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

**CIVIL APPLICATION (ST) NO.22587 OF 2018
IN
SECOND APPEAL NO.239 OF 1996.**

Harischandra Krishna Dalvi and
others ... Applicants.

In the matter of Second Appeal between

Ramchandra Laxman Dalvi (decd)
through legal heirs ... Appellants.

V/s.

Harischandr Krishna Dalvi and ors ... Respondents

Mr. G. N. Salunke a/w Mr. P.A. Pol, Mr. S.S.
Suryavanshi, Mr. Rjesh Darvesh, Mr. Ranjit S. Hatkar,
for the applicants.

Mr. S. Karndikar a/w Mr. Suresh Sabrad, Ms. Sonal
Dabholkar, for the respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 31st JULY, 2018.

P.C. :

- 1] Heard learned counsel for the applicants and respondents.
- 2] This application is filed for production of additional evidence in form of certified copies of Mutation Entries. It is submitted that these Mutation Entries were reflected in the 7x12 extract of the suit property and accordingly considered by the Appellate Court. However, certified copies of the Mutation Entries

remained to be produced as the applicants could not get them despite exercise of due diligence and therefore, this Court should allow the applicants to produce them those copies.

3] However, as rightly submitted by learned counsel for respondents, the production of additional evidence at the appellate stage is as of no right. But some case is required to be made out as to why such evidence was not produced either before the trial Court or in the first Appellate Court. Making vague and general statement that despite exercise of due diligence, such evidence could not be produced in the Courts below cannot be sufficient. Moreover, as rightly pointed out by learned counsel for respondents, majority of these documents show that their certified copies were obtained way back in the year 1987 or 1988 by the applicants. In such situation, now it should not lie in the mouth of applicants that these documents were not in their possession despite exercise of due diligence. As in the second Appeal, only substantial question of law is to be considered, this Court cannot enter into the factual aspects which are already dealt with by the Courts below. This application for production of additional evidence is, thus, nothing but to fill up the factual lacunae. As such, it cannot be allowed at all. Hence stands rejected.

[DR.SHALINI PHANSALKAR-JOSHI, J.]