by bearing in mind that a human being does not come into existence on account of any law of a country. So is the case of our country as well where even Article 21 of

our Constitution which deals with the “Right to Life” does not “bestow” life, in its natural definition, upon an individual. It simply signifies that life and liberty cannot be curtailed in the absence of law. The natural corollary to this explanation would be that if the law does not bring a human being into existence by its declaration, it certainly cannot declare one as dead in the absence of a legal context. An extremely significant phrase common to both Section 107 and Section 108 of the Evidence Act which raises the foundation of the two provisions is “when the question is whether a man is alive or dead...”

12. At this juncture, I stress on the phraseology used, which, for a lack of a better word, activates the operation of the presumptions to be taken under the said provision with regard to the state of existence of a person. It being, that to bring forth the application of either provision, it is pertinent that a “question” be raised as to the current state of being of an individual. The term “question” denotes a legal question that is raised with respect to a particular right that is granted upon person under law. Before we delve into the workings of the presumption taken under these provisions and shifting of the burden of proof in the matter of life or death of a person, let us first refer to another relevant provision.

13. I digress temporarily from the Evidence Act and travel back to the very inception of this suit and the primary prayer on which it is based i.e a suit for declaration of civil death of the plaintiff’s father, Sri M. Dallaiya, missing since 5th of June, 1999. Before proceeding further, I would like to bring it to notice that that the plaint itself is silent as to under which specific provision of law the instant suit has been filed. Except for a prayer for the declaration of civil death of M. Dallaiya and another prayer for directions to the Registrar or Births and Death, Ketetong Margherita for the issuance of death certificate, the plaint does not mention any specific provision of law under which the instant suit has been brought. However, When we speak of declaratory suits, it is imperative that we discuss Section 34 of the Specific Relief Act which addresses the matter of the *discretion of a Court as to the declaration of status or right* and reads as follows: **“Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so**

entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so”.

- 14.** This provision confers two essential characteristics upon a plaintiff seeking to bring a suit for declaration; it may either be a person entitled to any legal character or a right with respect to a certain property recognized by law. The language of the section further confines the circumstances under which a declaratory suit can be brought; laying down that any such title to a legal character or right to any property must be denied by another, before such a suit can be placed before a Court of law. Simply put, a declaratory suit can only be instituted by a party when a legal title or character or a right to property accrues to him under law and such right, title or character is denied by another.
- 15.** In the instant suit, from a plain reading of the plaint we see that the facts as stated by the plaintiff has detailed out the first instance of the disappearance of his father almost 2 decades back and has supplied various documentary evidence to prove that his family had taken all necessary reasonable steps to trace out the missing person and having failed to have done so, had also approached the appropriate authorities for the issuance of a death certificate in his father’s name after the lapse of 7 years since his disappearance. Upon his request being denied, he had chosen to approach this Court for a declaration to that effect. His allegations, however, fail to highlight a specific legal right or character that has been denied or curtailed or otherwise violated by the authorities concerned, the State being arrayed as the Defendant in this matter.
- 16.** I take liberty to draw a parallel between the observations I have made above while discussing the operation of Section 107 and 108 of the Evidence Act and Section 34 of the Specific Relief Act and the terminology that connects both these two provisions. The phrase *“when a question is raised whether a man is alive or dead...”* used in both section 107 and section 108 of the Evidence Act refers to a legal question raised in a suit. Only when the existence of a person is questioned under law while in relation to certain legal character, title or right to property and the same is denied by another, would a suit for declaration of civil death lie in a Court

of law. In the instant suit, the plaintiff has not laid forth any legal right that has been encumbered due to the lack of such a declaration.

17. It is clear that the Defendant has not denied the plaintiff of any of his rights. What the authorities had simply denied was their request for an issuance of a death certificate of the plaintiff's father. Grant of a death certificate without any legal context is by no means a legal right of an individual. As deliberated before, just as a State does not grant "life" to an individual; nor can it declare an individual as "dead" in the absence of a legal milieu. Only when the question of such existence of a person is raised with regard to a legal character or right, can the presumption under Section 108 of the Evidence Act be applied. Death of a person may make some other to inherit the property in accordance with law or may change the legal character of the former but the death itself cannot be the legal character or the right to property. It comes from the premise that the legal status of an individual dissolves after his death. One may file suit for declaring such legal character or right to property which may be dependable on the factum of death being proved. A declaration of civil death of an individual unheard of for seven years by those would naturally have heard of him if he had been alive under section 108 of the Evidence Act cannot be granted in a legal vacuum wherein no recognized legal right has been asserted and denied as per the requisites of Section 34 of the Specific Relief Act.

18. In the light of the deliberations made above, I find that no cause of action has arisen for the present suit and hence is not maintainable under law. Accordingly, **issue no. 1 is decided in negative and goes against the Plaintiff.**

19. Considering the discussions and observation made above and the decision taken, discussing issue no. 2, 3 and 4 becomes redundant.

20. In view of the facts and circumstances and the decision arrived at above, I am of the considered opinion that the Plaintiff is not entitled to a decree for the declaration of civil death of Sri. M. Dallaiya and as such the instant suit is liable to be dismissed.

ORDER

- 21.** The present suit is hereby dismissed on contest without costs.
 - 22.** Prepare the decree accordingly.
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The judgment is pronounced by me in open Court and given under my hand and seal of this Court on this 27th day of November, 2020

Sukanya Gogoi
Munsiff-cum-JMFC,
Margherita