

2025:PHHC:103898



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-6136-2018 (O&M)
RESERVED ON: 07.08.2025
PRONOUNCED ON: 08.08.2025**

MALKIT KAUR AND ANR

.....APPELLANTS

VERSUS

GENERAL PUBLIC

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Ramesh Kumar, Advocate
for the appellants.

None for the respondent.

MANDEEP PANNU, J

1. Present Regular Second Appeal has been filed by the plaintiffs/appellants assailing the correctness of the concurrent findings of the fact arrived at by the Courts below while dismissing the suit for declaration to the effect that Rajinder Singh son of Joginder Singh resident of village Habibwal, Tehsil and District Kapurthala is legally presumed to be dead, having not been heard of for more than 7 years by the plaintiffs/appellants and other persons.

BRIEF FACTS

2. Brief facts of the case are that Rajinder Singh, who happens to be the son of appellants/plaintiffs, was permanent resident of village Habibwal, Tehsil and District Kapurthala and was unmarried. In December

2003, said Rajinder Singh went out of the house to his fields but did not return as he was having some mental problem previously. Upon search by appellants/plaintiffs, he could not be traced despite the elapse of 12 years. As such, by legal presumption aforesaid Rajinder Singh is deemed to be dead for all intents and purposes. This necessitated the appellants/plaintiffs to file the present suit as they are the only surviving natural heirs of said Rajinder Singh and are entitled to inherit his estate.

The suit was filed against General Public/defendant. Notice was issued to General Public through publication but no one appeared on behalf of defendant-General Public and accordingly, the General Public/defendant was proceeded against ex parte.

It is relevant to mention here that in the trial Court, learned counsel for the appellants/plaintiffs suffered a statement that they do not claim the relief of entitlement to inherit the estate of said Rajinder Singh by way of natural succession, which includes agricultural land.

EVIDENCE ADDUCED

3. In support of ex parte claim, plaintiff No.1-Malkit Kaur examined herself as PW-1, Surain Singh maternal grandfather of Rajinder Singh as PW-2, Jaspal Singh, Member Panchayat of village Habibwal as PW-3 and Balwinder Singh, Member Panchayat of said village as PW-4. In documentary evidence, the appellants/plaintiffs tendered Ex P-1 to P-8.

REASONS RECORDED BY THE COURTS BELOW

4. The trial Court after hearing the contentions of learned counsel for the appellants/plaintiffs, dismissed the suit vide judgment and decree dated 10.11.2017. Relevant portion of the said judgment reads as under:-

“No doubt, plaintiff Malkit Kaur, while stepping into witness box as PW1 has reiterated the version of their plaint and her testimony further finds support from the the testimony of other witnesses examined by the plaintiffs in support of their claim. Although the plaintiffs have placed on record certain documents, as discussed here-in-above, but none of these documents fulfills the requirement of law, since the plaintiffs have not placed on record any document like FIR, DDR or Publication in newspaper regarding the missing report of Rajinder Singh before filing the suit. When person is found missing then generally people report the matter to the police, but nothing in this regard was done in the present case.”

Feeling aggrieved by the above-said judgment and decree passed by the Learned Trial Court dated 10.11.2017, the appellants/plaintiffs filed an appeal before the Learned Addl. District Judge, Kapurthala, which was also dismissed on the similar grounds as that of the Learned trial Court vide judgment and decree dated 04.07.2018.

ARGUMENTS ADDRESSED

5. Learned counsel for the appellants/plaintiffs argued that the Learned Trial Court below committed a grave error while dismissing the suit of the appellants/plaintiffs. As per Section 108 of Indian Evidence Act, if it is proved that a person has not been heard of for 7 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 on the person who affirms it. In the present case, appellants/plaintiffs led sufficient oral evidence to prove the fact that Rajinder Singh has not been heard of for seven years by those who would naturally have heard of him if he had been alive.

6. He further contends that the Learned Courts below erred in holding that, in the absence of any DDR, FIR, newspaper publication or the missing report of Rajinder Singh, the aforesaid fact remains unproved. Therefore, both the judgments passed by the Lower Courts below are liable to be set aside, and the present appeal deserves to be allowed.

7. I have heard learned counsel for the appellants/plaintiffs and perused the record.

ANALYSIS AND DISCUSSION

8. The main question that arises for determination is that whether both the Courts below erred in law by dismissing the suit of the appellants/plaintiffs by misapplying the provisions of Section 107 and 108 of Indian Evidence Act, 1872 despite the unrebutted evidence led by the appellants/plaintiffs that Rajinder Singh had not been heard of for more than 7 years by the appellants/plaintiffs and those who would naturally have heard of him if had been alive.

9. After considering the contentions of learned counsel for the appellants/plaintiffs, this Court is of the considered opinion that both the Courts below have misdirected themselves by requiring direct evidence of death in the shape of DDR, FIR, missing report, publication or any other document which defeats the very purpose of the statutory presumption. The law nowhere requires the filing of the above-said documents in order to prove the death of a person. In the present case, the oral evidence led by the appellants/plaintiffs is sufficient to prove the above-said fact. PW-1-Malkiat Kaur is the mother of deceased Rajinder Singh, who has categorically deposed on oath that her son Rajinder Singh never returned back since the year 2003 from the fields whereupon the appellants/plaintiffs searched for

him at each and every place where he could be located. His whereabouts are not known to anybody. PW-2 is the maternal grand-father of Rajinder Singh, who has corroborated the version of PW-1. PW-3 and PW-4 are Member Panchayat of village Habibwal to which deceased Rajinder Singh belong. Both of them categorically stated that Rajinder Singh never returned back since the year 2003 whereupon they searched for him at each and every place where he could be located but could not succeed. Learned Courts below ignored the fact that the above-said evidence led by the appellants/plaintiffs remains un-rebutted on record as no one has appeared on behalf of General Public/defendant. The law requires proof that the person has not been heard of for 07 years by close family members or associates. Filing of FIR/DDR/Publication is not legally required. Once the condition under Section 108 of the Indian Evidence Act is satisfied, the Courts must presume death unless rebutted. There is nothing on the record that the present claim has been made fraudulently. Both the Learned Courts below erred in holding that since no documentary evidence has been led by the appellants/plaintiffs to prove the missing of Rajinder Singh, therefore, the presumption of death does not arise. Also, Learned Lower Appellate Court wrongly observed in para No.17 of the judgment that as per the case of the appellants/plaintiffs, Rajinder Singh is missing since the year 2003 and the present case has been filed after a gap of 12 years and that the reason for aforesaid delay has not been explained by the appellants/plaintiffs ignoring the fact that there is no limitation to seek such a declaration. The evidence led by appellants/plaintiffs proves the fact that Rajinder Singh has not been heard of for 7 years by his close relatives or associates.

FINDING

Consequently, the judgments and decrees dated 10.11.2017 and 04.07.2018 passed by Learned Courts below are set aside and the present appeal is hereby allowed and the suit of the appellants/plaintiffs for declaration to the effect that Rajinder Singh is legally presumed to be dead, having not been heard of for more than 7 years, is decreed.

08.08.2025

Poonam Negi

**(MANDEEP PANNU)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No