

**Court No. - 29**

**Case :-** SECOND APPEAL No. - 428 of 2016

**Appellant :-** Smt. Raeesa Bano

**Respondent :-** Smt. Tabassum Jahan And Ors.

**Counsel for Appellant :-** Alok Mishra,Adnan Ahmad,Dr.

Manoj Kumar Dubey,Roopani Mishra

**Counsel for Respondent :-** C S C,Mohd Wajid Irfan,Narendra

Kumar Pandey,Vidhu Bhushan Kalia

**Hon'ble Arun Kumar Singh Deshwal,J.**

1. Heard Sri Adnan Ahmad, learned counsel for the appellant, Sri Sabul Khan, learned counsel holding brief of Sri Mohd. Wajid Irfan, learned counsel for respondent nos.1 to 5 and Sri Amar Nath Mishra, learned Additional Chief Standing Counsel for respondent no.6.

2. Present appeal has been filed against the judgment and decree dated 18.1.2016 passed by Additional District Judge, Court No. 15, Lucknow in Regular Civil Appeal No. 142 of 2015 (Smt. Raeesa Bano Vs. Smt. Tabassum Jahan & Others) confirming the judgment and decree dated 31.8.2015 passed by Civil Judge (Senior Division), Mohanlalganj, Lucknow in Regular Suit No. 128 of 2015 (Smt. Raeesa Bano Vs. Smt. Tabassum Jahan & others).

3. This appeal was admitted on 27.02.204 on the following substantial question of law "whether a suit for declaration of civil death of a person on the ground that he is missing for more than 7 years, is barred under Section 34 of the Specific Relief Act".

4. The crux of the matter is that the appellant had filed a suit bearing Suit No.128 of 2015 for the relief that her husband is missing for more than 13 years; therefore, he may be declared

dead in view of presumption under Section 108 of the Evidence Act. In her plaint, she specifically stated that she had lodged an FIR dated 31.05.2009, the publication in the newspaper and required format as well as notice u/s 80 CPC to the District Magistrate, Lucknow regarding missing her husband (Akhtar Ali) for more than 13 years. It was also pleaded in the complaint that her husband was working in the Electricity Department, but he did not attend his duty for more than 13 years, and unless he is declared dead, she will not be able to get his service benefit. Though none of the respondents contested the above suit, even the State has supported the claim of the plaintiff appellant.

5. After hearing the parties and on perusal of the record, the learned Civil Judge (Senior Division) Mohanlalganj, Lucknow, vide judgement and order dated 31.08.2015, dismissed the suit on the ground that the suit for mere declaration of civil death without further relief is barred by Section 34 of Specific Relief Act, 1963 (hereinafter referred to as 'the Act, 1963'). Against the order of the learned Civil Judge, the plaintiff-appellant had also preferred an appeal before the District Judge, Lucknow, which was registered as Civil Appeal No.142 of 2015, and the same was heard by learned Additional District Judge, Court No.15, Lucknow, who, after hearing the parties, rejected the appeal of the appellant on the same reasoning as of the learned Civil Judge.

6. Contention of learned counsel for the appellant is that under Section 34 of the 'Act, 1963' the legal heirs of the person who is missing for more than seven years can file a suit for declaration of his civil death, as this legal character will make him entitled to receive benefits in the missing person's property. In support of his contention, learned counsel for the appellant has relied upon the judgement of the Bombay High Court in **Sou. Swati**

**& Ors. Vs. Shri Abhay & Anr** reported in **2016 Legal Eagle (BOM) 10130**; judgement of the Apex Court in **L.I.C. of India Vs. Anuradha** reported in **2004 (10) SCC 131**; judgement of Calcutta High Court in **Saroj Gupta Vs. Sanjay Kumar Gupta** reported in **2023 AIR CC 1214**; judgement of this Court in **Gokul Pandey and Others Vs. Gram Pradhan Gram Sabha Vill. Bhabnauli Pandey and Others** reported in **2022 (6) ADJ 375**.

