

**High Court Form No. (J) 2.  
Heading of Judgment in Original Suit**

**District : SONITPUR.**

**IN THE COURT OF MUNSIF NO. 1, SONITPUR,  
TEZPUR**

**Present :Sri Vishek Bhuyan, AJS,  
MUNSIF NO. 1, SONITPUR.**

**Thursday the 22<sup>nd</sup> day of December, 2022**

**TITLE SUIT NO. 216 of 2022**

**Mrs Nirmala Devi**

**..... Plaintiff**

***-versus-***

**1. Mr Tushar Kanti Powdel**

**2. Mr Mrinal Jyoti Powdel**

**..... Defendants**

**T. Ghosh.....Advocate for the plaintiff;**

**and**

**Santi Rekha Choudhury ..... Advocate for the  
defendants**

## **JUDGMENT**

**1.** That the plaintiff and the defendant are permanent residents of village- Rupak Nagar, Hazarapar, P.O&P.S- Tezpur, Dist- Sonitpur (Assam).

That the plaintiff is the lawfully wedded wife of Sri Bhes Raj Powdel. The couple are blessed with two children. They are: Tushar Powdel and Mrinal Jyoti Powdel.

That the husband of this plaintiff, Dr Bhes Raj Powdel, has been missing since 12 May, 2014. he was last seen on that day the river side known as Rudra Path by the side of bank of Brahmaputra at Tezpur. He had gone out from his house to Darrang College for his duty where he working as a Lecturer in the Department of Statistics.

That despite many efforts this plaintiff or her children or relatives have not been able to find him or hear from him. The matter of his going missing was reported to Lalmati Police out post. The police made a GDE and tried to trace him, but they also failed to trace him and to know his whereabouts. The in charge of Lalmati Police out post gave me a report dated 10.11.21 certifying therein that the po-

lice has not been able to trace Dr Bhes Raj Powdel till that date.

That after the day Dr Bhes Raj Powdel went missing, this plaintiff was left with her two child who were then minor, whose nourishment and education became the sole responsibilities of this plaintiff. Being a housewife, it was very difficult for this plaintiff to manage her living yet she somehow managed by. However, now as both the sons are pursuing their respective higher studies, it has become herculean task for her to get them the best education possible. She has been deprived of the financial sources to do so.

That there is no proof of death of Bhes Raj Powdel. However, it is equally true that he has not been heard of more than eight years now. Since the day he went missing, there is no clue as to his surviving anywhere. The plaintiff or the defendants are the natural persons who would have heard about him had he been alive. My husband had taken a policy from your company. Apart from them, there are other distant relatives and friends but no one has heard about Bhes Raj Powdel. It appears that Bhes Raj Powdel is no longer alive. He is presumably dead. A decree in that respect has become

necessary in the absence of which the plaintiff and her sons are facing lot of difficulties.

That Bhes Raj Powdel had two vehicles-a car [AS-12-H-6390, a silky silver Maruti Wagon R VXI] and a motorbike [AS-12-H-2196, Glamour MMC]. All these years the two vehicles are lying in the garage. It has not been in use since the insurance of the two vehicles could not be renewed in the absence of the insured/owner. In the absence of the insurance, the vehicles could not be plied and it has rusted lying unused. In case if by virtue of a decree of presumed death of Bhes Raj Powdel, This plaintiff shall be able to get the vehicles transferred to her name or in the name of her children and then can decided the next course of action for its disposal or making it fit for use once again.

That Dr Bhes Raj Powdel was having some insurance policies. There is one insurance policy issued by the ICICI Prudential Life Insurance bearing Policy No. is 08824094 for sum assured of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand). There are seven more insurance policies that he had taken but from Life Insurance corporation of India.

That there is yet one more insurance policy issued by IDBI Federal Life Insurance Co. Ltd. With Certificate of Insurance No. and FedSecure account No. 11870600044716. with the same account attached, Dr Bhes Raj powdel had a savings Bank Account with Federal Bank Ltd., Tezpur Branch. His Savings Bank Account No is 11870600044716. In the account, there is money which is lying unused. The account has become inactive due to non operation in the absence of Dr Bhes Raj Powdel.

That the insurance companies, or even the Bank or the District Transport Officer, Sonitpur, need either clear cut information as to death of Bhes Raj Powdel or a decree of the Court in order to settle the claim of this plaintiff. The absence of any clarification as to the death or being alive, the insurance companies or the bank have not been able to settle the claim. Even the DTO have not been to take any decision as to the transfer of the Certificate of Registration in the name of the plaintiff or in the name of any of her children. The authorities-be it insurance companies or bank or the DTO need a decree from a competent civil court as to presumed death of Bhes Raj Powdel in order to settle the claims against the life insurance policies.

That at the cost of repetition, this plaintiff says that since the day when her husband went missing, it is more than 7 long years. In fact, it is more than eight years now. Bhes Raj Powdel has not been heard of for 7 years by those who would have naturally heard about him and hence he is presumed to be dead. It is reiterated that neither this plaintiff nor her extended family or any of close aids have heard Bhes Raj Powdel in the last more than eight (8) years. There is no other option but to assume the death of beloved husband.

That the cause of action for the suit arose on 12.05.2014, the day Dr Bhes Raj Powdel went missing. The cause further arose on 12.05.2021 when the seven years period expired but during all these years Dr Bhes Raj Powdel was not heard nor was seen by anyone including the parties to the suit.

