



\$~1 & 2 (SB)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 04th April, 2022

+ **C.R.P. 48/2021 & CM APPLs. 17750/2021, 17752/2021**

KHIROD CHAND SIKHDAR Petitioner

Through: Mr. Tarun Arora, Advocate with
Petitioner in person.

versus

BABU LAL SIKHDHAR Respondent

Through: Mr. Mukul Sharma, Advocate for D-
3.

Mr. Siddharth Khatana, Sr. Panel
Counsel for R-5/UOI.

2 (SB)

AND

+ **C.R.P. 4/2022**

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CHAND BISWAS Petitioner

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Counsel for R-5/UOI.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. These are two revision petitions arising out of a suit being *Suit No. 298/2008 titled Pushpa Rani & Ors. v. Union of India & Ors.*, before the Ld. Civil Judge, Tis Hazari West, Delhi, (*hereinafter "Trial Court"*) which was filed by one Smt. Pusha Rani/Plaintiff No.1 - claiming to be the wife of



Late Shri Khirod Sikhdar - and her four children namely Babu Lal Sikdar, Dhrity Sikhdar, Anita Sikhdar and Mamta Rani. The suit was filed against the Defendants therein being, the Union of India, through Secretary (Home), Commissioner of Police and SHO, PS, Model Town, for declaration and consequential reliefs.

3. The case of the Plaintiffs/Respondent Nos.1-4 (*hereinafter "Plaintiffs"*) was that they are family members of Shri Khirod Sikhdar, who has been missing for more than 7 years. Thus, a decree of declaration was sought before the Trial Court, in the following terms:

"Under these circumstances, it is therefore respectfully prayed that a decree of declaration be passed in favour of the plaintiffs there by declaring that Khirod Sikdar is dead and is no more, in the interest of justice. Any other relief which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case be also passed in favour of the plaintiffs. Cost of the suit be also awarded."

4. In the said suit, a judgment/decree of declaration was granted on 23rd August, 2011. The said judgment has been passed on the basis that approximately fourteen years ago, the Plaintiff's husband had gone to his native village in Bareilly, UP, but did not return. Consequently, the Trial Court noted that a complaint was also filed in this regard to the SHO, PS Model Town, by Plaintiff/stated to be the wife of Shri Khirod Sirkar, and public notice was issued, since the Plaintiff's husband had disappeared for a very long time and there were no other legal heirs. The issues were framed in the matter and on the basis of the fact that more than seven years had passed and he had not been heard of, by his relatives and family members, the ingredients under Section 108 of the Indian Evidence Act, 1872, were



held to have been made out. The findings of the Trial Court vide judgement/decreed dated 23rd August, 2011, are as under:

“Issue no.1:- Whether the plaintiff is entitled for a decree of Declaration, as prayed for? OPP

The onus to prove this issue was upon the Plaintiff.

Vide her testimony Ex.PW1/A, it is proved by the plaintiffs that plaintiff no.1 was married with Sh. Khirod Sikdar and out of the said wedlock, four children has been born as plaintiff no.2 to 5. The plaintiff no.1 was a nurse and working in Jaipur Medical Hospital & others. That Sh. Khirod Sikdar was a permanent resident of village Utarsia Samukhia, Pargana Richa, Tehsil Baheri, Distt. Bareilly, U.P. and was a doctor by profession. Approximately fourteen years ago he went to his native village but he did not return. The plaintiff no.1 went to the native village at Bareilly, U.P. but couldn't succeed to know the whereabouts of her husband. She also contacted the village Pradhan but all in vain and till date no whereabouts of her husband could be found. This constrained the plaintiff to file a complaint to the SHO PS Model Town and another complaint to SHO PS Baheri, UP had been lodged in this regard. A public notice was also got published in the newspaper “Veer Arjun” dated 13.03.2008 as well as another public notice published in the newspaper “Rashtriya Sahara” published from Lucknow dated 28.03.2008. That it has been very long time the husband of plaintiff no.1 had disappeared and his whereabouts are not known to the plaintiffs. That there are no other legal heirs of Sh. Khirod Sikdar except the plaintiffs.

By way of present suit, plaintiff no.1 has



sought the relief of declaration thereby declaring the husband of plaintiff Sh. Khirod Sikdar as dead. It is argued by counsel for plaintiff that if a person is not heard of for 7 years by those who would naturally have heard of him, he should be presumed to be dead.