7. Per contra, learned Additional Chief Standing Counsel has stated that though in the complaint, the appellant has mentioned that because of the non-declaration of death of her husband, who has been missing for more than 13 years, she could not get the service benefits of her husband from the Electricity Department as he was an employee of the Electricity Department, but the appellant has not impleaded Electricity Department as a party and also no consequential relief was sought, and the suit is only for a mere declaration, which is not maintainable under Section 34 of the Act, 1963.

8. Respondents nos.1 to 5 did not oppose the appeal and virtually supported the case of the appellant.

9. After hearing the learned counsel for the parties and on perusal of the record, it appears that the suit in question was filed for the declaration of the death of Akhtar Ali (husband of the appellant) who was missing for more than 13 years, and because of this the plaintiff-appellant could not get the service benefit of Akhtar Ali, who was working as a Lineman in Electricity Department. Therefore, the suit in question is not only a declaration of civil death but also to get service benefits for Akhtar Ali. In the judgement of Bombay High Court in **Sou. Swati & Ors. (supra)** as well as the judgement of Allahabad High Court in **Gokul Pandey and Others (supra)** relied upon by learned counsel for the appellant, Hon'ble Court observed

that a suit for declaration of civil death of another person on the part of a legal heir is virtually a declaration of legal character as mentioned in Section 34 of the Act, 1963. Therefore, such a suit is maintainable as the plaintiff is not a stranger to the dead person. It was also observed in the above judgement of Allahabad High Court that the suit at the instance of the legal heir for declaration of death of a person 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. Paragraph no.7 of **Sou. Swati & Ors. (supra)** of Bombay High Court is being quoted as under:

*"7. In the light of the dictum laid down by the Apex Court as above, I am of the firm opinion that the Civil Court acting under Section 9, has inherent powers in its plenary jurisdiction de hors with reference to Section 34 of the Specific Relief Act to grant relief qua Section 108 of the Evidence Act. Therefore, the reason that Section 34 of the Specific Relief Act was required to be called in aid does not appear to be sound."*

10. Similarly, paragraphs nos. 11 and 12 of the judgement of Allahabad High Court in **Gokul Pandey and Others (supra)** are being quoted as under:

*"11. From the bare perusal of the above provision, it is clear that a suit for declaration could be filed by any person for the following objects: (a) for his or her legal character, (b) for any right as to any property. Thus, it is clear that a suit for a declaration may be instituted for declaring a status or legal character to which a person/party may be entitled. However, in a suit for declaration of a civil death of another person, the plaintiff is not entitled to such legal character under section 34 of the Act. It is because a suit has been brought for a legal character of another person and not of the plaintiff."*

*12. Section 34 provides that any legal character may be declared for which a plaintiff is entitled. Besides this, he should not be a stranger to a dead person, but he must be interested in such legal character, maybe as his legal heirs. The suit filed at the instance of plaintiff can be contested by anyone denying or interested in denying his title to such character or right. Section 34 of the Act further bars any such declaration where the plaintiff can seek further relief. Legal character is a position recognised by law. A person's legal character is the attribute that the law attaches to him. After the death of a person, his heirs, having an interest in such legal character, have the title to seek a declaration of such legal character as to the person's death. 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."*

11. From the above mentioned judgements, it is clear that though there is no bar under Section 34 of the Act, 1963, for filing a suit for declaration of a civil death of another person, if the plaintiff is a legal heir and such legal character of civil death

is for his benefit and the same is attributed to such legal character. Section 9 of CPC permits all suits of a civil nature except the suits which are expressly or impliedly barred. Section 9 of CPC is quoted as under;

*"9. Courts to try all civil suits unless barred- The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."*

12. Therefore, it is clear from Section 9 of the C.P.C that all suits, which are of a civil nature, are maintainable before the civil Court except specifically barred, but the suit for declaration of any legal character (civil death of a person) is not specially barred by Section 34 of the Act, 1963. Section 34 of the Specific Relief Act 1963 is being reproduced as under.

