

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Civil Application No. 14872 of 2017
(In Second Appeal No. 0761 of 2017)

District : Dhule

- | | |
|----------------------------|---------------|
| 1. Bandu Shivala Gangurde. | |
| 2. Babulal Murlya Kokani. | .. Applicants |
| 3. Dhedu Kumar Kokani. | (Original |
| 4. Dahilya Kalu Kokani. | defendants) |

versus

- | | |
|---|----------------|
| 1. Smt. Hirabai Babulal Bagul
(Kokani). | |
| 2. Lalchand Bhavadu Kokani,
since deceased, through
legal heirs : | .. Respondents |
| | (No.01 - |
| | Original |
| | plaintiff |
| 2-A. Smt. Chhabibai
w/o. Lalchand Bhoje. | & |
| 2-B. Shantaram s/o. Lalchand
Bhoje. | No.02 - |
| 2-C. Sunil Lalchand Bhoje. | Original |
| | defendant |
| | no.02) |

.....

Mr. B.R. Warma, Advocate, for the applicants.

*Mr. A.S. Abhyankar, Advocate, holding for
Mr. S.V. Natu, Advocate, for respondent
no.01 (caveator).*

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26TH APRIL 2019

ORAL ORDER :

01. Present application has been filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908.

02. Heard both sides.

03. It has been contended on behalf of the applicants, that a contention was raised in the written statement, that structures, houses, temple, school, Aanganwadi, public utility services and office of Grampanchayat are in the suit land and both the Courts have ignored or failed to understand the degree of proof. It is stated that it is necessary to place public documents on record. It is stated that no evidence is required to be led to prove those documents as they are public documents. Though photographs are also tried to produced, now-a-days, negatives are not used for photographs and, therefore, additional evidence is necessary for better clarification of admission of plaintiff with regard to existing structures on the suit land.

04. Needless to say, that the application has been objected orally on the ground that though opportunity was available to the defendants before both the Courts, no such attempt was made and, therefore, it cannot be permitted in second appeal.

05. The first and the foremost fact that is required to be considered is that there is absolutely no explanation by the applicants - original defendants, that why these documents were not produced before the trial Court. Merely because the documents are public documents, they cannot be

allowed to be produced on record at any stage of the proceedings. When those documents were not produced before the trial Court and no attempt was made to produce it before first appellate Court and when explanation is not given, as to why there was no attempt to take out certified copies of those public documents earlier, the application cannot be treated under Order XLI Rule 27 of C.P.C. Further, it cannot be agreed that now-a-days, negatives are not used for photographs, the photographs can be allowed to be produced under Order XLI Rule 27 of C.P.C. It is stated, that those photographs are recent. At least, that fact is required to be proved and the fact that the negatives are not used, is also required to be proved.

06. In the light of above, the civil application is rejected.

(Smt. Vibha Kankanwadi)
JUDGE

.....