

**(2019) 04 BOM CK 0136**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 4777 Of 2014**

|                                            |            |
|--------------------------------------------|------------|
| Orbit Super Market Private Limited And Ors | APPELLANT  |
| Vs                                         |            |
| Mukta Arvind Bobde And Ors                 | RESPONDENT |

**Date of Decision :** 30-04-2019

**Acts Referred:**

Maharashtra Rent Control Act, 1999 — Section 16(1)(a), 16(1)(b)  
Transfer Of Property Act, 1882 — Section 108(o)  
Evidence Act, 1872 — Section 91, 92  
Code Of Civil Procedure, 1908 — Order 20 Rule 12  
Constitution Of India, 1950 — Article 226, 227

**Citation :** (2019) 04 BOM CK 0136

**Hon'ble Judges :** Manish Pitale, J

**Bench :** Single Bench

**Advocate :** A.S. Jaiswal, R.V. Shah, Sunil Manohar, Masood Shareef, P.A.  
Abhyankar

**Final Decision :** Dismissed

## Judgement

1. By this writ petition, concurrent orders are being challenged whereby decree has been granted in favour of the respondents directing the petitioners herein to hand over peaceful and vacant possession of suit property i.e. house no.220, Ward no. 86, Ravindranath Tagore Marg, Civil Lines, Nagpur. An enquiry into mesne profits under Order 20 Rule 12 of the Code of Civil Procedure, 1908 (CPC) has also been directed from the date of filing of the suit till possession is actually handed over to the respondents.

2. The respondents filed a suit for recovery of possession of the aforesaid suit property against the petitioners in November, 2000 contending that the petitioners had violated terms of the lease agreements in pursuance of which they were put in possession of the suit property by the respondents and that, therefore, they were liable to hand over possession of the suit property to the respondents under Section 16 (1) (a) and (b) of the Maharashtra Rent Control Act, 1999 (for short "Act"). The respondents referred to four documents

executed between the parties. These were deeds of lease dated 09.04.1990 (Exh.179), 05.06.1993 (Ex.180), 30.11.1994 (Exh.181) and 17.07.1995 (Exh.184). It was contended by the respondents that the deed of lease dated 30.11.1994 (Exh.181) and the subsequent registered lease deed dated 17.07.1995 (Exh.184) were documents that were not meant to be acted upon and that they had been executed only because of the request of the petitioners that such documents were required for the purpose of taking loan in order to construct Supermarket building in the suit property. For this purpose, the respondents heavily relied upon letter dated 27.07.1995 (Exh.178) sent on behalf of the petitioner no.1 to the respondent no.1 wherein it was acknowledged that the registered sale deed dated 17.07.1995 (Exh.184) had been executed solely for the purpose of taking loan from Banks and Financial Institutions and that the said document had been executed so as to satisfy the requirements of such Banks and Financial Institutions, as suggested by their lawyers. The respondents pointed out that the husband of respondent no.1 and the original defendant no.3 had very good personal relations and that as events unfolded later, it became evident that the said person had misused the faith reposed by the respondent no.1 and her husband, leading to the present litigation.

3. On the basis that the unregistered lease deed dated 30.11.1994 (Exh.181) and the registered lease deed dated 17.07.1995 (Exh.184) were not meant to be acted upon, the respondents contended before the Court of Small Causes, Nagpur, that the lease deeds dated 09.04.1990 (Exh.179) and 05.06.1993 (Exh.180) were the only documents that defined the relationship between the parties and that since the petitioners had changed the user completely and they had made permanent construction without permission of respondent no.1 and further since they had illegally sublet the suit property to one Sandipani School, the petitioners had made themselves liable to be dispossessed from the suit property under Section 16 (1) (a) and (b) of the aforesaid Act. It was pointed out that since there was violation of Section 108 (o) of the Transfer of Property Act, 1882, the petitioners were liable to be evicted. The respondents contended before the Small Causes Court that as per the lease deeds at Exh.179 and 180, the petitioners could have utilized the suit property only for construction of Supermarket and having failed to do so and further having permitted the school to be run from the suit property, they were liable to be evicted. It was pointed out that under the aforesaid documents at Exh.179 and 180, the term of the lease was at will and that it was terminable with a notice of one month on either side.

