

**IN THE COURT OF HELLY FUR KAUR : CIVIL JUDGE – 08
(CENTRAL), ROOM NO.231, TIS HAZARI COURTS, DELHI**

SUIT NO : 2573/18
CNR NO.DLCT03-000100-2000

In the matter of :-

**Mian Singh
S/o Late S. Avtar Singh,
R/o Chatha Mill, Bhorcamp,
Opp. F.C.I. Store, Jammu.**

...PLAINTIFF

VERSUS

- 1. Govt. of NCT of Delhi
Department of Home
5th Floor, C-Wing,
Delhi Secretariat, New Delhi – 110 001.**
- 2. Registrar of Births & Deaths
North Delhi Municipal Corporation,
17th Floor, E-Block,
Dr. S.P. Mukherjee Civic Centre,
Jawahar Lal Nehru Marg, ITO,
Delhi – 110 002.**
- 3. Union of Indian
Through Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi – 110 001.**
- 4. Harjeet Singh
S/o Mian Singh
R/o Chatha Mill, Bhorcamp,**

Opp. F.C.I. Store, Jammu.

**5. Baljeet Singh
S/o Mian Singh
R/o Chatha Mill, Bhorcamp,
Opp. F.C.I. Store, Jammu.**

**6. Rajinder Singh,
S/o Mian Singh
R/o Chatha Mill, Bhorcamp,
Opp. F.C.I. Store, Jammu.**

**7. Nimrat Kour
W/o Gurdeep Singh,
R/o Ward No.2, Bhour Camp,
Chhatha Jagir, Jammu – 181 101.**

...DEFENDANTS

**Date of institution : 06.09.2018
Date of judgment : 18.11.2021**

SUIT FOR DECLARATION AND MANDATORY INJUNCTION

J U D G M E N T

1. Vide this judgment, I shall decide a suit for declaration and mandatory injunction.

BRIEF FACTS OF THE PLAINT:

2. The brief facts of the plaint as alleged by the plaintiff in the plaint which are necessary for disposal of the suit are that plaintiff is a senior citizen, aged about 80 years and is a resident of Jammu and

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Kashmir State. The plaintiff has been constrained to approach this Hon'ble Court for seeking relief of declaration i.e. declaration of civil death of his son Ajit Singh and also for procuring/issuance of a death certificate from the office of the concerned Registrar of Births and Deaths i.e. defendants No.1 to 3. The defendants No.4-7 are plaintiff's children and siblings of Ajit Singh. The plaintiff in the year 1979 went to Nepal along with his family to earn his livelihood where he started a business of motor parts trading. The eldest son of plaintiff, Ajit Singh was working as a contractor for supply of Auto Spare Parts along with the plaintiff. That for the purpose of purchasing motor parts to be supplied in Nepal, Ajit Singh went to Kashmere Gate, Delhi in the last week of October, 1984. That Sh. Ajit Singh throughout the said period was in Kahsmere Gate Area, as he had to place orders for supply of spare auto parts from Leyland Syndicate and Guru Nanak Light House, having their respective offices in Kashmere Gate. That during the period when son of plaintiff was in Kashmere Gate, Delhi, i.e. last week of October, 1984, the assassination of the former Prime Minister of India Mrs. Indira Gandhi took place which was followed by the

infamous 1984 Anti-Sikh Riots that broke out in the first week of November, 1984. It is a matter of record that in the said riots, persons professing Sikh religion, their families, property etc. were targeted and led to mass scale killing of Sikh men, women and children, destruction of shops, properties and homes belonging to Sikhs. During the said period i.e. first week of November, 1984, Ajit Singh went missing and till date his whereabouts are not known nor has Ajit Singh, S/o Mian Singh has been heard about. The fact that Ajit Singh went missing while he was in Kashmiri Gate, Delhi, in the infamous 1984 Anti-Sikh Riots has been certified by the then President of Prabandak Committee Gurudwara, Guru Nanak Satsang, Birgang, Nepal Vide certificate dated 25.06.1985. The plaintiff made numerous attempts to trace Ajit Singh and had come to Delhi to lodge an FIR at the earliest but the circumstances didn't allow him and in his first attempt, in November, 1984, the plaintiff while on his way to Delhi from Nepal, was forced to return from Muzaffarpur itself. After few days when the plaintiff managed to reach Delhi, the SHO PS Kashmiri Gate, Delhi, refused to register plaintiff's FIR regarding his missing son. That

