

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

**MISCELLANEOUS PETITION NO. 69 OF 2019
IN
TESTAMENTARY PETITION NO. 2204 OF 2018**

Piyush Kumarpal Shah & Ors. ... Petitioners

Versus

Kumarpal Jagjivan Shah ... Missing person

Ms. Nikita Lad i/b Chhaya Pandya for the Petitioners.
Mr. P.H. Kantharia G.P. with Mr. H.B. Takke, A.G.P. for the State.

CORAM : R.I. CHAGLA, J.

DATED : 30th SEPTEMBER, 2022

ORDER :

1 Heard the learned Counsel for the Petitioners and learned
A.G.P for the State.

2 By this Petition the Petitioners are seeking an order that
Kumarpal Jagjivan Shah, missing person is declared as dead. Further,
relief is sought for Letters of Administration to be granted to the
Petitioners having effect through out the State of Maharashtra.

3 The Petitioners have stated that Kumarpal Jagjivan Shah has
been missing since 20.07.2010. His place of address at the time of his

missing was Flat No.A-002 Ground Floor, Gokul Co-operative Housing Society Limited, Gokul Building, Haridas Nagar, Shimpoli Road, Borivali (West), Mumbai 400 092. The Petitioners have stated that the missing person is missing as intestate and due and diligent search had been made for a Will left by the missing person but none has been found. The missing person was survived by his heirs and next of kin according to Hindu Succession Act, 1956, who are mentioned in the tabular form in paragraph 4 of the Petition, three of whom are the Petitioners being the two sons and married daughter of missing person and fourth is the wife of the missing person. Save and except those mentioned in the tabular form at paragraph 4 of the Petition, the missing person was not survived by any other legal heirs. The Petitioners have set forth in schedule No.1 which is annexed at Exhibit B of the Petition, all the property and credit of which the missing person left or was entitled to at the time of his missing, which have and/or is likely to come to the Petitioners' hands.

4 The Petitioners have stated that the missing person has been missing since more than seven years. The Petitioners and family members haven't been able to trace the said missing person. The Petitioners have relied upon the police complaint lodged with N.M. Joshi Marg Police Station, Mumbai, on 21.07.2010 as well as certificate bearing the same date issued by Senior Police Inspector of N.M. Joshi Marg Police Station,

Mumbai certifying that the missing person has been missing since 20.07.2010. Thereafter, further certificate dated 21.02.2018 has been issued by N.M. Joshi Marg Police Station, Mumbai, certifying that the missing person has not been traced out till date. The certificates have been annexed at Exhibits 'C' and 'D' to the Petition.

5 An affidavit dated 09.07.2019 of Sadanand Rane, Police Inspector having office at N.M. Joshi Marg Police Station, Mumbai - 400 013 has been filed wherein it is stated that the complaint had been made to the concerned Police Station which was numbered as Adult Missing Register (AMR) No.71 of 2010. Thereafter, statements have been recorded during enquiry about the missing person. It is stated that despite all possible efforts on the part of the concerned Police Station, the missing person was not traced within the jurisdiction of the Police Station, Report has been submitted to special Inspector General of Police, Crime Investigation Department, Sangam Bridge, Pune for search of the missing person through the publication in State Police Gazette. The details of the missing person have been published in the State Police Gazette in July 2011 edition in Part I H/(i) 21 (621). Despite all these efforts, the missing person could not be traced so far. Hence certificate to that effect has been issued by Police Station on 21.02.2018 certifying that missing person has not been traced till that date.

6 Considering the averments in the Petition as well as the affidavit of Sadanand Janaba Rane, Police Inspector having office at N.M. Joshi Marg Police Station, Mumbai 400 013, it is clear that the missing person Kumarpal Jagjivan Shah has been missing since more than 7 years. Certificate to that effect is issued by the concerned N.M. Joshi Marg Police Station. Accordingly, the relief sought for in the Miscellaneous Petition requires to be granted. Hence, the following order is passed :

- i) Kumarpal Jagjivan Shah missing person is declared as dead.
- ii) The office is directed to process the Testamentary Petition for grant of Letters of Administration to the property and credits of Kumarpal Jagjivan Shah, missing person declared as dead and upon which same shall be granted to the Petitioners who are the legal heirs of the deceased. Consent affidavit of the other legal heir, being Mrs. Saroj Kumarpal Shah, wife of the deceased has been filed, giving full and free consent that the Letters of Administration sought for be granted to the Petitioners without justifying the surety of share and/or service of citation of the proceedings upon

her. The consent affidavit dated 28.07.2018 has been taken on record.

iii) Accordingly, Miscellaneous Petition is disposed of in the above terms.

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(R.I. CHAGLA, J.)