4. The petitioners filed their written statement and opposed the contentions raised on behalf of the respondents. They contended that the lease deed dated 17.07.1995 at Exh.184 was a registered document, which the respondent no.1 had executed upon being fully aware of the contents, wherein her husband was a witness and that, therefore, the respondents could not be permitted to wriggle out of the terms of such a registered document. According to the petitioners, the terms of the aforesaid registered lease deed dated 17.07.1995 (Exh.184)

permitted the petitioners to demolish the existing structure, to construct new building and to sublet the same. It was contended that emphasis placed on letter dated 27.07.1995 (Exh.178) on behalf of the respondents was misplaced because the said letter, being an unregistered document, could not have changed or altered the terms of the registered lease deed dated 17.07.1995 (Exh.184) and that a proper appreciation of the said letter at Exh.178 would demonstrate that the registered lease deed at Exh.184 was in fact acted upon by the parties.

5. The respondents examined only respondent no.2 as their witness while the petitioners also examined only one witness i.e. one of the Directors of the petitioner no.1 Company.

6. The Small Causes Court took into consideration the oral and documentary evidence on record and rendered findings in favour of the respondents, holding that the respondents successfully proved that the registered lease deed dated 17.07.1995 (Exh.184) was not intended to be acted upon and that it was a sham document, that the petitioners had carried out the permanent construction without the consent of the respondents, that the respondents had proved that the petitioners had committed acts showing that Section 108 (o) of the Transfer of Property Act, 1882, was applicable against them and that the respondents were entitled to recover possession of the suit property from the petitioners.

7. Aggrieved by the said judgment and decree passed by the Small Causes Court against them, the petitioners filed appeal before the Court of District Judge, Nagpur (Appellate Court), raising various grounds of challenge. By judgment and order dated 11.02.2014, the Appellate Court dismissed the appeal, thereby confirming the findings rendered by the Small Causes Court. As a consequence, the decree passed against the petitioners stood confirmed. The present writ petition has been filed challenging the aforesaid two concurrent judgments and orders passed against the petitioners.

8. Mr. A.S. Jaiswal, learned senior counsel appearing with Mr. R.V. Shah, Advocate for the petitioners made the following submissions while challenging the said concurrent orders:-

(a) The Courts below committed a grave error in giving findings against unregistered lease deed dated 30.11.1994 (Exh.181) and registered lease deed dated 17.07.1995 (Exh.184), when there was no prayer made in respect thereof in the suit filed by the respondents. The Courts below failed to appreciate that a declaration regarding Exh.184 being a sham document could not have been granted, particularly in the absence of any such prayer made in the suit.

(b) It was contended that the provisions of the Provincial Small Cause Courts Act, 1887, did not empower the Small Causes Court to give such a declaration and, therefore, the said findings granted in favour of the respondents and the relief granted to them on the basis of such findings, was without jurisdiction and hence liable to be set aside.

(c) The Courts below erred in relying upon letter dated 27.07.1995 (Exh.178) for holding that the registered lease deed dated 17.07.1995 (Exh.184) was not meant to be acted upon. Such an unregistered document could not have been relied upon for discarding the registered document at Exh.184.

(d) The evidence of respondent no.2, the only witness on behalf of the respondents, was entirely hearsay evidence because the only person who could have deposed in respect of the true nature of the documents executed between the parties could have been only respondent no.1 as she was party to the said documents.

(e) Since the respondent no.1 (original plaintiff no.1) had failed to enter the witness box, an adverse inference was required to be drawn against the respondents in the present case, which the Courts below failed to appreciate.