*In order to appreciate the contention of the plaintiff, it is necessary to analyze the provisions of **Section 108 of Indian Evidence Act** which is being reproduced herein for the sake of ready reference:*

“Burden of proving that person is alive who has not been heard of for 7 years:-

“When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it”

Section 108 is founded on the presumption that things once proved to have existed in a particular state are to be understood as continuing in that state until the contrary is established by evidence either direct or circumstantial.

*In **Halsbury’s Laws of England, 4th Edn., Vol. 17, page 85 paras 115 and 116** the law is stated thus:*

Where there is no acceptable affirmative evidence that a person was alive at sometime during a continuous period of seven years or more and it is proved that there are persons who would be likely to have heard of him over that period, that those persons have not heard of him, and that all due inquiries have been made appropriate to the circumstances, there



arises a rebuttable presumption of law that he died sometime within that period.

Plaintiff no.1/PW1, being wife of Sh. Khirod Sikdar, had proved that Sh. Khirod Sikdar is not heard of for the past more than 7 years. It has been proved that Sh. Khirod Sikdar could not be traced out despite the efforts of the plaintiffs and her family members, which constrained the plaintiffs to lodge a complaint at PS Model Town and PS Baheri, Bareilly, U.P. which are proved as Ex.PW1/3 and Ex.PW1/4 respectively. Further a public notice in the newspaper 'Veer Arjun' dated 13.03.2008 and in the newspaper "Rashtriya Sahara" published from Lucknow dated 28.03.2008 to this effect are proved as Ex.PW1/6 and Ex.PW1/7 respectively, which further substantiate the case of the plaintiffs.

Moreover, the defendants neither cross-examined the plaintiffs nor adduced any evidence on their behalf. In the wake of these circumstances, the testimony of PW1 remained un-controverted and un-impeached.

Period of more than seven years has passed since when Sh. Khirod Sikdar went missing and has not been heard of by his close relatives and family members. Accordingly, all the essential ingredients of Section 108 of Evidence Act have been met out. Hence, a rebuttable presumption of law has arisen to the effect that Sh. Khirod Sikdar died sometime within that period and accordingly, it can be presumed that Sh. Khirod Sikdar is now dead.

Accordingly, in view of my aforesaid findings, this issue is decided in favour of the plaintiffs and against the defendants.

Issue no.2:- Whether the suit is not maintainable in view of Section 40 of D.P. Act? OPD.



The onus to prove this issue was upon the defendants. However, no evidence has been led on behalf of defendant to prove the same. Accordingly, this issue is decided against the defendants and in favour of plaintiffs.

Relief:

In view of the aforesaid discussion, suit of the plaintiffs is decreed to the effect that **Sh. Khirod Sikdar is declared as dead.** Decree sheet shall be prepared accordingly. File be consigned to record room."

5. As per the above judgment, the Trial Court gave a declaration that Shri Khirod Sikdar was dead.
6. On the strength of this judgment, the Plaintiffs sought mutation of land from the Tehsildar, Bareilly, Uttar Pradesh, which was in the name of Shri Khirod Sikdar. They also filed a declaratory suit before the Deputy Collector, Bareilly, under Sections 34 & 35 of the U.P. Land Revenue Act, 1901, seeking transfer of the land, which was in favour of Shri Khirod Sikhdar, in the name of his son Mr. Babu Lal Sikhdar. This is when the Petitioner before this Court- who claims to be Shri Khirod Chand Sikhdar @ Khirod Chand Biswas - avers that he came to know of the decree dated 23rd August, 2011. In the meantime, on 18th October, 2012, Plaintiff No.1 i.e., the wife, passed away. One of the daughters of the Plaintiff, i.e., Plaintiff No.3, also filed a complaint with the Commissioner of Police in Delhi and the DIG, Bareilly, Uttar Pradesh (SSP), that her father Shri Khirod Sikhdar had expired and that the Petitioner-Shri Khirod Chand Biswas is impersonating him.
7. Subsequently an enquiry was conducted by the PS Model Town and



an enquiry report dated 16th September, 2013 was submitted pursuant to the same. An FIR was also filed by Plaintiff No.3 in Bareilly against the Petitioner being **FIR No.706/14** under Sections 354/504/506 of the IPC. An investigation was conducted by the UP Police, PS Bareilly and a closure report dated 17th September, 2015, was filed.

