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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 5886 OF 2018

**MUMTAJ GULAB LASHKARWALE AND
ORS**

....PETITIONERS

V/s.

NURUDHIN ABDUL MANGOLE AND ORS

.....RESPONDENTS

Mr. Abhijit M. Adagule Advocate for the Petitioners

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 27, 2022.

P.C.:

1) This Petition is by Defendant to R.C.S. No. 267/2012 which is for cancellation of sale deed dated 23/01/2009. Said Suit was filed through next friend as the Plaintiff appears to be not competent to enter into the contract.

2) After the death of Plaintiff, Application Exh. 80 under Order XXII Rule 3 of Code of Civil Procedure, 1908 was taken out for bringing legal heirs on record which is allowed vide impugned order dated 10/01/2018.

3) The contentions are, apart from the dispute to the status of proposed legal representatives which can be only looked into under Order XXII Rule 5, present Defendants are also claiming that they are legal heirs. My attention is invited to the fact that without calling say of the Petitioner-Defendants, order impugned is passed.

4) There appears to be substance in the contentions raised by the Petitioner. However, in response to the Court's query, he submits that Petitioners can appear before the Court below seeking recall of the impugned order on the aforesaid ground.

5) As such, Petition stands disposed of as withdrawn.

6) Petitioners are at liberty to take Application for recalling of the order dated 10/01/2018 which the Trial Court is expected to decide the same without being influenced by the withdrawal of the present Petition.

[NITIN W. SAMBRE, J.]