(f) The respondents could not have feigned ignorance about the construction undertaken by the petitioner no.1 in the suit property, in view of letter dated 26.04.2000 (Exh.179), wherein specific demand was made on behalf of the respondents regarding measurement and wherein specific reference was made to the construction. The respondents were not entitled to claim that the construction was undertaken by the petitioners without their permission because respondent no.1 herself had signed on the map of the proposed construction and if she denied her signature, the burden was completely on her to prove the said fact. Having failed to do so, the Courts below could not have held that the construction was undertaken by the petitioners without permission of the respondents.

(g) The Courts below were not justified in holding that the petitioners had illegally sublet the suit property to the Sandipani School because the terms of the registered lease deed at Exh.184 executed between the parties permitted the petitioners to sublet the suit property.

(h) The Courts below erred in holding that the petitioners were liable to be evicted from the suit property for having committed act contrary to Section 108 (o) of the Transfer of Property Act, 1882, because the material on record, particularly the registered lease deed dated at Exh.184, demonstrated that the petitioners had not committed any such act.

(i) The Courts below had not only erred in exercising jurisdiction vested in them but their findings were absolutely perverse, warranting exercise of writ jurisdiction by this Court to set aside the decree granted against the petitioners.

9. Per contra, Mr. Sunil Manohar, learned senior counsel appearing with Mr. Masood Shareef, Advocate for respondent nos.1 and 2, supported the two concurrent judgments and orders passed in favour of the respondents and submitted as follows:-

(i) The scope of exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India was limited and interference in the concurrent orders

passed by the two Courts below could not be justified in the facts and circumstances of the present case. It was contended that power of superintendence of the High Court could not be exercised to correct mere errors of law or facts or just because another view was possible and that such jurisdiction was required to be exercised very sparingly. It was further contended that in the present case findings rendered by the two Courts below were in tune with the position of law and upon appreciation of the facts and material on record, thereby showing that writ jurisdiction could not be exercised to interfere with the same.

(ii) The letter dated 27.07.1995 (Exh.178) could certainly be looked into by the Courts in order to ascertain whether the unregistered lease deed dated 30.11.1994 (Exh.181) and the registered lease deed dated 17.07.1995 (Exh.184) were actually meant to be acted upon or not. It was contended that as per settled law, the bar under Section 92 of the Indian Evidence Act, 1872, would not operate in the facts of the present case because even if the lease deed dated 17.07.1995 (Exh.184) was a registered document, the respondents were entitled to rely upon evidence, including letter dated 27.07.1995 (Exh.178), to prove that the said registered lease deed at Exh.184 was not intended to be acted upon. Therefore, the contention raised on behalf of the petitioner that the terms of the registered lease deed at Exh.184 could not be ignored, was without any substance.

(iii) In respect of the jurisdiction of Small Causes Court and the contentions of the petitioners that the finding rendered by the Courts below in the present case to the effect that the registered lease deed at Exh.184 and the lease deed at Exh.181 were sham, was without jurisdiction, it was submitted that the question regarding the validity of the said documents and whether the said documents were at all intended to be acted upon, was a collateral and incidental issue before the Small Causes Court and that it was not a matter directly and substantially in issue, thereby showing that the orders passed by the Courts below could not be said to be without jurisdiction.

It was submitted that the matter directly and substantially in issue in the present case was the entitlement of the respondents to possession of the suit property and the findings on the said documents had been rendered incidentally by the Small Causes Court.

(iv) On the question of drawing an adverse inference against the respondents because the respondent no.1 (original plaintiff no.1) failed to enter the witness box, it was submitted that in cross-examination the only witness who appeared for the petitioners admitted that the documents pertaining to the suit property were prepared pursuant to discussion between husband of respondent no.1, original defendant no.2 (respondent no.3 herein) and original defendant no.3. None of the said persons were examined before the Court because the husband of respondent no.1, as also the original defendant no.3 expired and the original defendant no.2, who was in fact author of the letter dated 27.07.1995 (Exh.178)

(Managing Director of petitioner no.1) was also not examined by the petitioners. On this basis, it was pointed out that no adverse inference could be drawn against the respondents. It was also pointed out that no adverse inference could be drawn against the respondents because the evidence available on record was enough to prove the case of the respondents.

