

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 86 OF 2016
IN
TESTAMENTARY PETITION NO. 596 OF 2013**

Shashikala Ramchandra Naidu ...Petitioner
And
Ramchandra Kotia Naidu ...Deceased

Mr. Ravi Gadagkar, *a/w Mr. Aniket Ransubhe, i/b Ajay Basutkar, for the Petitioner.*

CORAM: G.S. PATEL, J
DATED: 13th December 2016

PC:-

1. Heard Mr. Gadagkar for the Petitioner in the Miscellaneous Petition.
2. This Miscellaneous Petition seeks a declaration that one Mr. Kuchalkumar Ramchandra Naidu, son of one Ramchandra Kotia Naidu must be presumed dead under Section 108 of the Evidence Act since he has not been heard of or from a period of seven years from May 1991.
3. The Petition itself is for Letters of Administration to the property and credits of Ramchandra Kotia Naidu. The Petitioner,

Shashikala Ramchandra Naidu, is the mother. Kuchalkumar was the deceased's son and therefore, the Petitioner's sister. Ramchandra's wife died before he and there is another son Lavakumar Ramchandra Naidu whose whereabouts are also said to be unknown.

4. The present Miscellaneous Petition is concerned only with the declaration in respect of Kuchalkumar. It is to be noted that Kuchalkumar himself previously filed Probate Probate No. 222 of 1988. That Petition came to be rejected in 1994 by the Prothonotary & Senior Master. What the present Petitioner, Shashikala, says is that it was in May 1991, *i.e.*, in the time between the filing of the Probate Petition and its rejection, that Kuchalkumar went missing. A missing person's complaint No. 52 of 1991 was filed on 6th May 1991 with the Chembur Police Station. There is a certificate dated 17th January 2002 attesting to this and confirming that Kuchalkumar has not been found or heard off or from since.

5. Having regard to these circumstances and to the further Affidavit that is filed by the Petitioner, I will grant the Petition in terms of prayer clause 14(a) which reads as follows:

“(a) that this Hon'ble Court be pleased to declare that Mr. Kuchalkumar Ramchandra Naidu to be presumed dead since he has not been heard for a period of more than 7 years.”

6. The Miscellaneous Petition is disposed of in these terms.

7. All concerned to act on an authenticated copy of this order.

8. Drawn up order is dispensed with.

(G. S. PATEL, J.)