
(1992) 08 BOM CK 0027
In the Bombay High Court
Case No : Petition No. 196 of 1992

Subhash Ramchandra Wadekar	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 18-08-1992

Acts Referred:

Evidence Act, 1872 — Section 107, 108

Citation : AIR 1993 Bom 64

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : P.K. Samdani and Ms. Maya Sarkar, instructed by Madhukar Munim and Company, for the Appellant; L.K. Chatterjee, for the Respondent

Judgement

1. An interesting and important question of law arises in this proceeding for consideration of the Court as to the presumed date of death of a person where the presumption of death on expiry of 7 years absence applies and the person concerned is not heard of for last more than 7 years. The question arising before the Court is of some significance as the Estate Duty Act, 1953 was repealed from 1st April, 1985, save and except in respect of liability to pay estate duty where the deceased had died prior to the date.

2. The relevant facts having bearing on the above referred question are as under:--

(a) The petitioner is the son of Shri Ramchandra Arjun Wadekar. The said Ramchandra left home on 9th January, 1984 and was not heard of by the petitioner and the other relatives since then. A missing report was filed by petitioner with the police authorities. Newspaper advertisements were issued announcing reward to the informant for tracing the whereabouts of the said Ramchandra. All efforts to trace out Ramchandra failed. On 9th January 1984, Police authorities issued a certificate to the effect that the said Ramchandra was missing since 9th January, 1984. The said Ramchandra could not be traced by the authorities. Nothing was heard from him or about him.

(b) The statutory period of 7 years expired on or about 8th January, 1991.

3. On 18th Sept. 1991, the petitioner filed Miscellaneous Petition No. 4 of 1992, in this Court for a presumptive finding that Shri Ramchandra Arjun Wadekar is presumed to be dead on the ground that he has not been heard of for last more than 7 years by the persons who would have normally heard of him. The petitioner invoked Ss. 107 and 108 of Indian Evidence Act, 1872.

4. After thorough scrutiny of the material on record Chaudhari, J. passed an Order on 27th January, 1992, to the effect that the said Ramchandra is presumed to be dead and that the petitioner was permitted to take oath to the said effect for purpose of adopting proceedings in this Court in exercise of its testamentary and intestate jurisdiction.

5. In view of the said Order, the petitioner filed Petition No. 196 of 1992, for issue of Letters of Administration in respect of estate of the said Ramchandra.

6. The Prothonotary and Senior Master has issued an office requisition to the effect that the petitioner be required to produce certificate u/s 56 of the Estate Duty Act, 1953 and comply with various other provisions of the Estate Duty Act, 1953 before the petition would be proceeded further.

7. It is well known that the Estate Duty Act, 1953 ceased to be operative from 1st April, 1985.

8. The only question which arises for consideration of the Court is as to what is the presumed date of presumed death of the said Ramchandra Arjun Wadekar?

9. At the outset I would like to refer to the formulation of law having direct bearing on the question under consideration appearing in Halsbury's Laws of England, Fourth Edition, Volume 17, Para 116. The relevant principle of law deduced from the decided English cases is formulated in the said standard work as under:--

"Where the presumption of death after seven years absence applies, the person will be presumed to have died by the end of that period".

10. Section 108 of Indian Evidence Act enacts law of rebuttable presumption in case of a person who has not been heard of more than 7 years. The relevant provisions of Indian Law and English Law are identical.

11. To my mind, the above referred proposition of law formulated in Halsbury's Laws of England cannot be considered as an absolute proposition of law applicable in all situations irrespective of facts although ordinarily the presumed date of presumed death can be fixed on expiry of statutory period of seven years. It must be clarified that the presumption of law concerning death of a person raised from continuous absence of a person for 7 years as more particularly set out in Section 108 of the Act is merely a rebuttable presumption of law and not a conclusive presumption.