thereafter, the plaintiff again after making more efforts managed to reach Delhi to trace his son and also to register an FIR for the said reason, however, the police was reluctant to lodge an FIR or to accept the missing complaint regarding Ajit Singh. That in view of the fact that the police was refusing to register the missing report/FIR of plaintiff's missing son, the plaintiff was left with no option but to approach the Delhi Administration. The plaintiff managed to file the missing report of his son and a copy was provided to him. The plaintiff was assured that, efforts would be made to trace is son, however, the same drew a blank. Unfortunately, with the passage of more than 3 decades of time, the plaintiff misplaced the said missing report of his son. The plaintiff sent a letter dated 31.10.2007 to the Prime Minister's office under Notification No.U13018/46/2005 dated 16.01.2006 published by the defendant No.3 on the basis of Justice Nanavati Commission Report dated 09.02.2005 for the ground of ex-gratia relief, as the abovementioned notification was specifically published for the grant of ex-gratia relief and rehabilitation package to the victims of the 1984 Anti Sikh Riots. The plaintiff's letter dated

31.10.2007 to the Prime Minister's office, was forwarded to the Chief Secretary, Govt. of Jammu and Kashmir, Srinagar, vide letter No.09/25/2007-PMP-4/752376, dated 15.11.2007, for appropriate action. There are plethora of inter-se communications between the Prime Minister's Office, Govt. of Delhi, Govt. of Jammu and Kashmir as well as the Police departments of State of Jammu and Kashmir and NCT of Delhi, whereby they requested each other to take appropriate action regarding the release of ex-gratia amount prayed for by the plaintiff, however, it is pertinent to mention that till date no such amount has been given to the plaintiff by any State Government on account of there being no death certificate issued qua Ajit Singh. That the plaintiff also sought a duplicate copy of missing report of his son from the concerned authorities which was also not given to him on the pretext that no such FIR was lodged and no missing report against plaintiff's son was ever made. That vide communication dated July, 2007 the Additional Deputy Commissioner, Jammu, communicated to Senior Superintendent of Police, Jammu that in his opinion the subject, namely, Ajit Singh (Plaintiff's son) "Needs to be

declared dead” before the matter could be taken any further. Further vide communication dated 06.10.2015 issued by Deputy Commissioner of Police, Anti-Riots Cell, Malviya Nagar, New Delhi informed the District Magistrate, Jammu that as per the available records, plaintiff's son (Ajit Singh) name was neither found in the missing persons list nor was any FIR registered in the concerned Area. The plaintiff also filed writ petition, OWP No.941/16 before the Hon'ble High Court of Jammu and Kashmir, wherein the plaintiff prayed for ex-gratia relief under Rehabilitation Package dated 16.01.2006 introduced by the Govt. of India to provide relief to the victims of 1984's riots, as the plaintiff's son also went missing during the riots in Delhi. The writ petition, OWP No.941/16 was disposed vide order dated 03.04.2017 with directions that “... respondents, particularly, respondent No.3 to consider the claim of petitioner as projected in the writ petition under rules and having regard to the policy issued vide order dated 16.01.2006, and pass consideration order within the period of three months from the date of copy of this order along with complete set of writ petition is made available to the

