

THE COURT OF ADDITIONAL CIVIL JUDGE (JUNIOR DIVISION)-III**Present: Smriti Tripathi****Additional Civil Judge (Junior Division)-III****[10th day of June, 2022]****District: Ramgarh****[Title Suit 02/2018]****(CNR No. JHRG040000142018)**

Plaintiff	1. Purni Devi w/o Bhado Mahto @ Bhade Mahto r/o Kedla Basti, PO-Kedla, PS- Mandu, Distt. Ramgarh [P1]
Represented By	Sanjeev Kumar Ambastha, Ld. Adv.
Defendants	1. Chief Manager, Life Insurance Corporation of India Jeevan Jyoti Building, District Board Chowk, Hazaribagh branch, PS- Sadar, Distt. Hazaribagh. [D1] 2. Manager, State Bank of India, Kedla Branch PS-Mandu, Distt- Ramgarh. [D2]
Represented By	TN Mishra and Pramod Kumar Singh, Ld. Adv.

Date of Filing	27.04.2018
Date of Admission	21.08.2018
Date of Framing Issues	30.11.2021
Date of commencement of evidence	30.11.2021
Date of Judgment is reserved	27.05.2022
Date of Judgment	10.06.2022

J U D G M E N T

1. The plaintiff has brought this suit **u/s. 34, Specific Relief Act, 1963** (Hereinafter referred to as the 'SRA') against the defendants **for declaration of the death** simpliciter of the plaintiff's husband.

PLAINTIFF'S CASE

2. The case of the plaintiff in brief is that her husband namely Bhado Mahto s/o late Desai Mahto, who was an employee of CCL was posted at Kedla Project, Ramgarh as a Grade-II employee, and the plaintiff is a nominee in his service book, in LIC policy taken by him as well as in his Savings Bank Account in SBI, Kedla branch. Her husband is missing since the 02.04.2009 when he went away for his treatment, and despite several efforts made by the plaintiff and other family members, including filing a report with Ramgarh PS on 10.04.2009 being station diary entry no. 319/2009 dated. 10.04.2009, he could not be traced till the date of filing of the instant suit. As more than 7 years have lapsed since then, prayer has been made before this court to declare him dead. It has further been mentioned that the said LIC policy was issued by the office of the Chief Manager of LIC, Hazaribagh branch having policy nos. 544489843 and 545046521 towards which, which her husband had deposited a premium of ₹ 95,000/- and ₹ 30,000/- respectively to the defendant no. 1 and according to the terms of the said policy the maturity period already got over on 15.01.2018 and 31.05.2013 respectively. As for the claim against defendant no. 2, it has been mentioned that in her husband's account maintained at SBI, Kedla branch bearing account no. 11590339809, from the statement of the account dated 25.09.2016 it appears that there is a balance of ₹ 9,73,343.71 in it. The plaintiff has stated that she visited the office of both the defendants on multiple occasions and submitted all the paper-work but in the absence of a death certificate, both of them denied releasing any amount in her favour and thus, she seeks the following reliefs:

- (a) that a decree for declaration of death of the plaintiff's husband be passed as he is missing since more than the past seven years.
- (b) costs of the suit.
- (c) any other relief or reliefs to which the plaintiff is entitled.

3. The suit was admitted for hearing on 21.08.2018 and thereafter, summons were issued upon the defendant nos. 1 and 2 pursuant to which, they appeared before the court on 25.03.2019 and 19.11.2018 respectively and written statement by defendant no. 1 was accepted on 01.08.2019 whereas defendant no. 2 was debarred.

DEFENDANT NO. 1's CASE

4. It has been stated in their written statement that the instant suit is not maintainable in eyes of law and is fit to be dismissed being barred by law of limitation, estoppel, waiver and acquiescence. It is mentioned that the plaintiff neither filed any FIR nor made any paper publication after her husband went missing. All the averments made and contentions raised by the plaintiff in in the plaint have been denied and it has been submitted that the plaintiff is not entitled to any relief sought by her and that the suit be dismissed with costs.

ISSUES FOR ADJUDICATION

5. Then, on 30.11.2021, based upon the pleadings of the parties, documents brought on record, oral examination during first hearing, the following issues were framed by the Id. predecessor court for adjudication. Findings are mentioned next to the issues and reasons for them are elaborated further in the judgment:

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|-------|---|----------|
| I. | <i>Is the suit maintainable in its present form?</i> |No |
| II. | <i>Whether the plaintiff has any valid cause of action?</i> |Yes |
| III. | <i>Whether the suit is barred by law of limitation?</i> |No |
| IV. | <i>Is the suit barred by law of estoppel, waiver and acquiescence?</i> |No |
| V. | <i>Is the suit hit under the provisions of section 34 of SRA?</i> |Yes |
| VI. | <i>Whether the suit lies within the territorial jurisdiction of this court?</i> |Yes |
| VII. | <i>Is the suit properly valued and sufficient court fee paid?</i> |Yes |
| VIII. | <i>Whether the husband of the plaintiff was traceless for seven years till the filing of this suit?</i> |No |
| IX. | <i>Is the plaintiff entitled to other relief(s)? If yes, what?</i> |No |

EVIDENCES

6. In order to prove his case, the plaintiff has adduced the following evidence, reference is made to which at relevant parts of this judgment. The defendant has not adduced any evidence.