That this plaintiff has impleaded her sons/children only as they are the persons who would have heard about their father had he been alive. Even they have not heard about him ever since 12.05.2014, the day he went missing. They are the most affected persons on the sudden missing of their father. The elder son, Sri Tushar Kanti Powdel has been pursuing Ph.D from the Department of

Mathematic Sciences, Tezpur University while the younger one is in pursuing integrated Ph.D from International Centre for Theoretical Sciences-TIFR, Bengaluru. Apart from them, even no one else has been made party to the suit since others are not supposed to hear about him in the natural course. The insurance companies or the bank or even the DTO are asking for a presumed dead decree from a competent court of law as the same is the requirement as per their respective policies.

**2.** Summon was duly served on the defendant and the defendant did not file written statement and instead filed an application for admission under Order XII Rule 6 of the Code of Civil Procedure for admission of fact.

**3.** In support of the instant case the plaintiff submitted the following documents :

I) Police report.

II) Certificate of Registration of vehicle bearing No. AS12H-6390.

III) Certificate of Registration of vehicle bearing No. AS12H-2196.

IV) One No. of Insurance Policy of ICICI Prudential Life Insurance.

- V) Seven Nos. of Life Insurance Policy of LIC, India.
- VI) One No. of Life Insurance Policy of IDBI Federal insurance.
- VII) Letter to the Branch Manager, LIC India, Tezpur Branch, Sonitpur, Assam dated 15.11.2021.
- VIII) Letter to the DTO, Tezpur, Sonitpur, Assam dated 15.11.2021.
- IX) Letter to ICICI Prudential Life Insurance, Tezpur, Sonitpur, Assam dated 15.11.2021.
- X) Three Nos. of Postal receipt (original).

**4.** That the Defendants jointly states that the Plaintiff is their mother and she has filed the instant case seeking for a decree of presuming the death of her husband Dr Bhesh Raj Powdel who has been missing since 12<sup>th</sup> of May, 2014. He was last seen on that day on the river side known as Rudra Path by the side of the bank of Brahmaputra at Tezpur. Despite best efforts of the Plaintiff and her relatives they were unable to find their father/husband. There is no proof of death of Dr Bhesh Raj Powdel but more than eight years have passed since he was last heard from. And therefore the Defendants have no objection if the Court grants a decree of



presumption of Death of Dr. Bhesh Raj Powdel which is filed by their mother i.e the petitioner.

**5.** I have perused the pleadings of the Plaintiff and the application for admission of fact by the defendant of the claim of the Plaintiff. The defendants have stated that they have no objection if the decree for presumption of death of Dr Bhesh Raj Powdel is granted by the Court.

Now, Section 108 of Evidence Act, 1872 presumes that if a person has not been heard of for seven years by those who would naturally have heard of him if he had been alive, is presumed to be dead and the burden of proving that he is alive is shifted to the person who affirms it. In the instant case, the Plaintiff in her Plaint contends that her husband Dr Bhes Raj Powdel has been missing since 12<sup>th</sup> May, 2014 and despite the best efforts of the Plaintiff and her children/defendants he has not been heard from.

Hence, Under Section 108 of Evidence Act, it can be presumed that Dr Bhes Raj Powdel is dead as the defendants have also admitted to the claim of the Plaintiff that they have not heard from the concerned missing person since May 12<sup>th</sup>, 2014.

**6.** Thus, the admission of the defendants regarding the whole claim of the plaintiff establishes the suit in favour of the Plaintiff. Further, it is well settled that on basis of admission Court has the discretion to pass judgment upon satisfaction that the admission relied upon is cleared, definite and unequivocal. To be noted that it was observed in *Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India, (2000) 7 SCC 120*

*“Where one portion of the claim was admitted and the other portion was denied, and both the portions were severable, the plaintiff could ask for a judgment on the portion admitted by the defendant.”*

*Further in Nagindas Ramdas Vs. Dalpatram Iccharam, AIR 1974 SC 471 it has held*

*“Admission in the pleadings or judicial admissions made by the parties, at or before the hearing of the case, stand on a higher footing than evidentiary admissions and are binding on the party making them and constitute waiver of proof.”*

**7.** Considering the above position of law and upon satisfaction of the application for admission of fact filed by the defendants admitting the claim of the plaintiff; I deem it fit to pass judgment.

**8.** Accordingly, it is held that, the plaintiff has been able to prove his case based on admission of fact by the defendants and hence, entitled to the decree.

**Order**

**9. In the conclusion, the suit is decreed with cost with the below mention relief/s.**

**The Plaintiff is entitled to decree for presuming death of Dr Bhes Raj Powdel having not been heard for more than seven years since 12.05.2014 by those who would have naturally heard about him had he been alive.**

**10. Prepare decree accordingly.**

**Given under my hand and the seal of this court on this the 22<sup>nd</sup> day of December, 2022 at Tezpur, Sonitpur.**

**Sri Vishek Bhuyan  
Munsiff No.1,  
Tezpur, Sonitpur.**

## **APPENDIX**

**A. Plaintiff's Witnesses : Nil.**

**B. Defendant's Witnesses : Nil.**

**C. Plaintiff's Exhibits : Nil.**

**D. Defendant's Exhibits : Nil.**

**Sri Vishek Bhuyan  
Munsiff No.1,  
Tezpur, Sonitpur.**