respondent(s).” The plaintiff was not provided any relief under the abovementioned policy despite the directions by the Hon’ble High Court of Jammu and Kashmir, as on each and every occasion, he was asked to furnish the death certificate of his son, which was not provided to the plaintiff by any concerned authority. That the plaintiff on 04.12.2017 filed another writ petition W.P. (C) No.79/17 before the Hon’ble High Court of Delhi wherein the plaintiff prayed for issuance of death certificate of his son Ajit Singh, and for directions to release just and adequate compensation to the petitioner in accordance with the Notification No.13018/46/2005 dated 16.01.2006 issued by the Union of India, Minister of Home Affairs. The said writ petition W.P.(C) No.79/2017 was withdrawn by the petitioner vide order dated 05.01.2018, with the liberty to approach the concerned authorities for obtaining the death certificate of his son, if the petitioner otherwise is entitled to do so, in accordance with law. It is further contended that it is a trite law that a person who has not been heard of for seven years by those who would naturally have heard of if he had been alive should be presumed dead. Therefore, it incumbent to submit here that

the son of the plaintiff had not been heard by anyone among the family/relatives/ friends of the plaintiff since the said 1984 Anit Sikh Riots, so the plaintiff's son namely Ajit Singh be presumed and declared dead. In any event for issuance of death certificate and for seeking compensation the plaintiff needs to obtain a declaration of civil death of his son Ajit Singh. That till date no death certificate of plaintiff's son had been issued on account of difficulty being, that no specific date of death of the missing son of the plaintiff is known. Therefore, plaintiff had no alternate way to declare his missing son dead except for filing the present suit of declaration. The plaintiff has not filed any suit before any court of law for declaration of civil death of his son Ajit Singh. The plaintiff was not provided any ex-gratia amount under any scheme, either of any State or or the Central Government, the reason being that he did not have the death certificate of his son, therefore, the plaintiff after getting the death certificate should not be barred from claiming the ex-gratia amount which he is legally entitled to receive. The plaintiff was married to Smt. Surjeet Kaur and out of the said wedlock, they were blessed with

4 sons and one daughter, namely, Ajit Singh (son), Harjeet Singh (son), Baljeet Singh (son), Rajinder Singh (son) and Nirmat Kour (daughter). Out of the 4 sons, Sh. Ajit Singh has been missing since November, 1984 and was a bachelor. It is respectfully submitted that Smt. Surjeet Kaur has since expired and as such the plaintiff along with defendants No.4-6 are to be declared as the class II legal heirs and would be entitled to the estate/ compensation receivable after the declaration of civil death of Sh. Ajit Singh. Hence, the present suit for following reliefs:

- a) Pass an order and declare the missing son of the plaintiff, Ajit Singh as dead;*
- b) Pass a decree of declaration that the plaintiff along with defendants No.4-6 are the legal heirs of Sh. Ajit Singh;*
- c) Pass a decree of mandatory injunction thereby directing the defendant No.2 to issue death certificate of plaintiff's son namely, Ajit Singh.*

3. Despite service of summons, no written statement was filed on behalf of defendants No.1, 3 and 5, therefore, right of defendants No.1, 3 and 5 to file written statement was closed and were also proceeded against ex-parte vide order dated 23.05.2019. Defendant No.2 was proceeded against ex-parte vide order dated 31.01.2020. On 20.12.2018, defendants No.4, 6 and 7 gave statement that they admit

the contents of the plaint as correct and do not wish to file written statement and to contest the present suit.

4. As per Order 8 Rule 5 (1) of the Code of Civil Procedure, 1908 in absence of any denial of allegations in the plaint by the defendant, the Court shall presume the facts to be admitted. Section 58 of Indian Evidence Act states that a fact admitted even by way of any rule of pleading need not be proved. However, both the provisions empower the Court to require the admitted facts to be proved, whether admitted expressly or impliedly. Order 8 Rule 5 (2) of Code of Civil Procedure, 1908 is similar to Section 58 of Indian Evidence Act. Moreover, Order 8 Rule 10 of Code of Civil Procedure, 1908, which deals with power of Court in total absence of written statement also leaves it on a discretion of the Court whether to pronounce judgment or make such other order as the court deems fit.