(v) It was contended that although unregistered lease deed dated 30.11.1994 (Exh.181) and registered lease deed dated 17.07.1995 (Exh.184) were never meant to be acted upon, even if the said documents were to be taken into consideration, the petitioners had violated the terms of the said documents also, thereby making them liable for being evicted.

(vi) It was submitted that the respondents had proved that the petitioners had indeed violated the lease deeds dated 09.04.1990 (Exh.178) and 05.06.1993 (Exh.180) executed between the parties as the petitioners could have utilized the suit property only for constructing and running the business of Supermarket and yet they were running a School. The documents on record demonstrated that the construction on the suit property was made without permission of the respondents and that the suit property had been illegally sublet to Sandipani School. This proved the case of the respondents under Section 16 (1) (a) and (b) of the said Act read with Section 108 (o) of the Transfer of Property Act, 1882.

(vii) The cross-examination of the lone witness who was examined on behalf of the petitioners demonstrated that he admitted to the respondent no.1 not having signed on the map of the proposed construction. The material on record also demonstrated that the petitioners had not only undertaken construction without permission of the respondents but the said construction was beyond the sanctioned plan granted by the Municipal Corporation and the petitioners had illegally connected the structure constructed on the suit property with an existing old structure on adjoining plot belonging to respondent no.2, thereby showing that they were liable to be evicted from the suit property.

10. Heard counsel for the parties and perused the material on record. The aspect of the scope of jurisdiction to be exercised by this Court while considering the writ petition filed by the petitioners assumes significance in view of the submissions made on behalf of the parties and, therefore, it would be necessary to first examine the said aspect. The scope of jurisdiction to be exercised by this Court under Article 227 of the Constitution of India has been laid down in number of judgments and reference has been made on behalf of the petitioners to the judgments of the Hon'ble Supreme Court in the cases of Achutananda Baidya .vs. Prafulla Kumar Gayen and ors. reported in (1997) 5 Supreme Court Cases 76 and Sameer Suresh Gupta .vs. Rahul Kumar Agrawal reported in (2013) 9 Supreme Court Cases 374. By relying upon the said judgments, it was contended on behalf of the petitioners that this Court could certainly exercise powers under Article 227 of the Constitution of India to interfere with the findings of facts if the subordinate Court had come to conclusions without any evidence or upon manifest misreading of the evidence, thereby indulging in

improper exercise of jurisdiction, rendering the conclusions perverse. It is also contended that where there has been a patent perversity, this Court could certainly interfere even in concurrent findings rendered by the Courts below. In this context, principles formulated by the Hon'ble Supreme Court in the case of Shalini Shyam Shetty .vs. Rajendra Shankar Patil reported in (2010) 8 Supreme Court Cases 329, are relevant, wherein, inter alia, it has been held as follows:-

"49. ....

(a) .....

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

(g) .....

(h) .....

(I) .....

(j) .....

(k) .....

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227 , it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive

and will divest this extraordinary power of its strength and vitality."

11. The said position of law makes it very clear that intervention in orders passed by the Courts below can be made by this Court while exercising powers under Article 227 of the Constitution of India, in exceptional cases where patent perversity is found in the findings rendered by the Courts below. It is in cases of no evidence or manifest misreading of evidence, showing improper exercise of jurisdiction by Courts below that this Court would be justified in interfering with the same. Thus, it becomes evident that this Court is not expected to exercise its powers for the asking. The judgments relied upon by the learned counsel appearing for the petitioners reinforces the said position of law and thereby demonstrates that this Court would be justified in exercising its powers to interfere with the concurrent findings rendered by the two Courts below, in the present case, only if it is found that the two Courts below have rendered findings upon manifest misreading of the evidence thereby rendering them perverse and unsustainable. Thus, the petitioners have to satisfy a tough test to succeed in the present writ petition while claiming that the decree granted concurrently against them is required to be set aside. Keeping this in mind, this Court is now proceeding to consider the rival contentions raised on merits.