List of Plaintiff/Defendant/Court Witnesses

A. Plaintiff's Witnesses

Rank	Name of witness	Relation
PW-1	Purni Devi	Plaintiff
PW-2	Hulash Mahto	From same village
PW-3	Nageshwar Mahto	Brother of Bhado Mahto

List of Plaintiff/Defendant/Court Exhibits

A. Plaintiff's Exhibits:

Sr. No.	Exhibit Number	Description
1.	Ext.1	Original Certificate of LIC bearing policy no. 544489843
2.	Ext.1/1	Original Certificate of LIC bearing policy no. 545046521
3.	Ext.2	Original Saving Bank Account Passbook bearing A/c No. 11590339809
4.	Ext.3	Copy of Sahna bearing SDE No. 319/09, dt. 10.04.09
5.	Ext.4	Copy of legal notice issued against Def. No. 01 dt. 06.01.18
6.	Ext. 4/1	Copy of legal notice issued against Def. No. 02 dt. 06.01.18
7.	Ext.5	Original Reply of Def. No. 2 bearing letter no. BM/2017-18/61, dt. 06.02.18

8.	Ext.6	Original Speed Post Receipt bearing consignment no. EJ895165415IN
9.	Ext. 6/1	Original Speed Post Receipt bearing consignment no. EJ895165429IN
10.	Ext.7	Computer generated copy of tracking report of consignment no. EJ895165415IN
11.	Ext. 7/1	Computer generated copy of tracking report of consignment no. EJ895165429IN

7. After the plaintiff adduced evidences on her behalf, and despite being given a chance, the defendants submitted that they do not wish to adduce any evidence, the suit was posted for arguments during which upon transfer, the suit was received from the Id. predecessor court and the arguments were heard afresh on behalf of both the sides and the suit was posted for judgment.

ADMITTED FACTS

8. Before dwelling into the issues, it would be pertinent to mention the admitted facts. That the plaintiff was the legally wedded wife of Bhado Mahto, and he had undertaken LIC policies bearing nos. 544489843 and 545046521 and had a savings account bearing no. 11590339809, maintained at SBI, Kedla branch and the amounts therein belonged to him, or to his kin after his death are all admitted facts in this suit.

FINDINGS

Issue Nos.

(Whether the suit maintainable in its present form?)

9. It has been mentioned in the plaint that when the plaintiff approached the defendants asking them to release the amount in the name of her husband in her favour, they denied the same and asked her to produce a death certificate. Although this relief has not been claimed in the relief section, it forms the basis of this suit, and the relevant documents regarding this have been brought on record at the evidence stage as well. In the plaint where the plaintiff has mentioned the dates on which cause of action arose, she has mentioned the date on which legal notice was sent to the defendants asking them to release the amount. *Per contra*, in a suit seeking declaration of death, where the matter would not just concern the defendants but more persons, no entity public in nature has been impleaded as a party. Any such entity would have been a necessary party thereby covering the interests of the public in general.

9.1 *This issue is accordingly decided against the plaintiff.*

Issue Nos. II-IV, VI and VII

(Whether the plaintiff has any valid cause of action?; Whether the suit is barred by law of limitation, estoppel, waiver and acquiescence?; Whether the suit lies within the territorial jurisdiction of this court?; Is the suit properly valued and sufficient court fee paid?)

10. Regarding these issues, the contesting defendant has pleaded in their written statement that the instant suit suffers from these vices without mentioning any ground for these. These issues were also not raised once during the course of arguments or hearing nor was any evidence

furnished during evidence stage. *Per contra, prima facie* the plaintiff has mentioned that the cause of action for the suit arose on 02.04.2009 when the husband of the plaintiff went away for his treatment and did not return to his house and then again on 10.04.2009 when the plaintiff submitted application to the Ramgarh police station to ascertain the whereabouts of her missing husband and yet again on 09.04.2016 after completion of seven years from the date since which neither did anyone hear from the plaintiff's husband and not could the police trace him out and finally on 06.01.2008 when legal notice was sent to both the defendants. It has also been mentioned that the suit was valued at ₹ 10,000/- for the purpose of jurisdiction upon which *ad valorem* court fee is being paid. From a bare perusal of the Sarishtedar's report dated 14.05.2018, the same has been found sufficient. As per the cause-title of the instant suit, the plaintiff is a resident of this district, within the territorial jurisdiction of this court and nothing is available on record to show that the suit is barred by law of estoppel, waiver and acquiescence or limitation. Once the plaintiff has established these in its favour, onus lies on the defendant to rebut these presumptions but he has not done so and averments made regarding these issues in their written statement seem to be mechanical without any supporting plea or proof.