In *Balraj Taneja & Anr v. Sunil Madan & Anr (1999) 8 SCC 396*, in the context of Section 58 and Order 8 Rule 5, it was held by the Hon'ble SC that:-

" A court, at no stage, can act blindly or mechanically."

In exercise of the above powers and as a matter of caution, this Court had required the plaintiff to prove its case through evidence.

PLAINTIFF'S EVIDENCE:

5. In order to prove his case, plaintiff examined himself as PW-1 whose examination in chief is by way of affidavit Ex.PW-1/A. PW-1 relied upon following documents:-
 - a) Ex.PW-1/1 Copy of Certificate dated 25.06.1985 issued by President of Prabandak Committee Gurudwara, Guru Nanak Satsang Birgang, Nepal is de-exhibited and marked as Mark-A.
 - b) Ex.PW-1/2 Copy of letter dated 31.10.2007 to the Prime Minister's Office is de-exhibited and marked as Mark-B.
 - c) Ex.PW-1/3 Copy of letter no. 09/25/2007-PMP-4/752376 dated 15-11-2007 is de-exhibited and marked as Mark-C.
 - d) Ex.PW-1/4 Copy of communication sent by The Senior Superintendent of Police, Jammu dated July, 2015 is de-exhibited and marked as Mark-D.
 - e) Ex.PW-1/5 Copy of said communication dated 06.10.2015 issued by the Dy. Commissioner of Police, Anti-Riot Cell, New Delhi to

District Magistrate, Jammu & Kashmir is de-exhibited and marked as Mark-E.

- f) Ex.PW-1/6 Copy of Writ Petition OWP no. 941 filed before Jammu and Kashmir High Court.
 - g) Ex.PW-1/7 Copy of the order dated 03.04.2017 passed in OWP no. 941/2016 by High Court of Jammu and Kashmir.
 - h) Ex.PW-1/8 Copy of Writ Petition W.P.(C) No. 79/2017.
 - i) Ex.PW-1/9 Copy of order dated 05.01.2018, whereby the Writ Petition W.P.(C) No. 79/2018 was withdrawn.
 - j) Ex.PW-1/10 Notice dated 23.02.2018.
 - k) Ex.PW-1/11 Speed post Receipts.
 - l) Ex.PW-1/12 Copy of delivery report is de-exhibited and marked as Mark-F.
 - m) Ex.PW-1/13 Reply received from Govt. of NCT of Delhi(Department of Home Affairs) dated 07 June, 2018 alongwith envelope.
- Ex.PW-1/14 Reply received from the office of the Chief Registrar (Births & Deaths) dated 03-07-18 alongwith envelope.

- n) Ex.PW-1/15 Reply received from Union of India (Minister of Home Affairs) dated 13.07.18 alongwith envelope.
 - o) Ex.PW-1/16 Reply received from The SHO (Kashmere Gate) alongwith envelope.
 - p) Ex.PW-1/17 Reply received from North Delhi Municipal Corporation dated 15-06-2018 alongwith envelope.
 - q) Ex.PW-18 Reply received from the office of The Dy. Commissioner of Police, North District, Delhi alongwith envelope.
6. I have heard the arguments and perused the record.
7. Before delving into the merits, it is expedient to advert to Section 107 and 108 of Indian Evidence Act, 1872.

Section 107. Burden of proving death of person known to have been alive within thirty years.— *Where 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. 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 provided that he has not been heard of for seven years by those who would have naturally heard of him if he had been alive, the burden of proving that he is alive is shifted to person who affirms it.*

8. At the outset, it may be mentioned that defendants No.1, 2, 3 and 5

never turned up to refute the claims of the plaintiff and defendants No.4, 6 and 7 got their statement recorded before the court admitting the contents of the plaint and stating that they do not wish to contest the case. Notably, defendants No.4, 6 are sons and defendant No.7 is daughter of the plaintiff. Nonetheless, as said earlier, it is the duty of the court to satisfy itself if the plaintiff is entitled to the decree or not.

