

## Demystify Concept of Declaration of Civil Death

Suman Tiwari

Judicial Officer (UP2100)

UP Judicial Services

PN-7522811760

Whether Civil Court have jurisdiction to declare Civil Death of a person based on presumption drawn under Section 108 of Evidence Act 1872 ?. High Courts differs on maintainability of suit under Section [34 Specific Relief Act 1963](#) and [Section 9 Civil Procedure Code 1908](#). As per my reading , and understanding, a suit for declaration of Civil Death is maintainable U/S 34 Specific Relief Act, it could even be granted U/S 9 CPC 1908 as Section 34 SRA is not sole repository of this relief.

The underlying fact is that the relief of declaration should be based on the presumption of death drawn [U/S 108 Evidence Act 1872](#).

The very language of the Section is-

Burden of proving that person is alive who has not been heard 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.

The above-mentioned rule of presumption comes into picture only when the matter is pending in Court or Tribunal. The above provision of Law is only rule of evidence therefore, do not create any substantive right in favour of any person to institute suit for declaration of Civil Death.

However, the importance of Section could not be undermined as relief of declaration is granted based on the presumption drawn under this Section.

The issue of presumption on this point has been discussed in detail by Hon'ble SC of India [in L.I.C. Of India vs Anuradha on 26 March, 2004 Appeal \(civil\) 2655 of 1999](#)

The following High Courts have also discussed this point.

[Smt. Alka Sharma vs Union of India and Others Second Appeal No. - 192 of 2007 Allahabad HC](#)

[Vivek Kumar Verma vs Uttar Pradesh Rajya Vidyut Writ No. - 19124 of 2019 Allahabad HC](#)

[Swati vs Abhay Deshmukh and Or's Second Appeal No 18/2016 Bombay HC](#)

[Sunita Roy Choudhary And Or's. vs Jag Eshwar Choudhary and Or's. AIR 2006 Pat 127 Patna HC](#)

Following rule of presumption could be fairly culled out from these cases to summarise the issue of presumption.

1-The law as to presumption of death remains the same whether in Common Law of England or in the statutory provisions contained in [Section 107 and 108 of the Indian Evidence Act, 1872](#). In the Scheme of Evidence Act, though Section 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.

2- U/S 108 presumption of fact of death is drawn, no presumption as to time date or circumstances of death is to be drawn. If the issue of date or time of death arises same shall be decided on merit based on evidence not by assumption or presumption.

3-The presumption as to death U/S 108 of Evidence Act would arise only on lapse of seven years of missing and would not be permitted to be raised on expiry of even 6 years and 364 days.

4-The presumption could be raised only, when the question of death is raised in any court tribunal or before an authority who is called upon to decide whether a person is alive or dead

5-Unless issue is raised before any forum or legal proceeding the occasion for raising presumption does not arise.

6-This provisions do not by itself declare a person to be alive or dead. That finding is to be arrived in a duly constituted suit and upon shifting of burden of proof in one contingency to other.

Now once the presumption of death is drawn relief of declaration of civil death of missing person could be granted under Section 34 SRA 1963 or Section 9 CPC 1908.

In most of the cases this kind of suit is brought by legal heirs of the missing person under Section 34 SRA and it is settled Law that relief under section 34 could be granted within the preview and ambit of this Section, hence the controversy arises.

Section 34 of SRA Act provides that—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. Explanation. —A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and whom, if in existence, he would be a trustee.

The suit under this section could be brought by a person whose legal character or right to any property is denied by another or a person is interested to deny.

Apart from this one more rider of the Section is that if the plaintiff being able to seek any further relief omits to do so, no relief of declaration could be granted to him under this Section.

In most of the cases suit under this Section is brought by Legal Representative of the missing person . on the ground that certain right which accrue to them after death of missing person is denied to them by the authority concerned citing no proof of death of the person ,hence leaving them in the state of destitution .

In most of the cases the suit brought under Section 34 SRA is dismissed on the ground.

1-No person have right to get declaration of death of other person under the Section.

2-Relief of declaration of civil death unless coupled with consequential relief could not be granted under this Section.

But if we carefully read pleading in totality as a matter of fact generally the suit of declaration is brought by wife of missing person for declaration of death of her husband which implies within it declaration of her own status of widowhood. Similarly, if the suit is brought by another LR of missing person i.e., children etc their right to property as LR of the missing person automatically accrue once the person is declared dead. So, on these ground only relief should not be denied U/S 34 SRA if otherwise it could be granted. Accordingly, it could not be said that plaintiff has not sought declaration of her own status or character or right in the property.

So far as consequential relief is concerned rarely any suit for declaration of civil death is brought without consequential relief if we carefully peruse the entire plaint.

The Hon'ble Apex Court in several times opined that relief under Section 34 SRA could be granted within the scope and ambit of this Section only but section 34 SRA is not sole repository of declaration of civil death, it could be granted even under section 9 of CPC 1908. So, dismissing suit based on above mentioned ground only is not justified and suit simpliciter is also maintainable under Section 9 of CPC, 1908.

Typical example of this is recent decision of Hon'ble Allahabad High Court in - [Alka Sharma vs Union Of India And Others on 17 January, 2020 Second Appeal No. - 192 of 2007](#) . In this case it has been categorically held by Hon'ble Allahabad HC that It has been arbitrarily held by the learned Civil Judge (Senior Division) that the plaintiff was oblige to seek any other declaration in regard to claim of service benefits in addition to the declaration of civil death and granted relief of declaration simpliciter in the words " it is declared that the husband of the plaintiff is dead and his death is civil death as he is missing from 09.02.1993 is not heard of till the date of filing of the application in 2002. It is directed that the competent authority issues a death certificate on the basis of declaration issued in favour of the appellant." No order as to cost. Accordingly, decree be drawn in favour of the appellant.

