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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2918 OF 2018**

Neelesh Thakur and Anr.	... Petitioners
Versus	
Dr. Satish Vitthal Sawant and Ors.	...Respondents

Mr. P. D. Patil, for the Petitioners.

**CORAM : REVATI MOHITE DERE, J.
DATE : 26th FEBRUARY, 2020**

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioners have impugned the order dated 1st January, 2018, passed by the learned 3rd Joint Civil Judge, Senior Division, Thane, below Exhibit – 56, in Special Civil Suit No.245 of 2013, by which, the learned Judge was pleased to allow the respondent no.1's – plaintiff application seeking amendment of the plaint under Order VI, Rule 17 of the Code of Civil Procedure.
3. Learned Counsel for the petitioners submits that when the suit was filed the description of the suit property was given as shop Nos.3 and 4, however, after the written statement was filed by the petitioners, the respondent no.1 (original plaintiff), executed a Rectification Deed with respect to the suit property and got the numbers of the shops changed from

shop Nos.3 and 4 to shop Nos.1 and 2. Learned Counsel for the petitioners submits that pursuant to the Rectification Deed, the respondent no.1 filed an application and sought amendment of the plaint to correct the shop numbers. He submits that the amendment will lead to further complications, inasmuch as, the said shop Nos. 1 and 2, belong to some other party.

4. Perused the papers as well as the impugned order. The respondent no.1 (original plaintiff) has filed a Civil Suit, being Special Civil Suit No.245 of 2013, for declaration, injunction, mesne profit and compensation, in respect of shop Nos.3 and 4. The petitioners appeared in the said suit and filed their written statement in October 2013. Thereafter, the respondent no.1 (original plaintiff), executed a rectification deed in respect of the said shops on 13th November, 2013 and got the shop numbers changed from shop Nos. 3 and 4 to shop Nos. 1 and 2. Pursuant thereto, the respondent no.1 filed an application (Exhibit – 56) and sought amendment of the plaint under Order VI, Rule 17 of the Code of Civil Procedure. It is not in dispute that the trial has not commenced till date i.e. issues have not been framed. The amendment sought in the plaint was based on the Rectification Deed which was executed by the respondent no.1 (original plaintiff), during the pendency of the suit. Needless to state that the suit

property should be properly described for adjudication of the suit. It is also pertinent to note and a matter of record, that the respondent no.1 – plaintiff after execution of the Rectification Deed sought to withdraw the suit with liberty to file a fresh suit, in view of the incorrect description of the property in the plaint, however, the trial Court rejected the said application with an observation, that the reason for withdrawal of the suit was not satisfactory and that the plaintiff can amend the plaint instead of withdrawing the suit. It appears that pursuant thereto, the respondent no.1– plaintiff filed the application (Exhibit – 56) seeking amendment of the plaint.

5. This is the only amendment sought by the respondent no.1 – plaintiff. Having gone through the impugned order dated 1st January, 2018, passed by the learned 3rd Joint Civil Judge, Senior Division, Thane, below Exhibit – 56, in Special Civil Suit No.245 of 2013, no infirmity can be found in the same.

6. The petition is accordingly dismissed. The trial Court to proceed with the case, on its own merits, in accordance with law.

REVATI MOHITE DERE, J.