

JPP

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 12307 OF 2017

Mr. Madhavlal N. Pittie.

... Petitioner.

V/s.

Mrs. Mary John D'Silva (Since deceased) & Ors. ... Respondents.

And

Mr. Amit Vasudev Manjeshwar.

... Proposed Respondent.

Ms. Anita Castellino a/w. Mr. R.S. Tiwari and Mr. B.N. Shukla i/b.
B.N. Shukla & Co. for the Petitioner.

Mr. Akshay P. Shinde for the Respondents.

CORAM : G.S. KULKARNI, J.

DATE : DECEMBER 18, 2017.

P.C. :-

Heard learned Counsel for the parties. The Petitioner assails the order dated 24 August 2017 passed by the Appellate Bench of the Small Causes Court, Mumbai, whereby the application filed by the Petitioner to bring the legal heirs of the deceased Defendant No.2 on record, stands rejected.

2. Having perused the impugned order it clearly appears that an inquiry as necessary under provisions of Order XXII, Rule 5

of the Code of Civil Procedure has not been undertaken by the Appellate Court. This more peculiarly, in the light of the finding recorded in para 9 of the impugned order.

3. After hearing the learned Counsel for the parties, in my opinion, an appropriate enquiry as the provisions of Order XXII, Rule 5 contemplate, ought to have been undertaken by the Court.

4. For the above reasons, the impugned order is set aside with a direction that the Appellate Court shall *de-novo* consider the application of the Petitioner to bring the heirs of deceased Defendant No.2 on record and decide the same in accordance with law. All contentions of the parties on merits are accordingly kept open.

(G.S. KULKARNI, J.)