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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3809 OF 2019

Parvati Bajirao Pawar alias Thakar
through her power of attorney holder
Ramesh Bajirao Pawar ..Petitioner

vs.

Umesh Suryaji Tupe & ors. ..Respondents.

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Shri Nikhil Wadikar I/b. Shri N.V. Pawar for petitioner.
None for respondents.

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CORAM : M.S.KARNIK, J.

DATE : 26th AUGUST, 2019

P.C. :

Heard learned counsel for the petitioner.

2. By an order dated 22nd February, 2019 this Court had permitted the petitioner to serve the respondents along with entire proceedings by way of private notice either by RPAD and/or by hand delivery and to file an Affidavit of service to that effect on or before 12/4/2019. None appears for the respondents though an affidavit of service to that effect has been filed by the petitioner.

3. Learned counsel for the petitioner has invited my attention to Exhibit 63 for bringing on record the heirs of defendant No.3 who died on 6/5/2016. The plaintiff filed two applications. The plaintiff filed application below Exhibit 61 for bringing legal heirs of defendant No.3 on record. It was pointed out that the plaintiff failed to file an application for setting aside abatement order passed against defendant No.3. It was further pointed out that failure on the part of the plaintiff was due to oversight therefore the petitioner wanted to amend the application moved by her for bringing legal heirs on record and add proposed amendment in the said application.

4. The plaintiff filed application Exhibit 63 for bringing the legal heirs of defendant No.3 on record. The trial Court by impugned order passed below Exhibit 63 rejected the application for amendment on the ground that the application under Order 22 Rule 4 of the Code of Civil Procedure has not been decided. The trial Court was of the opinion that the plaintiff was having an opportunity to get the order of

abatement set aside and bring the legal heirs of defendant No.3 on record. It appears that there was no prayer made for setting aside abatement.

5. No one has appeared on behalf of the respondents though they are served by private notice.

6. Considering the controversy involved, in my opinion, the present Petition deserves to be allowed in view of the application moved for bringing the legal heirs of defendant No.3 on record. Considering the facts of the present case and particularly as there is no contest on behalf of the respondents though they are duly served, the impugned order passed by the trial Court deserves to be set aside.

7. The Petition is allowed.

8. The legal heirs of defendant No.3 are permitted to be brought on record. Application Exhibit 63 is allowed.

9. Necessary amendments to the suit to be carried out within a period of 2 weeks from today.
10. Parties to act on an authenticated copy of this order.

(M.S.KARNIK, J.)