9. The claim of the plaintiff is that his son Sh. Ajit Singh worked as a contractor for supply of Auto Spare Parts along with the plaintiff in Nepal and for the purpose of purchasing motor parts, Ajit Singh came to Kashmere Gate, Delhi in the last week of October, 1984. Further that in first week November, 1984, Anti-Sikh Riots broke out in Delhi and persons professing Sikh religion were targeted and plaintiff's son went missing and till date his whereabouts are not known.
10. It is quite pertinent to note that it is an admitted fact that no missing report is available with the plaintiff since the police refused to register the same and the one lodged with Delhi Administration got misplaced. More so, there is nothing on record to show that Sh. Ajit Singh visited Delhi in last week of October, 1984. The documents which plaintiff

has been relying upon consist of Mark A; a partly legible copy of Certificate dated 25.06.1985 issued by *Prabandhak Committee Gurudwara Guru Nanak Satsang*, Mark B copy of letter to Hon'ble Prime Minister for rehabilitation and other documents including Writ Petitions filed before Hon'ble High Court of Delhi and Jammu and Kashmir and correspondence between Commission of Police, Delhi and SDM, J&K. I have gone through these documents meticulously. However, no cogent proof is found that substantially and satisfactorily supports the claim of the plaintiff since all the documents are merely based on representations of plaintiff. In fact, it has come to pass that there are some contradictions between the plaint and documents which might assume importance in view of foregoing and forthcoming observations. In Ex.PW1/6 i.e., Writ Petition filed by Plaintiff himself, plaintiff mentioned that his son Sh. Ajit Singh went missing in Last week of November, as against averment in the plaint that he went missing in last week of October whereas in another petition Ex.PW1/8, first week of November has been mentioned. Besides, in the plaint, Sh. Ajit has been shown as eldest son of the plaintiff

whereas in Mark B, he has been mentioned as younger son.

11. At this juncture, I shall also mention that it is a matter of common and legal sense that only a person who is known to have exist in the first place can be declared dead. In fact, it is also worth noting that Section 108 of Indian Evidence Act as reproduced above is a Proviso to Section 107 of the Act which basically calls for evidence of existence before the proof of death though indeed in form of presumption. Therefore, needless to say, before seeking a declaration that a person is dead, plaintiff had onus to prove existence of Sh. Ajit Singh who is the "person" sought to be declared dead. On the contrary, despite being put a query by the Court during final arguments, plaintiff did not bring on record any ID proof of Sh. Ajit Singh nor any kind of document which could reasonably satisfy the court about his identity and existence.

12. As far as Ex.PW1/7 is concerned, in that miscellaneous petition, Hon'ble High Court of J&K merely directed Deputy Commissioner, Jammu to consider the claim of the plaintiff as per rules and did not give any further finding. As regards Ex.PW1/8 which is letter dated

issued to Id. Counsel for plaintiff by Dy. Commissioner of Police wherein it is stated that record of complaints upto 31.12.2013 Roznamcha upto 31.12.2012 and all Miscellaneous Register upto 31.12.2012 have been destroyed, the same does not come to rescue of the plaintiff in view of above observations in preceding paras. Even otherwise, it is the claim of the plaintiff himself that no missing report was lodged.

13. Accordingly, in view of the above observations, relief No.(a) for declaration of death cannot be granted. Since relief No.(c) is related to and contingent upon relief No.(a), it is also declined.

14. Coming to relief No.(b) seeking declaration that defendants No.4 to 6 are legal heirs of Sh. Ajit Singh, no evidence has been brought forth in support of the same. Therefore, this relief can also not be granted.

Hence, suit of the plaintiff is dismissed.

15. No order as to costs.

16. Decree sheet be prepared accordingly.

17. **File be consigned to Record Room.**

**Announced in the open court
on 18.11.2021**

**(HELLY FUR KAUR)
Civil Judge – 08 (Central)/Delhi**