

(1926) 06 CAL CK 0030
In the Calcutta High Court
In Re: Ganesh Das Aurora

Date of Decision : 28-06-1926

Acts Referred:

Evidence Act, 1872 — Section 108

Citation : AIR 1926 Cal 1056 : 97 Ind. Cas. 247

Hon'ble Judges : Charu Chunder Ghose, J

Bench : Single Bench

Judgement

Charu Chunder Ghose, J.—This is an application for an order that the death of one Ganesh Das Aurora may be presumed and that the petitioner may be at liberty to declare and state in her intended petition for grant of Letters of Administration to her of the property and credits of the said Ganesh Das Aurora deceased, that the death of the said Ganesh Das Aurora occurred on or since the 23th August, 1918, and she may be at liberty to verify such statement in her intended petition.

2. The circumstances under which this application has been made, briefly stated, are as follows: The applicant is the wife of the said Ganesh Das Aurora. It is stated that the applicant's husband disappeared on or about the 29th August, 1918, and has not been heard of since by her or any other member of his family or any relations or friends or by any one to the applicant's knowledge. It is further stated that diligent enquiries and searches to find out the whereabouts of the said Ganesh Das Aurora in various places in British India, such as Calcutta, Howrah, Hardwar, Bindhyachal, Muttra, Etawah, Brindavan, Amraoti and Agra, have been made but without success and advertisements were inserted in various places in Calcutta. The said Ganesh Das Aurora could not be found nor was any information received about him.

3. Now, u/s 108 of the Indian Evidence Act I think in this case Ganesh Das Aurora must be presumed to be dead. There is no presumption, however, as to the time of his death and if any one seeks to establish the precise period at which such person died, he must do so by actual evidence. The question for which provision is made in Section 108 of the Indian Evidence Act is whether a

man is alive or dead at the time the question is raised, in other words, the presumption of the continuance of life [there is a presumption in favour of continuance of life, see *Tani v. Rikhi Ram* 56 Ind Cas. 742 : 1 L. 554 : 114 P.L.R. 1920 : 2 L.L.J. 481] ceases at the expiration of seven years from the period when the person in question was last heard of [see in this connection *In re Benjamin* (1902) 1 Ch. 723 : 71 L.J. Ch. 319 : 86 L.T. 387, *In re Walker* (1872) 7 Ch. A. 120 : 41 L.J. Ch. 219 : 25 L.T. 775 : 20 W.R. 171.]

4. The order, therefore, will not be as prayed for but will be in the following form. In the permises herein mentioned the death of the said Ganesh Das Aurora may be presumed and the petitioner be at liberty to declare and state in her intended petition for grant of Letters of Administration to her of the property and credits of the said Ganesh Das Aurora deceased that in the events which have happened the death of the said Ganesh Das Aurora may now be presumed and the applicant may be at liberty to verify such statement in her said intended petition.