

W.P(MD)No.25106 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2025

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD)No.25106 of 2024

Leejith

... Petitioner

**Vs.**

The Tahsildar,  
Vilavancode Taluk,  
Kuzhithurai,  
Kanyakumari District.

...Respondent

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to consider the petitioner's representation dated 18.10.2023 and to issue Legal Heir Certificate for the petitioner's deceased parents Alexander and Lilly Pushpam within the time stipulated by this Court.

For Petitioner : Mr.M.R.Sreenivasan

For Respondent : Mr.D.Ghandiraj  
Special Government Pleader

### **ORDER**

This writ petition has been filed for a Mandamus to direct the respondents to consider the petitioner's representation, dated 18.10.2023 for



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issuance of legal heir certificate as the petitioner's father is presumed to be dead in terms of Section 111 of Bharatiya Sakshya Adhiniyam, 2023 (Formerly Section 108 of the Indian Evidence Act, 1872).

2. It is the specific case of the petitioner that the petitioner's father namely, Alexandar, went missing as early as on 07.04.2007. A complaint was lodged by the petitioner's mother, Late.Lilly Pushpam, pursuant to which a case was registered in Crime No.155 of 2007 as man missing. After due investigation, the case was closed as UN on 17.10.2008.

3. It appears that the petitioner had also issued a legal notice to the District Collector, Kanyakumari District and the Superintendent of Police, Kanyakumari District on 12.09.2014, wherein, it was stated that the petitioner's father namely, Alexandar went missing at about 12.00 a.m., on 07.04.2007 and thereafter never returned home. Therefore, a complaint was lodged by the petitioner's mother Late.Lilly Pushpam before the Arumanai Police Station on 15.04.2007.

4. In the aforesaid legal notice on 12.09.2014, the District Collector and Superintendent of Police, Nagercoil, Kanyakumari District were called upon



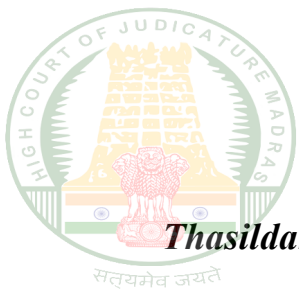
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to issue a certificate that the petitioner's father was presumed to be dead, so that they are entitled to succeed to the asset of Late.Mr.Alexander. The petitioner has also clearly stated that in case no certificate is issued, the petitioner will be constrained to file civil suit against the District Collector and Superintendent of Police for the costs and consequences.

5. In response, the Inspector of Police, Arumanai has reported the case was closed as UN on 17.10.2008 and further stated that there is no provision under the law for the Police to issue certificate that the man is presumed to be dead.

6. During the interregnum, the petitioner's monther namely Lilly Pushpam also died on 13.01.2016. The request of the petitioner for information regarding the status under Right to Information Act was rejected and thus, the only question arise for consideration is whether the petitioner is entitled to invoke the presumption under Section 111 of Bharatiya Sakshya Adhiniyam, 2023.

7. The learned counsel for the petitioner has placed reliance on the decision of the Full Bench of this Court in the case of **P.Venkatachalam Vs.**



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**Thasildar, Kumarapalayam Taluk, Namakkal District** reported in 2022 (4)

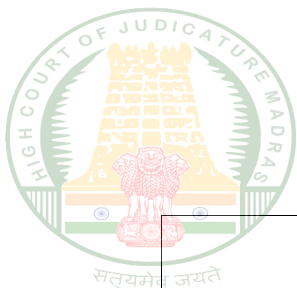
**CTC 1**, which was followed by this Court in the case of **P.Stella Vs. The District Collector, Thanjavur and others (W.P(MD)No.27634 of 2022)**

8. In my view, these decisions are not relevant to the facts of the case.

9. Section 111 of Bharatiya Sakshya Adhiniyam, 2023 is pari materia with Section 108 of the Indian Evidence Act, 1872, are reproduced below:

Section 111 of the Bharatiya Sakshya Adhiniyam, 2023	Section 108 of the Indian Evidence Act, 1872
<b>111. Burden of proving that person is alive who has not been heard of for seven years.</b> 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.	<b>108. Burden of proving that a person is alive who has not been heard of for seven years.</b> [Provided that when] [Substituted by Act 18 of 1872, Section 9, for "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] [Substituted by Act 18 of 1872, Section 9, for "on".] the person who affirms it.

10. Both these provisions are preceded by Sections 110 and 107 respectively, which reads as under:



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Section 110 of the Bharatiya Sakshya Adhiniyam, 2023	Section 107 of the Indian Evidence Act, 1872
<b>110. Burden of proving death of person known to have been alive within thirty years.</b> 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.	<b>107. Burden of proving death of person known to have been alive within thirty years.</b> 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.

11. Since the burden of proof is on the petitioner, the petitioner has necessarily obtain a decree from the Civil Court against the respondents by discharging the burden under Section 111 of Bharatiya Sakshya Adhiniyam, 2023 (formerly Section 108 of the Indian Evidence Act, 1872).

12. Considering the same, this writ petition is dismissed with liberty to the petitioner to approach the civil Court for appropriate relief. No costs.

16.07.2025

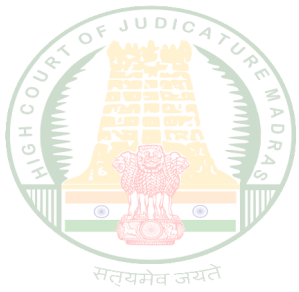
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The Tahsildar,  
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**C.SARAVANAN, J.**

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