12. It has been contended on behalf of the petitioners that the decree granted by the Small Causes Court in the present case is without jurisdiction because the said Court could not have declared registered lease deed dated 17.07.1995 (Exh.184), as a sham document, when the Court is not vested with any such power to give declarations and the respondents had not even made such a prayer. It was pointed out that such relief of declaration could not have been sought by the respondents before the Small Causes Court, but when in fact, such relief was granted to them, the decree passed by the Small Causes Court was rendered without jurisdiction, which the appellate Court also failed to appreciate. In this context, the learned senior counsel appearing for the respondents has relied upon judgments of the Hon'ble Supreme Court in the case of Shamim Akhtar .vs. Iqbal Ahmad and another reported in AIR 2001 S.C. 1 and Gangabai .vs. Chhabubai reported in (1982) 1 Supreme Court Cases 4. In these judgments, in the context of jurisdiction of the Small Causes Court under the provisions of Provincial Small Cause Courts Act, 1887, it has been held that while deciding the main issue pertaining to grant of eviction decree, the Small Causes Court could certainly go into the incidental question of title and when findings were rendered in that behalf, they were findings on collateral or incidental issues, while the issue substantially being decided pertained to the question of entitlement of the landlord to evict the tenant. The said position of law does show that while deciding the substantial issue, the Small Causes Court could certainly go into collateral and incidental issue and render a finding thereon and in such a situation the power exercised by the Small Causes Court could not be said to be without jurisdiction. Thus, it becomes clear that in the present case also while deciding the substantial issue regarding entitlement of the respondents to evict the petitioners under Section 16 (1) (a) and (b) of the Act,

the incidental issue pertaining to the true nature of the documents at Exh.181 and 184 could certainly be gone into by the Small Causes Court. Therefore, the contention raised on behalf of the petitioners in this regard is rejected.

13. The learned counsel appearing for the petitioners heavily relied upon judgment of the Hon'ble Supreme Court in the case of M/s Raval and Co. .vs. K.G. Ramachandran reported in (1974) 1 Supreme Court Cases 424, to contend that the Courts below could not have gone into the question of validity of the registered lease deed dated 17.07.1995 (Exh.184) on the basis of unregistered document like the letter dated 27.07.1995 (Exh.178), because the terms of a registered document executed between the parties ought to prevail and the parties could not be permitted to lead evidence to disprove such terms of registered document. In this context, the position of law pertaining to the exact nature of bar under Section 92 of the Evidence Act has been considered by this Court in the case of Vijay Laxmipati Dasari .vs. Laxmibai Ramayya Bolabattin reported in 2017(3) ALL MR 567, wherein it has been laid down that the power under Section 92 of the Evidence Act would not apply when a party seeks to disprove the contract itself or to prove that the document was not intended to be acted upon and that the intention was totally different. It has been held that the bar applies only when oral evidence is sought to be led to disprove the terms of a contract. While laying down the said position of law, this Court has relied upon judgment of the Hon'ble Supreme Court in the case of R. Janakiraman .vs. State reported in AIR 2006 S.C. 1106. In the said judgment, the Hon'ble Supreme Court has held as follows:-

"11.6. We may cull out the principles relating to section 92 of the Evidence Act, thus :-