Other important cases on the point are-<https://indiankanoon.org/doc/137404121/>

[Swati vs Abhay Deshmukh And Second Appeal No 18/2016 Bombay HC](#)

[Balaban vs Kannammal Alias Pazhaniammal \(1997\) 1 MLJ 181](#)

So, it could be concluded that though strict rule of caution is required before declaration of Civil Death but it must not be outrightly dismissed on technical ground as stated above , without weighing balance of convenience .This kind of suit is generally brought by legal heirs of the missing person facing destitution ,in that case if they are left with no relief at all the interest of justice would be frustrated .If a person missing is not heard of for more than seven years, then the legal heirs of the missing person cannot be deprived of the monetary assets of such person which are lying idle either in the bank or in other deposits. In the event of return of such person, the law can take care of a situation if further proceedings are taken out by such person but only because of such remote possibility which may be closure to impossibility relief must not be denied outrightly for many practical purposes. The general yardstick of reasonableness must be applied while appreciating fact. In such cases of missing persons, the reasonable period is therefore not less than seven years, which is supposed to be a considerably longer period to find out the missing person. Last but not least we

must always keep in mind while considering all above issue that a declaration made under this Chapter is binding only on the parties of the suit ,person claiming through them respectively and where any of the parties are trustee ,on the person for whom ,if in existence at the date of declaration ,such parties would be Trustee as provided in [Section 35 of SRA ,1963](#).

The issue whether Court exercising jurisdiction under Succession Act could declare Civil Death is also debateable.

The Hon'ble SC of India in [L.I.C. Of India vs Anuradha Civil Appeal No 2655 of 1999](#) held that- An occasion for raising the presumption would arise only when the question is raised in a Court, Tribunal or before an authority who 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.

However, this observation has been given by Hon'ble SC while deciding issue of rule of presumption under Section 108 Evidence Act in general it was not concerned with any specific legislation enacted with special objective.

Certainly , Court granting Succession Certificate is a Civil Court but it is also true that Succession Act is a Special Act and it was enacted with an objective to consolidate the law applicable to intestate and testamentary succession and in number of cases Hon'ble Apex Court itself makes it clear that proceeding under Succession Act for grant of succession certificate is summary in nature and it does not decide title of the party, it only give party concern authority to collect his debts and due of missing person.

If we carefully peruse Part X of Succession Act from section 370 to 383 and following relevant case law on the point -

[Bandaris Dass Vs. Teeku Dutta \(2005\) 4 SCC 449](#)

[Joginder Pal Vs. Indian Red Cross Society \(2000\) 8 SCC 143](#)

[Sunita Roy Choudhary And Or's. vs Jag Eshwar Choudhary and Or's. AIR 2006 Pat 127](#)

[Sanju Devi And Or's. vs State and Anr. on 6 January, 2013, FAO No.477/2013](#)

[Mrs. Vijaya Shrikant Reveal vs Shri. Shirish Shrikant Reveal and Or's First Appeal No-1208 of 2015 Bombay HC](#)

The following ratio could be culled out fairly-

1-Jurisdiction to grant succession certificate under this Section arise on the death of the person so the issue of death could not be ascertained under these Section by the Court concerned. The purpose of granting succession certificate is limited.

2-The grant of a certificate does not establish a title of the grantee as the heir of the deceased, but only furnishes him with authority to collect his debts and allows the debtors to make payments to him without incurring any risk and

3-Finding in this kind of suit is not final it is summary in nature but the factum of death requires appreciation of evidence which could be performed effectively by instituting separate suit in proper Civil Court exercising jurisdiction to appreciate fact and finding of which would have binding effect.

4-These provisions do not by itself declare a person to be alive or dead. That finding is to be arrived in a duly constituted suit and upon shifting of burden of proof, procedure contemplated for declaration of the civil death of a particular person is a detailed inquiry hence must be decided by proper Civil Court.

5- Also while dealing with the case of heirship certificate where the date of death of the person missing is not known, under such circumstances, the Courts must not insist on compliance of Sub-Section (1) of Section 372 of the Act. For that necessary amendment is sought by Legislative Organ of the Government.

However, the Hon'ble HC of Bombay [in Mrs. Vijaya Shrikant Reveal vs Shri. Shirish Shrikant Reveal and Or's First Appeal No-1208 of 2015 Bombay HC](#) has held that, it is true that only Civil Court has power to give relief of declaration in such matters. The inquiry under Section 372 of the Succession Act is limited. However, the Court which conducts the inquiry under Section 372 of the Act is a Civil Court and therefore the said Court is competent to decide the issue of declaration of death of Shrikant Vishnu pant Reveal. But the view of Hon'ble Apex Court that civil death could be declared by the Court authorised to grant succession certificate under Succession Act may be termed as [PER INCURIA](#). Jurisdiction to grant succession certificate under this Section arise on the death of the person and same view has been affirmed in many cases of Hon'ble Apex Court . The inquiry under Succession Act for grant of Succession Certificate is limited and summary in nature. Since the issue of factum of death require detailed inquiry, it must be decided by proper Civil Court instituting Civil Suit. Apart from this necessary step should also be taken by legislative organ of the Government to ensure amendment in Section 372(1) of Succession Act to relax requirement of filling time and date of death of deceased in an application to be produced before concerned Court authorised to grant Succession Certificate.