10.1 *These issues are hereby decided in favour the plaintiff and against the defendants.*

Issue No. V

(Is the suit hit under the provisions of section 34 of SRA?)

11. It would be pertinent to reproduce s. 34, SRA at this stage:

Discretion of court as to declaration of status or right. — *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.

11.1 In order to obtain relief under Section 34 of the Specific Relief Act, the plaintiff has to establish that the defendant has denied or is interested in denying the character or title of the plaintiff. Since in the present suit, the plaintiff claims that she has been deprived of encashing the amounts which could be given to her on getting death certificate of her husband, therefore, the declaration sought here is essentially in the nature of establishing the legal character of the plaintiff so as to enable her to obtain benefits under various schemes.

11.2 However, as we move to the proviso to s. 34, SRA, it states that in cases where declaration of title is sought, such as the present one and further relief can be sought in addition to the relief of declaration but the plaintiff omits to do so, the court shall not make the declaration as prayed for. It is a settled principle that where further relief can be claimed, and it has not been claimed, declaration simpliciter u/s. 34, SRA cannot be made. In the plaint, the plaintiff mentioned that the defendants are not releasing the amount in her favour as no death certificate of her husband is available on record, and it has been averred that she is his wife and thus, entitled to these

benefits however, if we turn to the reliefs sought in the instant suit, as reproduced in para no. 2 of this judgment, the plaintiff has sought the relief of declaration that her husband is dead but has not made any prayer for a further relief. On this, some guidance is provided by the Hon'ble High Court of Allahabad in their judgment in the case of **Alka Sharma v. Union of India**, Second Appeal No. 192 of 2007, decided on 17.01.2020 where it has been held in para no. 18 of the judgment that:

“It has been arbitrarily held by the learned Civil Judge (Senior Division) that the plaintiff was obliged to seek any other declaration in regard to claim of service benefits in addition to the declaration of civil death.”

However, later on, the Hon'ble High Court of Allahabad in **Gokul Pandey and Others v. Gram Pradhan Gram Sabha** [2022 SCC OnLine All 268] has held in paras 12 and 13 of its judgment that:

“Section 34 clearly provides that any legal character may be declared for which a plaintiff is entitled. Besides this, he should not be stranger to a dead person, but he must be interested in such legal character, may be as his legal heirs. The suit filed at the instance of plaintiff can be contested by anyone, denying or interested to deny his title to such character or right. Section 34 of the Act further bars any such declaration where the plaintiff is able to seek further relief. Legal character is a position recognised by law. A person's legal character is the attribute which law attaches to him. After death of a person his heirs, having interest in such legal character, have title to seek declaration of such legal character as to the death of the person. The suit at the instance of any such person for a declaration is maintainable, if he can stand the test that he is entitled to any legal character, even though, he cannot lay to immediate claim to any property. “

“In most of the case, the defendants almost accept the fact of missing of a person for whom declaration of civil death is sought, therefore, absence of denial from the side of defendants bars the relief sought. A mere suit of declaration of death of a person is not maintainable.”

Therefore, the case of the plaintiff is barred by section 34, SRA and a prayer of declaration of death simpliciter is not fit to be considered by this court.

11.3 This issue, in effect, is decided against the plaintiff.

Issue No. VIII

(Whether the husband of the plaintiff was traceless for 7 years till the filing of this suit?)

12. The provisions governing the instant issue are enshrined under sections 107 and 108 of The Indian Evidence Act, 1872 (Hereinafter referred to as the "IEA").

Section 107, IEA reads:

“Burden of proving death of person known to have been alive within thirty years.— 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, IEA reads:

*"Burden of proving that person is alive who has not been heard of for seven years. –
– 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."*

As to the interplay between these sections regarding which burden of proof has to be discharged first, the interpretation of Sections 107 and 108, IEA is no more *res integra* in view of the decision of Hon'ble Supreme Court in the case of **L.I.C. of India v. Anuradha** [AIR 2004 SC 2070], wherein it has been held that:

"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 continued 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 person is dead on him who affirms the fact. Section 108 subject to its applicability been attracted, has the effect of shifting the burden of proof back on the one who asserts the fact 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 a 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 by expiry of six years and 364 days or any time sought by it."

