

APPELLATE CIVIL.

Before Khosla and Falshaw, JJ.

STATE OF PUNJAB,—Appellant.

versus

BACHAN SINGH AND OTHERS,—Respondents.

Civil Regular Second Appeal No. 432 of 1949.

1955.
 Oct. 4th. *Evidence Act (I of 1872)—Sections 107 and 108—Absconder not interested in disclosing his whereabouts—Whether can be presumed to be dead after seven years—Presumption under section 108, whether can be raised in such circumstances.*

M. S. who was charged with murder absconded. His property was attached and taken possession of by Government under sections 87 and 88 of the Criminal Procedure Code. In 1946 next reversioners of M. S. brought a suit for possession of the attached property on the ground that M. S. must be presumed to be dead and the plaintiffs being the next reversioners were entitled to succeed to his property. T. C. decreed the suit and its decision was affirmed in appeal. Government moved the High Court in Second Appeal.

Held, that section 108 of the Evidence Act is nothing more than a proviso to section 107 and the two sections, therefore, must be read together. In the circumstances of this case there would be no communication with the relations or the people of the village in the natural course of events and no presumption, therefore, can arise because it is section 107 and not section 108 which would apply.

Second Appeal from the decree of Shri M. R. Bhatia, District Judge, Ludhiana, dated the 19th day of February, 1949, affirming that of Shri Gurcharan Singh, Senior Sub-Judge, Ludhiana, dated the 11th February, 1948, granting the plaintiffs a decree for possession of the land and house in question and disallowing the suit with regard to other property ; parties were left to bear their own costs. The Lower-Appellate-Court ordered that there would be no order as to costs in his court.

BAL RAJ TULI, for Appellants.

NEMO, for Respondent.

JUDGMENT.

KHOSLA, J. This second appeal has arisen in the somewhat peculiar circumstances. One Mal Singh who was to be charged with murder absconded. His property was attached and taken possession of by Government under the provisions of sections 87 and 88 of the Criminal Procedure Code. This took place several years ago. In 1946 the plaintiffs Bachan Singh and Tara Singh claiming to be the next reversioners of Mal Singh brought a suit for the possession of the attached property on the ground that Mal Singh must be presumed to be dead, and they being his next heirs were entitled to succeed to his property. The plaintiffs also impleaded Mst. Santo who was originally married to Mal Singh but has now remarried a second time.

Khosla, J.

The plaintiffs' suit, therefore, was based on the presumption arising under section 108 of the Indian Evidence Act. The most important issue in the case was the first one, namely—

Whether Mal Singh absconder can be presumed to be dead? If so, what is its effect?

If Mal Singh cannot be presumed to be dead, the plaintiffs' suit must be dismissed. The Courts below held that since Mal Singh's whereabouts had

State of Punjab
v.
Bachan Singh
and others

not been heard of for more than seven years, he must be presumed to be dead. The plaintiffs' suit was accordingly decreed. The Government appeals.

Khosla, J.

Section 108 is nothing more than a proviso to section 107 and the two sections must, therefore, be read together in order to appreciate their full import. The sections read—

“107. 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. 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.”

The important phrase in section 108 is “those who would naturally have heard of him if he had been alive.” In the present case Mal Singh was absconding from justice in order to evade a trial upon a charge of murder. He would, therefore, not communicate with any relations in the natural course of events because to do so would reveal his whereabouts and he might be apprehended by the police and prosecuted. It is in evidence that after the alleged commission of the murders he ran away and remained in hiding. In a case of this nature no presumption, therefore, can arise because it is section 107 and not 108 which would apply. Shifting of the onus under section 108 would have taken place only if the plaintiffs “would naturally have heard of him if he had been alive.” Now, the plaintiffs being the rever-
sioners, Mal Singh would not communicate with

them. Indeed, he would not communicate with any one in the village. One of the witnesses examined by the plaintiffs is the father of the two men who are alleged to have been murdered by Mal Singh, and this man would be the last person to whom Mal Singh would reveal his whereabouts or with whom he would communicate.

State of
Punjab
v.
Bachan Singh
and others

Khosla, J.

I, therefore, find that in the circumstances of this case no presumption regarding Mal Singh's death can arise. It is section 107 which must be applied and not section 108. The plaintiffs, therefore, cannot claim Mal Singh's property as he has not been proved to have died. Their suit is liable to be dismissed and allowing the appeal of the State I would dismiss it with costs.

It was brought to our notice that Mst. Santo respondent had died and the question arose whether it was necessary to bring her legal representatives on the record. I have already indicated in the beginning of my judgment that Mst. Santo was no more than a *pro forma* defendant. She had married a second time and had, therefore, lost all rights in Mal Singh's property. Her death does not make any difference to these proceedings. There was no decree in her favour and, therefore, there can be no question of any abatement.

FALSHAW, J. I agree.

Falshaw, J.