- i) Section 92 is supplementary to section 91 and corollary to the rule contained in section 91.
- ii) The rule contained in section 92 will apply only to the parties to the instrument or their successors-in-interest. Strangers to the contract (which would include the prosecution in a criminal proceeding) are not barred from establishing a contemporaneous oral agreement contradicting or varying the terms of the instrument. On the other hand, section 91 may apply to strangers also.
- iii) The bar under section 92 would apply when a party to the instrument, relying on the instrument, seeks to prove that the terms of the transaction covered by the instrument are different from what is contained in the instrument. It will not apply where anyone, including a party to the instrument, seeks to establish that the transaction itself is different from what it purports to be. To put it differently, the bar is to oral evidence to disprove the terms of a contract, and not to disprove the contract itself, or to prove that the document was not intended to be acted upon and that intention was totally different."

14. Thus, it becomes abundantly clear that merely because Exh.184 in the

present case was a registered lease deed, it could not be said that the respondents were prohibited under Section 92 of the Evidence Act, to lead evidence to show that the said lease deed was never intended to be acted upon. Therefore, it becomes clear that the petitioners cannot contend that once the document at Exh.184 was a registered document, the Court could not examine the contentions raised on behalf of the respondents at all.

15. Once the said hurdle is crossed, it needs to be examined whether the two Courts below correctly appreciated the evidence on record, to come to a conclusion that the unregistered lease deed dated 30.11.1994 (Exh.181) and registered lease deed dated 17.07.1995 (Exh.184), although executed between the parties, were never intended to be acted upon. The Courts below have relied upon letter dated 27.07.1995 (Exh.178) sent by the petitioner No.1 through its Managing Director (original defendant No.2) to the respondent No.1, to hold that the registered lease deed dated 17.07.1995 (Exh.184) was never intended to be acted upon. A perusal of the said letter shows that it is emphatically stated on behalf of the petitioner No.1 that the aforesaid lease deed at Exh.184 was executed only for the purpose of taking loan to build the Supermarket on the suit property, particularly because the Banks and financial institutions from whom the petitioner No.1 intended to take loan for the Supermarket required the lease deed to be in a particular form with specific items being mentioned. It is also stated in the said letter that the terms of the lease deed at Exh.184 were those that were suggested by the lawyers of financial institutions.

16. The contents of the letter at Exh.178 dated 27.07.1995 have been appreciated by the two Courts below to conclude that the lease deed at Exh.184 was executed only for the purpose of taking loan from the banks and financial institutions and that the parties were clear about the manner in which the suit property was to be utilized by the petitioners in terms of lease deeds dated 09.04.1990 and 05.06.1993 at Exhs. 179 and 180, executed between the parties. It is significant that the petitioners have not denied the fact that the letter dated 27.07.1995 (Exh.178) was indeed issued by the petitioner No.1, through its Managing Director, to respondent No.1. It is also significant that the said letter was executed within 10 days of the registered lease deed at Exh.184. It is also brought on record and found to be an admitted position by the two Courts below that the relations between the parties i.e. the respondent No.1 and her husband on one hand and the original defendant No. 3 were extremely thick and friendly and that the respondent No.1 had proceeded in the matter in absolute good faith. These circumstances that have come on record have been appreciated in detail by the two Courts below to concurrently come to the conclusion that the lease deeds dated 30.11.1994 and 17.07.1995 (Exhs. 180 and 184) were never intended to be acted upon. The said findings rendered by two Courts below cannot be said to be findings based on no evidence or based on manifest misreading of the evidence on record to demonstrate any error in exercise of jurisdiction by the Courts below. In such a situation, this Court does not find any reason to interfere with the said findings rendered by the two Courts

below.

17. The approach adopted by the two Courts below in taking into account the evidence on record, particularly letter dated 27.07.1995 (Exh.178), to examine as to whether the lease deeds at Exhs.181 and 184 were intended to be acted upon or not, cannot be said to be erroneous, in view of the aforesaid position of law that there cannot be an absolute bar to parties leading evidence to show that even a registered document was never intended to be acted upon. The position of law supports the approach adopted by the two Courts below and as noted above, the findings rendered by the two Courts below on this aspect on merits cannot be said to be erroneous, deserving interference at the hands of this Court exercising writ jurisdiction.

