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

**WRIT PETITION NO. 6062 OF 2012
WITH
INTERIM APPLICATION STAMP NO. 25522 OF 2025**

Pramila Sambhaji Patil & Ors.

.. Petitioners

Versus

Tanaji Hindurao Patil & Ors.

.. Respondents

Mr. Bhushan Walimbe a/w Mr. Mayank Tripathi for petitioners.
Mr. Kuldeep S. Patil for respondent no.1.

CORAM: ALOK ARADHE, CJ.

DATE: 28th JULY, 2025

ORAL ORDER:

1. Heard on Interim Application Stamp No. 25522 of 2025, an application seeking condonation of delay in filing the present application and substitution of legal representatives of deceased respondent no.1.
2. For the reasons assigned in the application, duly supported by the affidavit, Interim Application is allowed in terms of prayer clauses (a), (b) and (c). Let cause title of the writ petition be amended during the course of the day. Re-verification is dispensed with.
3. With the consent of the learned counsel for the parties, writ petition is hearing finally.
4. In this petition filed under Article 227 of the Constitution of India, the petitioners have assailed the validity of the order

dated 3rd January, 2012 passed by the trial court by which the Court on its own has directed impleadment of legal heirs of deceased defendant no.3 in the suit.

5. I have heard the learned counsel for the parties at length.

6. Respondent No.1/plaintiff had filed a suit seeking relief of partition and separate possession. The petitioners in the present petition are legal representatives of deceased defendant no.3. After the institution of the suit, the original defendant no.3, namely, lated Shri Sambhaji Hindurao Patil expired on 12th October, 2002. Thereupon, the respondent no.1/plaintiff filed an application for substitution of legal representatives of deceased defendant no.3. The trial court thereupon by an order dated 13th August, 2007, *inter alia*, held that the suit has abated against legal representatives of deceased defendant no.3 as the plaintiff has failed to file an application seeking substitution of legal representatives of deceased defendant no.3.

7. Thereafter, on 8th August, 2007, defendant no.1 expired. Plaintiff thereupon filed an application on 21st January, 2008 seeking substitution of legal representatives of deceased defendant nos. 1 and 3. The trial court by an order dated 4th February, 2008, *inter ailia*, held that the suit qua legal representatives of deceased defendant nos.1 and 3 has abated.

8. The trial court, however, by the impugned order dated 3rd January, 2012 has directed impleadment of the legal representatives of deceased defendant no. 3 suo moto without

any application being filed. The trial court was bound by the previous orders passed on 13th August, 2007 and 4th February, 2008 and could not have directed the impleadment of legal representatives of deceased no.3 even in the absence of any application by the legal representatives of deceased defendant no.3. The impugned order, therefore, suffers from jurisdiction infirmity as well as error apparent on the face of the record. It is quashed and set aside.

9. Accordingly, the writ petition is disposed of.

10. Let copy of this order be forwarded to the Trial Court forthwith.

(CHIEF JUSTICE)