

TESTAMENTARY JURISDICTION.

Before C. C. Ghose J.

GANESH DAS AURORA (DECEASED),

*In the goods of.**

1926

June 28.

Presumption of Death—Evidence Act (I of 1872), s. 108—No presumption, as to time of death.

Although under section 108 of the Indian Evidence Act, a person who has not been heard of for seven years is presumed to be dead, the law raises no presumption as to the time of his death, and therefore, if any one has to establish the precise period during those seven years at which such person died, he must do so by actual evidence.

Tani v. Rikhi Ram (1), *In re Benjamin* (2), *In re Walker* (3) referred to.

APPLICATION IN CHAMBERS.

This was an application by Munna Bai, widow of Ganesh Das Aurora, for an order that the death of the said Ganesh Das Aurora be presumed and that the petitioner be at liberty to declare and state in her intended petition for grant of Letters of Administration to her of the property and credits of the said Ganesh Das Aurora, that the death of the said Ganesh Das Aurora occurred on or since the 24th day of August 1918 and that she might be at liberty to verify such statement in her said intended petition.

The facts stated in her petition, which are relevant for the purpose of this report, were as follows:—That Ganesh Das Aurora, who was governed by the Mitakshara School of Hindu Law, had disappeared on or

* Testamentary and Intestate Jurisdiction.

(1) (1920) I. L. R. 1 Lah. 554.

(2) [1902] 1 Ch. 723.

(3) (1871) 7 Ch. App. 120.

about the 29th August 1918 and had not been heard of since by the petitioner, his wife, or any other member of his family or any relation or friend or any one to the petitioner's knowledge. That since the said 29th August 1918, the petitioner and other members of the family had made diligent enquiries and searches to find out the whereabouts of the said Ganesh Das Aurora in various places in British India, viz., Calcutta, Howrah, Hardwar, Bindhyachal, Muttra, Etawah, Brindaban, Amraoti, Agra, Delhi, etc., and advertisements had been inserted in various newspapers but the said Ganesh Das Aurora could not be found nor any information received about him. In the circumstances the petitioner believed he was dead.

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Mr. R. C. Deb (of Messrs. G. C. Chunder & Co.) appeared in support of the application.

GHOSE J. This is an application for an order that the death of one Ganesh Das Aurora may be presumed and that the petitioner may be at liberty to declare and state in her intended petition for grant of Letters of Administration to her of the property and credits of the said Ganesh Das Aurora deceased that the death of the said Ganesh Das Aurora occurred on or since the 29th August, 1918 and she may be at liberty to verify such statement in her intended petition.

The circumstances under which this application has been made, briefly stated, are as follows:—The applicant is the wife of the said Ganesh Das Aurora. It is stated that the applicant's husband disappeared on or about the 29th August 1918, and has not been heard of since by her or any other member of his family or any relations or friends or by any one to the applicant's knowledge. It is further stated that diligent enquiries and searches to find out the whereabouts of the said Ganesh Das Aurora in various places

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in British India, such as Calcutta, Howrah, Hardwar, Bindhyachal, Muttra, Etawah, Brindaban, Amraoti and Agra have been made but without success and advertisements were inserted in various papers in Calcutta. The said Ganesh Das Aurora could not be found, nor was any information received about him.

Now, under section 108 of the Indian Evidence Act, I think in this case Ganesh Das Aurora must be presumed to be dead. There is no presumption, however, as to the time of his death and if any one seeks to establish the precise period at which such person died he must do so by actual evidence. The question for which provision is made in section 108 of the Indian Evidence Act is whether a man is alive or dead at the time the question is raised; in other words, the presumption of the continuance of life [there is a presumption in favour of continuance of life, see *Tani v. Rikhi Ram* (1)] ceases at the expiration of seven years from the period when the person in question was last heard [see in this connection *In Re Benjamin* (2), *In Re Walker* (3)].

The order, therefore, will not be as prayed for, but will be in the following form: In the premises herein mentioned the death of the said Ganesh Das Aurora may be presumed and the petitioner be at liberty to declare and state in her intended petition for grant of Letters of Administration to her of the property and credits of the said Ganesh Das Aurora deceased, that in the events which have happened, the death of the said Ganesh Das Aurora may now be presumed and the applicant may be at liberty to verify such statement in her said intended petition.

Attorneys for the petitioner: *G. C. Chunder & Co.*
 A. P. B.

(1) (1920) I. L. R. 4 Lah. 551. (2) [1902] 1 Ch. 723.

(3) (1871) 7 Ch. App. 120.