12.1 Thus, the provision that concerns the instant case first is s. 107, IEA which provides that when the question about the existence of a person is raised, 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. Once this burden is discharged, only then does s. 108 come into play and shift the burden back on the party who affirms life.

12.2 Now, the question arises as to based upon what exactly the presumption that a person is dead is raised. Once again, when we turn to section 108, it indicates that the same could be done by proving that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive. In order to prove the same, the plaintiff has examined herself and supported her case. The plaintiff has also examined PW2, who deposed that Bhado Mahto

@ Bhade Mahto is his uncle from the same village to look for whom, he went to Mandu but did not file any missing report in police station nor did he take any step for newspaper publication to look for Bhado Mahto. PW3, brother of the husband of plaintiff, has also deposed that he cannot say whether Bhado Mahto is alive or dead and that he has not heard from him since 2009 though he made efforts to look for him.

12.3 Absence of final report by the police: PW1, in her examination in chief, among other things has referred to Ext. 3 which is the missing report she filed on 10.04.2009 in Ramgarh PS wherein station diary entry no. 309/2009 dated 10.04.2009 has been endorsed by the officer-in-charge, Ramgarh P.S. it has been deposed by her that after this report was filed, the police looked for her husband but could not trace him. On this, the contesting defendant submitted during the course of arguments that no final report is available on record to substantiate this averment. However, on this, it was held by the Hon'ble High Court of Allahabad in the case of ***Alka Sharma v. Union of India***, (*supra*) that “..*submission of the final report by the police is not mandatory inasmuch as police investigation is in the domain of criminal law and that is neither influenced by the plaintiff claiming such declaration nor is within the authority and control of the plaintiff seeking such declaration. Once the factum of lodging a report and not hearing about that person for seven years or more is proved and admitted by the defendant employer of the husband in regard to whom declaration is being sought, is sufficient to hold that requirement of Section 108 of the Evidence Act has been fulfilled.*”

12.4 Absence of newspaper publication declaring that the husband of the plaintiff is missing: the most vital part of the presumption as raised u/s. 108, IEA is that the missing person has not been heard of for seven years by those who would naturally have heard of him if he had been alive. On this, the contesting defendant submitted during the course of arguments that as no newspaper publication was done, the fact that the husband of the plaintiff was missing was not brought before the public, thereby giving a person who could have heard from him to come forward and furnish his whereabouts and the plaintiff has therefore, not discharged its legal burden. The plaintiff on the other hand argued that as three witnesses have come forward and testified that Bhado Mahto is missing since 2009, and a report was filed with the concerned police station, there is no requirement of a newspaper publication. A similar situation arose before the Hon'ble High Court of Allahabad in the case of ***Alka Sharma v. Union of India***, (*supra*) and ***Gokul Pandey and Others v. Gram Pradhan Gram Sabha*** (*supra*) wherein it was held that as notice was served on the defendants u/s. 80, CPC it will be presumed that the summons were issued for the general public also. However, that is not the case in the instant case where the defendants do not fall under the ambit of s. 80, CPC and also no effort was made even during the course of the instant suit to make any form of public declaration that Bhado Mahto is missing. Therefore, this court finds that the plaintiff has failed to prove that her husband has not been heard of for seven years by those who would naturally have heard of him if he had been alive, and accordingly has been unable to shift the burden as envisaged u/s. 108, IEA.

12.5 A lot has been brought on record by the plaintiff during its evidence regarding the LIC policy and SBI bank account from which amount is claimed but the court has not dwelled into the same as it has neither been denied by the defendants anywhere, nor is it an issue in this suit and nor has the plaintiff sought any relief on it in its plaint.

12.6 *This issue is thus, decided against the plaintiff.*

Issue No. IX

(Is the plaintiff entitled to other relief(s)? If yes, what?)

13. None.

14. Accordingly, the plaintiff has not been able to prove its case and establish that her husband namely Bhado Mahto has been unheard of since the past seven years, taken from the date of filing of the instant suit by those who would have naturally heard from him had he been alive. Also, as she has not claimed any further relief other than declaration simpliciter when she could have, the relief of declaration is barred according to law.

Hence, in the result, it is hereby ordered

That let the suit be and the same is dismissed on contest without cost. A decree be drawn accordingly.

(Pronounced by me in open court)

(Dictated and corrected)

Sd/-

Sd/-

Smriti Tripathi

(Addl. Civil Judge Jr. Div.-III)

Ramgarh

Dated 10th June, 2022

Smriti Tripathi

(Addl. Civil Judge Jr. Div.-III)

Ramgarh

Dated 10th June, 2022