

# DECLARATION OF CIVIL DEATH

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Mostly in hilly areas, there is a tendency to file a suit for the declaration of civil death *simpliciter* of a person on the ground that such a person has not been seen/heard of for more than seven years.

In this article, I would try to discuss the legal points attached to the said suit and find out whether such a suit is maintainable in law or not? OR whether a Civil Court can grant a relief of declaration of civil death *simpliciter*?

Suit for declaration, generally, filed under Section 34 Specific Relief Act 1963 which is as follows:

**34. Discretion of court as to declaration of status or right.-** Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person **denying, or interested to deny**, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

*Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.*

**Explanation.-**A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

From the bare perusal of above provision, it is clear that a suit for declaration could be filed by any person for following two objects under above provision:-

- 1. for any of his legal character**
- 2. for any of his right as to any property**

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\* Civil Judge (Sr. Div.), Kashipur, Udham Singh Nagar.

As our subject sounds, it does not relate to second point, i.e., declaration for any right as to any property.

As regards first point, Section 34 of Specific Relief Act 1963 starts with the phrase “**Any person entitled to any legal character.**” From the above phrase, it is clear that a person who is entitled to any legal character, that person, may bring the suit for declaration of that legal character. But in the suit for declaration of civil death, the person who brings the suit is not entitled to any such legal character as envisaged under section 34 Specific Relief Act 1963. Whereas he brings the suit for legal character of another person, who is dead, which is not permissible under section 34 Specific Relief Act 1963.

Further it is also a debatable question that **whether death could be deemed as a legal character** since after the death legal status of an individual completely absolved.

Moreover, Section 34 Specific Relief Act 1963 provides that any person may bring the suit against any person **denying, or interested to deny**, his title to such character or right. In most of such cases, defendants almost accept the fact of missing of the person for whom declaration of civil death is sought. Therefore, absence of denial from the defendants would also bar the Court to give relief under above provision.

Even if we assume that other party has denied or interested to deny the character, nevertheless, suit for declaration of civil death is not maintainable under Section 34 Specific Relief Act 1963 for the reason that it does not relate to the legal character of the plaintiff.

Besides above, many a times, there are arguments that Section 34 Specific Relief Act 1963 is not a complete code for declaratory suits and it can be filed under S. 9 Code of Civil Procedure. Hence, suit for declaration of civil death simpliciter is maintainable under Section 9 Code of Civil Procedure.

It is true that Hon'ble Apex Court has, in plethora of rulings, held that Section 34 Specific Relief Act 1963 is not an exhaustive provision for declaratory suits and suits for declaration can be filed under S.9 Code of Civil Procedure.

Let us see, whether suit for declaration of civil death is maintainable or Court can declare civil death of a person under S.9 Code of Civil Procedure.

S.9 Code of Civil Procedure reads as under:

**9. Courts to try all civil suits unless barred.** *The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*

It is clear from above that Civil Court has jurisdiction to try all suits of civil nature. The word "civil nature" is not defined anywhere in Code of Civil Procedure. But Hon'ble Apex Court has, in many a case, defined suit of civil nature as a suit for the enforcement of one's civil right or obligation. Now question arises that whether any one has a civil right to declare any other's death. The answer will surely be in negative. Therefore, now it is also clear that relief of civil death of a person can not be given under S.9 Code of Civil Procedure.

Now, let us also discuss the law relating to missing of a person under Section 107 read with section 108 of Evidence Act to find out whether a suit for the declaration of civil death simpliciter is maintainable under above provision. Section 107 and Section 108 of Evidence Act is under:

**107. Burden of proving death of person known to have been alive within thirty years.-** *When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.*

**108. Burden of proving that person is alive who has not been heard of for seven years.-** *Provided that 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.*

As we know that Evidence Act is a law of procedure and it does not create any substantial right and liability in favour of anyone (except in some exceptional cases). It simply facilitates the courts in trial of a matter.

Further above provisions come under Chapter OF THE BURDEN OF PROOF of Evidence Act which relates to the Burden of Proof. Hence, provisions of above chapter of the Act only provides that in which circumstances onus of proof shifts on whom. In this way, Section 108 of the Evidence Act simply shifts the onus to prove that a person is alive, for whom no one has heard from 7 years, to that person who affirms it.

Moreover, it is established principle of law for Section 108 of Evidence Act that presumption under above provision could only be raised in **any proceeding** in which question arises that any person is dead or alive. Hence no matter could be filed upon the basis of above provision. In other words, no suit could be filed upon the basis of Section 108 Evidence Act.

Therefore, above provisions also do not create a substantial right in favour of any person to institute a suit.

In this way, suit for the declaration of civil death of is not even maintainable under Section 107 read with section 108 of Evidence Act.

As far as pronouncement of Hon'ble Supreme Court and High Courts relating to the suit for the declaration of civil death simpliciter is concerned, I found a case of Zena Gladys Freemantle vs Herbert Charles Freemantle; (1950) 52 BOMLR 641 only in which Bombay High Court, while interpreting Section 42 of (Old) Specific Relief Act, held that Court can not declare death of a person under Section 42 of (Old) Specific Relief Act. Except above, I did not find any direct pronouncement in which the ratio decedendi has been propounded that suit for the declaration of civil death simpliciter is maintainable or not.

Beside above legal impediments, there is a practical problem in declaring civil death of any person. Suppose a Court has declared civil death of a person and one fine morning that person appears before the World. Then what will be his status? Whether he had to bring a suit to declare that he is alive or institute a suit to cancel decree which follows from the declaration of his civil death? If so, what will be his status until

he succeed in such a suit? Whether till that time period he will be deemed as dead?

In the light of the above judicial hazards, I am of the view that a suit of declaration of civil death simpliciter is not maintainable in law and Court can not give relief of Civil death.

Now many a times, I had to encounter a question that if a person is missing for more than seven years leaving behind his/her property and other thing, what remedy will available to his/her legal representatives? In my opinion, legal representatives of such a person could brought suits for his/her property and other thing in a different mode. For example, any person can bring a suit to declare himself as a legal heir of the person missing or in case of recovery of dues of missing person, as recovery suit etc. In above type a suits, Court can took the presumption of death of the person missing in view of S.108 Evidence Act.

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