8. In the meantime, the Petitioner herein filed an application seeking review of the judgment/decreed dated 23rd August, 2011. The said review application was dismissed by the Trial Court on 6th April, 2021 in **M. No.29734/16** titled **Pushpa Rani & Ors. v. UoI & Ors.** In addition, the Petitioner had also preferred an application under Order VII Rule 11 CPC seeking rejection of the plaint, which was dismissed by the Appellate Court vide order dated 13th December, 2021 in **RCA No.11/21** titled **Sh. Khirod Chand Sikhdar v. Babu Lal Sikhdar and Ors**, by the Ld. JSCC/ASCJ/GJ (West), Delhi. Both these orders are the subject matters of these two petitions.

9. These matters have been heard by this Court from time to time. After some hearing, the Petitioner also has appeared before the Court in person, and Plaintiff No.3 i.e., the daughter, has also appeared before the Court.

10. Considering the nature of the dispute, the parties have agreed that the present two writ petitions can be disposed of in the following terms:

- (i) The judgment/decreed dated 23rd August, 2011, in **Suit No. 298/2008**, having been passed without impleading the Petitioner, the same shall stand set aside.
- (ii) On the prayer of Plaintiff Nos. 2 and 3 who are represented by Plaintiff No.3 who is present in Court, the Petitioner-Mr. Khirod Chand Sikhdar @ Khirod Chand Biswas, **Address:** D-125, Gali



No.50, Mahavir Enclave, Part III, Delhi, shall stand impleaded as Defendant No.4 in the said suit.

(iii) The suit before the Trial Court being ***Suit No. 298/2008 titled Pushpa Rani & Ors. v. Union of India & Ors.*** would be restored to its original number. Defendant No.4 would now be given an opportunity to file a written statement in the matter as also raise objections under Order VII Rules 10 and 11 CPC in respect of maintainability of the suit.

(iv) The suit shall now proceed before the Id. Civil Judge, Tis Hazari West, Delhi, in accordance with law.

11. The above recorded understanding between the parties shall be without prejudice to the rights and contentions of the parties.

12. It is clarified that this Court has not examined the merits of the claim of either of the parties to these petitions. The observations made in today's order or any earlier orders passed by this Court shall not be binding in respect of the final adjudication of the suit.

13. In view of this order, the appeal pending before lower Appellate Court being ***RCA No.11/21 titled Sh. Khirod Chand Sikhdar v. Babu Lal Sikdar and Ors.*** before the Ld. JSCC/ASCJ/GJ (West), Delhi, shall also stand disposed of in terms of this order.

14. Parties shall appear before the Ld. Civil Judge, Tis Hazari West, Delhi in ***Suit No. 298/2008 titled Pushpa Rani & Ors. v. Union of India & Ors.***, for directions and further proceedings, in accordance with law.

15. It is also made clear that in view of the order passed today, any steps taken by the Plaintiffs pursuant to the decree dated 23rd August, 2011, shall be *non est*. The Petitioner is free to avail of his remedies in accordance with



law.

16. Mr. Mukul Sharma, ld. counsel, submits that the Petitioner may use this order in order to dispose of the property in Bareilly, which is one of the contested properties between the parties. If so, the Plaintiffs are permitted to seek remedies before the ld. Civil Judge, Tis Hazari West, Delhi, in ***Suit No. 298/2008***, in accordance with law.

17. These two revision petitions, along with all pending applications are disposed of in these terms.

18. List ***Suit No. 298/2008*** before Court of ld. Civil Judge, Tis Hazari West, Delhi on 4th May, 2022.

19. Copy of this order be sent to the Court of ld. Civil Judge, Tis Hazari West, Delhi in ***Suit No. 298/2008*** titled ***Pushpa Rani & Ors. v. Union of India & Ors.*** and to the Court of Ld. JSCC/ASCJ/GJ (West), Delhi, in ***RCA No.11/21*** titled ***Sh. Khirod Chand Sikhdar v. Babu Lal Sikdar and Ors.***

PRATHIBA M. SINGH
JUDGE

APRIL 4, 2022

dj/ms