18. This Court has also examined the contents of the letter dated 27.07.1995 (Exh.178) and it is found that the tenor of the letter clearly shows that the registered lease deed dated 17.07.1995 (Exh.184) was executed only for the purpose of assisting the petitioners to obtain loans from Banks and Financial Institutions and that it was never intended to be acted upon. It is also significant that the petitioners did not examine the author of the said letter at Exh.178, who was the Managing Director of petitioner no.1, thereby showing that the findings rendered by the two Courts below based on the contents of Exh.178 were absolutely correct.

19. Once it is held that the lease deeds at Exh.181 and 184 were never intended to be acted upon, the contentions raised on behalf of the respondents as regards grounds for eviction of the petitioners, need to be tested on the touchstone of the lease deeds dated 09.04.1990 and 05.06.1993 at Exhs.179 and 180. In this regard, the main grounds raised on behalf of the respondents, were that the petitioners had completely changed the user of the suit property because as per the lease deeds, they were supposed to utilize the suit property only for construction and business of Supermarket, while they had admittedly started running a school in the suit property. It was further contended in this regard on behalf of the respondents that the petitioners had illegally sublet the suit property to the said school, in violation of the terms of the lease deeds and it was also contended that the petitioners had undertaken permanent construction in the suit property without permission of the respondents and that such construction was contrary to the plans approved by the Corporation, as also the fact that the structure so constructed in the suit property was illegally connected to structure in the adjoining plot belonging to the respondent No.2.

20. It is contended on behalf of the petitioners that the respondents had failed to prove each of these grounds for eviction. But, the evidence on record, particularly the admissions given in the cross-examination of the only witness who was produced on behalf of the petitioners, show that the respondents successfully proved the said grounds on the basis of which the decree was granted by the Courts below.

21. As regards the change of user, it was admitted on record by the witness, who appeared on behalf of the petitioners that Sandipani School was being run in the suit premises since 1995-96. A perusal of the terms of lease deeds dated 09.04.1990 and 05.06.1993 at Exhs.179 and 180 shows that the suit property was given on lease to the petitioners for construction and running of the business of Supermarket. The petitioners admittedly never opened the business of Supermarket in the suit property and instead started the said school, thereby changing the user as contended by the respondents. The Courts below have properly appreciated the evidence on record to hold against the petitioners in this regard. Similarly, on the question of subletting, it becomes clear from a perusal of the aforesaid lease deeds at Exh.179 and 180 that the petitioners could not have sublet the suit property at all, much less to the said Sandipani School, admittedly being run in the suit property since 1995-96. Therefore, the said ground regarding subletting was also made out against the petitioners.

22. As regards the question of construction made by the petitioners on the suit property without permission of the respondent No.1, it was contended that the respondent No.1 could not claim that the construction was without her permission as letter dated 26.04.2000 was sent on her behalf to the petitioner No.1 seeking clarifications regarding the construction and asking for measurement to be undertaken. In addition, it was contended that when the respondent No.1 had signed on the map, submitted for sanction before the Corporation, she could not claim to be ignorant about the construction undertaken by the petitioners and that such construction was clearly with her due permission. The letter dated 26.04.2000 shows that the respondent No.1 had sought clarification regarding the construction undertaken on the suit property, particularly on the aspect of the said construction being joined with the structure on the adjoining plot belonging to the respondent No.2, in violation of building by-laws. This letter in itself, cannot be said to be proof of the fact that the construction on the suit property was undertaken by the petitioners upon due permission given by the respondent No.1. As regards signature of respondent No.1 on the map, a perusal of cross-examination of the lone witness on behalf of the petitioners shows that it is admitted that the map did not bear the signature of respondent No.1. This clearly shows that the ground on which petitioners claimed that construction on the suit property was undertaken, after permission from the respondent No.1, is baseless. In this context, the contention raised on behalf of the petitioners that the burden to prove that the respondent No.1 had not signed on the map was on her, is also without any substance because from the aforesaid admission given by the lone witness who appeared for the petitioners it becomes clear that respondent no.1 had never signed on the said map. Apart from this, the evidence and material on record also shows that the petitioners had indeed undertaken the construction beyond sanction granted by the Corporation leading to notice issued by the Corporation for the demolition of the excess construction. It has also come on record that the petitioners clandestinely constructed a connection between the structure constructed on the