*"34. 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:"*

13. From the perusal of Section 34 of the Act, 1963 and its proviso, it is clear that it does not bar the suit for declaration of civil death of a person, but it simply regulates the suit which is in the nature of mere declaration without seeking further relief, which the plaintiff is able to seek, but when there is no requirement for further relief, then seeking further relief is not necessary. The declaration seeks to clear what is doubtful, and it prevents future litigation by removing existing causes of controversy. It gives a remedy to a person against all persons who not only claim adverse interest to his own but against all those who may do so, and it is intended that all such claims may once and for all be determined in one suit. Hon'ble Apex Court in the case of **Anathula Sudhakar vs P. Buchi Reddy; 2008 (4) SCC 594** observed that object of Section 34 of 'Act 1963' is to provide a perpetual bulwark against adverse attacks on the title of the plaintiff, where a cloud is cast upon it, and to prevent further litigation by removing the existing cause of controversy.

14. Declaring a person's civil death is a substantial relief and has an immediate consequential effect. On the declaration of the death of a person, benefits are accrued on the legal heirs of the person declared as dead, therefore relief of all such benefits cannot be sought vaguely in the garb of further relief. Even Section 34 of 'Act, 1963' itself permits seeking declaration without further relief except in those cases where without seeking relief, mere declaration has no effect and such is not a position in the declaration of civil death of a person by a legal heir. **Therefore, this Court holds that suit for mere declaration of civil death is very well maintainable and is not barred by Section 34 of the 'Act, 1963' merely because further relief was not claimed.**

15. Though it is true that Section 108 of the Evidence Act 1872 provides a presumption of civil death of a person who has been missing for more than seven years, but, if any person gets affected by the missing of such person either by express or implied denial by any of the person, than he can very well file suit for a declaration of the death of the person being his legal heir. Though, proviso of Section 34 of the 'Act, 1963' provides that a suit for mere declaration is not maintainable if the plaintiff being able to seek further relief than a mere declaration of title, omits to do so. But in the present case, the basis of the suit itself was to get the service benefit of the late Akhtar Ali from the Electricity Department and for that declaration of the death of Late Akhtar Ali is necessary. For another reason, no further relief is required in the present case regarding seeking the death benefit of Late Akhtar Ali because on the declaration of civil death of Late Akhtar Ali, the Government Department will respect the same. In the present case, there is no averment in the plaint that the Electricity Department had denied to pay service benefits or there is apprehension of none payment

despite the decree of the civil Court for the declaration of the civil death of Late Akhtar Ali. On declaration of civil death of late Akhtar Ali, the consequence will be that his wife, along with other legal heirs, would be entitled to the property and service benefit of the late Akhtar Ali as per the law. Relief of the same is not required to be pleaded as the same will automatically flow to them after the declaration of his civil death. Therefore, even if no specific relief is sought against the Electricity Department even then the suit for the declaration of the death of the husband of the appellant cannot be dismissed as not maintainable under Section 34 of the Act, 1963.

16. From the material available on record, it is undisputed that Late Akhtar Ali was missing for more than 13 years, and the appellant has completed all required formalities, including the lodging of FIR. Therefore, there is sufficient material to declare the civil death of Late Akhtar Ali at the instance of the appellant, who is his wife.

17. In view of the above analysis, this Court finds that the order of the learned Civil Judge and the first appellate Court suffers from illegality, which is apparent on the face of the record. Therefore, the judgement dated 18.1.2016 passed by the Additional District Judge, Court No. 15, Lucknow in Regular Civil Appeal No. 142 of 2015 (Smt. Raeesa Bano Vs. Smt. Tabassum Jahan & Others) and judgment and decree dated 31.8.2015 passed by Civil Judge (Senior Division), Mohanlalganj, Lucknow, in Suit No. 128 of 2015 (Smt. Raeesa Bano Vs. Smt. Tabassum Jahan & others) are hereby set aside.

18. The matter is remanded back to the learned Civil Judge, Senior Division, Mohanlalganj, Lucknow to pass a fresh order in light of the above observations.

19. Considering the peculiar facts and circumstances that the

suit itself was filed in the year 2015, and all evidence has been adduced before the learned Civil Judge and the suit was itself uncontested; therefore, learned Civil Judge, Senior Division, Mohanlalganj, Lucknow is further directed to complete the proceedings of passing a fresh order in Suit No.128 of 2015, within a period of three months from the date of receiving a copy of this order, in accordance with the law.

20. With the observations above, the appeal is **allowed**.

**Order Date :- 28.2.2024**

A.Kr\*/Subham