12. If Section 108 of Evidence Act, 1872 were to be interpreted literally, it would have to be held that law presumes death of a person unheard of for seven years but is silent in respect of date of presumed death. It is therefore, a possible view that the date of presumed death must be proved by the party concerned as a fact by leading reliable evidence. This aspect of the matter is not very clear and one comes across conflicting observations in several decided cases on the subject. In light of authorities cited by the learned Counsel on both sides referred to in later part of this Order, I have reached the following conclusions:--

(1) Ordinarily a person unheard of for the statutory period shall be presumed to be dead on expiry of seven years and not earlier,

(2) Section 108 of Indian Evidence Act, 1872 is not exhaustive. It is permissible for the Court to raise a suitable presumption regarding date of presumed death depending upon the attendant circumstances and other reliable material on record. In other words, no rule of universal applicability can be spelt out regarding presumed date of death. In my opinion, proposition No. 1 must operate subject to proposition No. 2.

13. Shri Samdani, the learned Counsel for the petitioner has relied on Division Bench judgment of our High Court in the case of Jeshankar Revashankar v. Bai Divali AIR 1920 Bom 85. In this case, one Diwali, filed a suit for redemption in respect of property mortgaged by one Lallu in favour of Shri Motilal Nathu. The said Lallu had disappeared sometime back and was found missing. In 1913, one Jugal, the first cousin of Lallu had purported to sell the equity of redemption to one Jeshankar Rewashankar. It was conceded before the Court seized of suit for redemption that Diwali could succeed in her suit for redemption only if the sale of equity of redemption by Jugal was held to be invalid. It was therefore, necessary for the Court to determine the date of death of Lallu. Lallu was missing since few years. In the context of these facts, Macleod C.J. observed during the course of his judgment in the above case as under:--

"A person is presumed to be alive until he is dead. A person asserting that a particular man is dead has to prove it. If he could prove that man has not been heard of for seven years, then the Court will presume the death, see Rango Balaji v. Mudiappa (1899) 23 Bom 296. But the earliest date to which the death can be presumed can only be the date when the suit was filed. It cannot have a further retrospective effect".

In a given situation like the situation on this petition for issue of Letters of Administration, no suit is filed by either side. The above quoted statement of law cannot be therefore, considered as exhaustive statement of law on the subject dealing with all situations. This authority helps Mr. Samdani up to a point and is not on all fours.

14. Shri L.K. Chatterjee, the learned counsel for the Revenue has relied upon the Full Bench judgment of Hon. Chief Justice. Oudh, in the case of Ram Kali v. Narain Singh AIR 1934 Oud 298 in which it was held that the party relying on

presumed death must prove the particular time when such person is presumed to have died. With respect it is not possible to agree with the ratio of the said judgment in entirety. Ordinarily it shall not be possible for a party affected to lead any evidence on the question of date of presumed death in a case of this nature. Law presumes missing person to be dead in view of total lack of communication from him to the near relatives concerned from the missing person, In most of such situation, it would be impossible for the party concerned to prove the date of presumed death by leading evidence.

15. Shri L.K. Chatterjee has also relied upon the judgment of the High Court of Allahabad in the case of Ram Singh Vs. Board of Revenue and Others, . In this case V. G. Oak, J. observed as under at page All 311:--

"Section 108, however, is not exhaustive on the question of presumption as regards death of a person, The Court may, in the circumstances of each case, make a suitable presumption, even regarding the time of death of the person concerned". (The underlining is done to supply emphasis). In para 5 of this judgment, the learned Judge has given two interesting illustrations regarding making of suitable presumption by the Court regarding the presumed date of death of a person in certain situation. These illustrations are as under :--

(1) Suppose a man sails in a ship, and the ship sinks. Thereafter the man is never seen alive. Under such circumstances, it is reasonable to assume that the person died in the ship wreck.

(2) When a person goes for pilgrimage he or she ordinarily returns home in six months or in a year. In the present case, Smt. Rukmini left for Gangasagar Yatra 17 years ago. Since then she has not been heard of. It is reasonable to assume that, she died in some accident or of some disease during the journey or at Gangasagar.

In absence of any reliable material to the contrary, the Court must presume in this case that the missing person died on completion of 7 years of his missing. Ordinarily the Court may make such presumption in all the cases in absence of any reliable evidence to the contrary.

16. Having regard to facts of this case, I presume as a matter of law of rebuttable presumption that said Ramchandra Arjun Wadekar died on expiry of seven years from 9th January, 1984. Accordingly requisition Nos. 2, 3 and 4 are quashed. The Prothonotary and Senior Master is directed to proceed further with this petition in light of this judgment expeditiously and in accordance with law.

17. Issue of certified copy is expedited.

18. Order accordingly.