

Civil Misc. Case no. 01 of 2018

15.03.2019

Plaintiffs/Petitioners present
with Ld. Counsel Ms Mirmir Lepcha.

None present for the Opposite
party.

Date is fixed for orders.

The plaintiffs/ Petitioners have
filed a petition praying for
declaration of death of their third
son Chuden Lepcha @ Tseten
Lepcha. The Complaint is supported by
their respective affidavits.

The case of the plaintiff no.1 is
that he is the father of Chuden
Lepcha @ Tseten Lepcha (herein
after referred as 'missing person")
and plaintiff no.2 is the wife of the of
plaintiff no.1 and mother of missing
person and the plaintiff no. 3 is the
first son of plaintiff no.1 and plaintiff
no.2 and brother of the missing
person. It is their case that the third
son of plaintiff no. 1 and 2 and the
brother plaintiff no. 3 went on
missing since 10th of November 2010
from Gangtok, East Sikkim and was
not heard till then. The petitioner

firstly tried to locate and trace the missing person by themselves and later petitioner no. 3 lodged General diary before Sadar Police Station Gangtok, East Sikkim. After the lapsed of seven years, despite several efforts being made, the said missing person's whereabouts could not be traced and since then he has not been heard of by any person who would have heard from him if he had been alive.

Notice was issued to the opposite party which returned duly published, however, none appeared to file any reply or to raise any objection.

The plaintiffs/ petitioners examined themselves as witnesses no.1 , 2 and 3 in support of their case. They relied on the following documents:-

- a) Evidence on affidavit by petitioner no. 1 , 2 and Petitioner no.3 marked Exhibit 1, 2 and 3 respectively.
- b) General Diary marked as Exhibit 4.
- c) Certificate of Gangtok Municipal Corporation marked as Exhibit 5.

d) No Objection Certificate of their family members as Exhibit 6.

I have considered the submissions made by the plaintiffs/petitioners and carefully perused the documents placed on record. In view of the same, and since there were no objections as any kind filed by any person, I am inclined to hold that the petitioners have made out their case that the missing person had not been heard of or seen by anyone who ought to have seen him or received any sort of intimation from him since 10.11.2010.

The petitioners have prayed for this Court to declare civil death as he is missing since 10.11.2010 and prays for the issuance of Death certificate. However, it is pertinent to mention here that under the provisions of Sections 107/108 of Indian Evidence Act, 1872, this Court can only “presume that the person died at some point of time during the period of his going missing” and that his death on a

particular day/date will not be presumed until the same can be proved from evidence.

Therefore, on the basis of the evidence produced and also keeping in mind the above discussion, it can be presumed that Shri Chuden Lepcha @ Tseten Lepcha had not been or heard from for a period of more than 7 years by anyone who ought to have seen him or received any sort of intimation from him.

Accordingly, it is declared that Shri Chuden Lepcha @ Tseten Lepcha is presumed to be dead.

A decree be issued accordingly.

This Civil Misc. Case is disposed off accordingly.

Sd/-

Civil Judge, (Jr. Division)
North Sikkim at Mangan (I/C)