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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.361 OF 2018

Kashinath Mahadu Bhatjire (since deceased)
through LRs. & Ors.

..Petitioners.

V/s.

Murlidhar Mahadu Bhatjire & Ors.

..Respondents.

Ms.Prabha U.Badadare for the petitioners.

Mr.Sachin Gite for respondent Nos.1 & 2.

CORAM : M.S.SONAK, J.

DATE : APRIL 22, 2019

ORAL JUDGMENT

Heard Ms.Badadare, learned counsel for the petitioners and
Mr.Gite, learned counsel for respondent Nos.1 and 2.

2. Rule. Rule made returnable forthwith with the consent and
at the request of the parties.

3. Challenge in this petition is to the order dated September
9, 2015 by which learned trial Judge has rejected the petitioners'
application at Exhibit-59 in Regular Civil Suit No.68/2011 seeking leave
to amend the plaint.

4. The record indicates that amendment was applied for prior

to the commencement of the trial. By the amendment, the petitioners-plaintiffs only seek clarification that the relief of injunction is now being claimed in respect of property admeasuring 53R and not property admeasuring 68R.

5. Ms.Badadare, learned counsel for the petitioners points out that on the aforesaid even temporary injunction was granted to the petitioners only in respect of the property admeasuring 54R.

6. Mr.Gite, learned counsel for the respondents points out in the temporary injunction in respect of this particular gut number was declined on the ground of incorrect description of this portion of the suit property.

6. According to me, it is in the interest of justice to permit the petitioners to permit the petitioners to amend the plaint and correctly describe this portion of the suit property. The application seeking leave to amend was applied prior to commencement of the trial. There was no reason for the learned trial Judge to reject the application.

7. Accordingly, the impugned order dated September 9, 2015 is hereby set aside and the petitioners are granted leave to amend the plaint as prayed for in application Exhibit-59. Consequently, the order dated August 8, 2016 by which the review petition (Exhibit-61) came to be dismissed is also set aside.

8. The petitioners to carry out amendment within a period of

four weeks from today and to serve the amended copy of the plaint to the respondents. The respondents are granted liberty to file additional written statement in response to the amended plaint within a period of four weeks from the date of receipt of the amendment plaint.

9. The petitioners to pay costs of Rs.1,000/- in favour of the respondents within a period of four weeks from today.

10. Rule is made absolute in the aforesaid terms.

11. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)