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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11571 OF 2022**

Fizzah N. Shah

...Petitioner

Versus

M/s. Ashapura Exports Pvt.

Ltd. & Ors.

...Respondents

Mr. Shardul Singh with Ms Kirtida Chandarana and Mr. Naozad Golwalla i/b Mr. Mahernosh Humranwala for the Petitioner.

Mr. Dakshesh M. Vyas a/w. Mr. Nishant Vyas, Mr. Yagnesh Vyas and Mr. Parth Choudhary for Respondent No.1.

Mr. Pradeep Thorat a/w. Mr. Akshay B. Udeshi for Respondent Nos.3 to 7.

**CORAM : N. R. BORKAR, J.
DATE : 7 SEPTEMBER 2023.**

PC:-

1. The petitioner is defendant No.2 in a suit filed by the respondent No.1 for declaration. The husband of the petitioner was defendant No.1, who died during the pendency of said suit. In view of death of the husband of the petitioner, the respondent No.1 has moved an application for bringing his legal heirs on record.

2. The present petitioner contested the said application. According to the petitioner, her husband executed Gift Deed in her favour in relation to his ½ share in the suit premises and as such the other legal heirs do not have any right title interest in the suit premises and therefore, they are neither necessary nor proper party to the suit as she is absolute owner of the suit premises.

3. The trial Court has allowed the said application by the order impugned.
4. I have heard the learned counsel for the parties.
5. It appears that in a suit filed by the legal heirs of husband of the petitioner before this Court challenging the Gift Deed, this Court has passed certain orders and the said orders were produced before the trial Court. The trial Court has however, not at all considered the said orders while deciding application at Exhibit-21. The impugned order, therefore, cannot be allowed to stand and the same is set aside. The application below Exhibit-21 is restored on the file of the trial Court. The trial Court shall decide the said application afresh.
6. Needless to mention that the trial Court shall hear the respondent Nos.2 to 8 before passing any orders on application at Exhibit-21.
7. All rights and contentions of the parties are kept open.
8. The Petition is disposed of in the aforesaid terms

(N. R. BORKAR,J.)