suit property and the already existing old structure in the adjoining plot belonging to the respondent No.2. The material on record clearly indicates that the school that was initially started in the structure already existing in the adjoining plot belonging to the respondent No.2 was expanded illegally by the petitioners into the structure constructed on the suit property by the petitioners. The said material was properly appreciated by the Courts below to hold against the petitioners in that regard.

23. The nature of evidence and material on record, therefore, clearly shows that the petitioners indeed acted contrary to the provisions of Section 108(o) of the Transfer of Property Act, 1882, thereby showing that the respondents were entitled to recover possession of the suit property from them. The petitioners not only constructed the structure on the suit property without permission of the respondents but started using the same for a purpose other than for which it was leased. Hence, the findings rendered by the two Courts below in this regard against the petitioners do not deserve any interference.

24. The learned senior counsel appearing for the respondents contended that although the lease deed dated 30.11.1994 (Exh.181) and registered lease deed dated 17.07.1995 (Exh.184) were correctly held by the Courts below as not intended to be acted upon, even assuming without admitting that the said documents at Exhs.181 and 184 could be looked into, the petitioners had clearly violated the terms of even said two documents. An effort was made to show that a proper appreciation of the said documents would show that the petitioners had violated terms of said documents also, thereby showing that the decree concurrently granted by the two Courts below was justified. Although there is substance in the said contentions raised on behalf of the respondents, since this Court is in agreement with the findings rendered by the two Courts below that the said documents at Exhs. 181 and 184 were never intended to be acted upon, it is not necessary for this Court to go into the said aspect.

25. It was strenuously argued on behalf of the petitioners that an adverse inference was required to be drawn against the respondents because respondent No.1 never entered the witness box and that the evidence of the respondent No.2 could not be considered by the Court as his evidence was hearsay in nature. But, an admission given by the lone witness who appeared on behalf of the petitioners, in cross-examination shows that all discussions pertaining to the documents executed between the parties took place in the presence of husband of respondent No.1, Managing Director of petitioner No.1 (respondent No.3 herein) and the original defendant No.3. Thus, when the respondent No.1 herself was admittedly not part of any of the discussions leading to the execution of the documents between the parties, merely because she did not enter the witness box could not lead to an adverse inference against the respondents. It is also an admitted position that the husband of respondent No.1 and the original defendant No.3, both expired during the pendency of the proceedings before the Trial Court, as a consequence of which they could not be examined and the only

remaining person present during the discussion i.e. original defendant No.2 (respondent No.3 herein) was never brought into the witness box by the petitioners. Therefore, the petitioners cannot get any mileage on the basis that the respondent No.1 never entered the witness box. In any case, the Courts below were justified in holding that such an adverse inference could not be drawn because when admissions given by the lone witness who appeared on behalf of the petitioners and the material and evidence on record amply proved the contentions raised on behalf of the respondents, no adverse inference could be drawn against the respondents only because the respondent No.1 did not enter the witness box. Therefore, the said ground raised on behalf of the petitioners is also found to be without any substance.

26. Thus, taking into consideration the limitations of exercise of writ jurisdiction by this Court, as also the fact that the petitioners have failed to demonstrate any manifest error in the two concurrent orders passed by the two Courts below, it is found that the present writ petition is without any merit. Accordingly, it is dismissed and rule is discharged.