

Digitally signed by
VARSHA DEEPAK
GAIKWAD
Date: 2022.11.24
14:23:55 +0530

also produced Aadhar Card, at “Exhibit-C, Page 25” of the petition. She has made a statement in the Petition at Paragraph 3, that her son Vilas Kawle be declared as presume to be dead under the provisions of section 108 of the Indian Evidence Act, 1872, she would be the sole legal heir of Vilas Kawle under the provisions of the Hindu Succession Act, 1956.

3. Considering the petition is filed by the sole legal heir, issuance of proclamation is dispensed with and the petition is taking up for final disposal.

4. According to the averments made in Paragraph nos. 8 and 9 of the petition, the son of the petitioner- Vilas Kawle proceeded to Pandharpur in the year 2012 and has been missing since that time. The Petitioner has produced on record, the police statement of her son- Vinay Vasudeo Kamble dated 10th July 2012, which was recorded at Pandharpur Police Station. The said police Station recorded therein that the missing person, Vilas Vasudeo Kamble was working as a clerk in B.M.C. for about 18 years. That the family of petitioner go every year to Pandharpur for Aashadhi Ekadashi Darshan. That, the missing person Vilas Kawle had left for Pandharpur from Mumbai on 29th June 2012 and on 30th June 2012, he spoke with his brother Vinod Kamble informing them that he had reached Pandharpur. That, thereafter, he has gone missing and is not seen till date.

5. The petitioner has also produced a certificate dated 27th December 2021, at “Exhibit-A1” of the petition, the same being issued

by the police inspector, Pandharpur Police Station, who certified that the police station was enable to issue a record of Disappearance Register for 2012, and further that the police has checked the records, the records for 2012 have been destroyed as per the Outward No. 4844/2021 dated 16/09/2021. For that reason, the petitioner is unable to produce the extract of the Disappearance Register of the said police station.

6. The petitioner has also produced the record of divorce proceedings between the missing person, Vilas Kamble and his wife Smt Sejal Vilas Kawle. The Family Court at Bandra by judgment and order dated 9th October 2006 passed in Divorce Petition No. F-587-2006, granted divorce by mutual consent under the provisions of Section 13-B of Hindu Marriage Act, 1955. The judgment records that there is no issue born out of the wedlock and that reconciliation is not possible. From the fact that the missing person–Vilas Kawle was divorced since 9th October 2006, it is apparent that his divorced wife would not have any rights to succeed to his estate.

7. Considering the documents produced by the petitioner, she has proved the fact that Shri Vilas Vasudeo Kawle has been missing since 30th June 2012. It would be suffice in terms of Section 108 of the Indian Evidence Act, 1872 to draw a presumption of death of Shri Vilas Kawle. Such presumption would be drawn from the fact that the petitioner, who is the mother of the missing person and with whom the missing person was residing would naturally have heard of him if he had been alive.

8. This aspect has been buttressed by the fact that the brother of the missing person has complained to the Pandharpur Police Station and recorded his statement before the police station, which is further evidenced by the fact that the concerned police station is neither able to issue a record from 2012 of the Missing Register.

9. The petitioner having claimed to be the sole heir of the deceased person in accordance with the Hindu Succession Act, 1956, there would be no requirement for issuance of proclamation, which is accordingly dispensed with.

10. The petitioner also makes a statement that deceased / missing son Vilas Kawle has not left any Will and there would be no other person who has competing rights to be a legal heir of the deceased.

11. Considering the submissions made in the petition and going through the documents produced along with petition, I find no impediment to the grant of relief sought by the petitioners to issue a Legal Heirship Certificate. I, accordingly, pass the following order:-

ORDER

- i) I hereby declare that a presumption of the death of Vilas Kawle, who has been missing since 30th June 2012, a period of more than seven years arises under the provision of section 108 of Indian Evidence Act, 1872.

ii) That the Legal Heirship Certificate be issued, certifying that the Petitioner-Vasudha Vasudeo Kawle, mother of Vilas Kawle, missing person is the only heir and legal representative of the missing person under the provision of Bombay Regulation VIII of 1827.

12. The Petition is made absolute in the above terms;

13. Registry to act upon this order and issue Legal Heirship Certificate.

(VALMIKI SA MENEZES, J)