

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

WRIT PETITION NO.12521 OF 2019

1. Sakhahari S/o. Dagdu Ghule,
Age : 70 years, Occu. Agri.,
2. Ramdas S/o. Pandurang Ghule,
Age : 51 years, Occu. Agri.,
3. Adesh S/o. Prabhakar Ghule,
Age : 22 years, Occu. Agri.,
4. Prabhakar S/o Vithoba Ghule,
Age : 56 years, Occu. Agri.,

All R/o. Bajarsawangi, Tq. Khultabad,
District Aurangabad.

5. Ambadas S/o Abaji Mankape Patil,
Age : 78 years, Occu. Agri. & Business,
R/o. Plot No.31, Shivjyoti Colony,
N-6, Cidco, Aurangabad
Chairman Adarsh Nagari Co-op.
Society Ltd., Aurangabad. ..Petitioners..

VERSUS

President, Swarajya Shikshan Sanstha
Aurangabad, Through it's Principal
Dr. Sanjay Tukaram Gaikwad,
Age : 68 years, Occu. Retired Principal,
R/o. Plot No.20, Nandanvan Colony,
Aurangabad. ...Respondent..

...

WITH

WRIT PETITION NO.12545 OF 2019

Ambadas S/o. Abaji Mankape Patil,
Age : 78 years, Occu. Agri. & Business,

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R/o. Plot No.31, Shivjyoti Colony,
N-6, Cidco, Aurangabad
Chairman Adarsh Nagari Co-op.
Society Ltd., Aurangabad. ... Petitioners..

VERSUS

President, Swarajya Shikshan Sanstha
Aurangabad Through it's Principal
Dr. Sanjay Tukaram Gaikwad,
Age : 68 years, Occu. Retired Principal,
R/o. Plot No.20, Nandanvan Colony,
Aurangabad. ..Respondent..

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Advocate for Petitioners : Mr. Garud V. B.
Advocate for Respondent : Dr. S D Tawshikar
(In both writ petitions)

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CORAM : V.K. JADHAV, J.
Dated : January 25, 2021

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PER COURT :-

1. Heard finally with the consent of the parties, at admission stage.
2. The respondent/original plaintiff (hereinafter called as 'Sanstha') has instituted a civil suit bearing Regular Civil Suit No.29 of 2018 in the Court of Civil Judge J.D. Khultabad against the petitioners herein for a decree of perpetual injunction in respect of the suit land bearing gat no.767 admeasuring 4 Hector 60R to

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the extent of 65R land situated at village Bajar Sawangi, Tq. Khultabad, District Aurangabad. The respondent Sanshta/original plaintiff has purchased the suit land from petitioner no.1 Sakhahari Dagadu Ghule (original defendant no.1) through a registered sale deed dated 16.1.2009. Initially, the respondent/original plaintiff has purchased 0Hector 70R land from the petitioner no.1 Sakhahari Ghule out of the land gat no.767 alongwith third share in the water of the well. However, it was revealed that mistakenly land was mentioned as 70R instead of 65R. Accordingly, correction deed was executed on 26.8.2009 and four boundaries of the land admeasuring 65 R of land are the same as mentioned in the original sale-deed. It is clarified in the correction-deed that other details of the original sale-deed are true and correct and no change is made with respect to those particulars. Thereafter, mutation entries with respect to the sale-deed dated 16.1.2009 as well as correction deed dated 26.8.2009 are duly recorded in the 7/12 extract of the land gat no.767. The respondent was enjoying the

suit property peacefully since the date of purchase without any obstruction or interference.

3. It is the case of the respondent/original plaintiff that with oblique intention defendant no.1 Sakahari in collusion with defendant nos.2 to 4 prepared a false and fabricated document of Vatanipatra on a stamp of Rs.100/- and thereby partitioned 13R land amongst defendant nos.2 Ramdas and 4 Prabhakar. It reveals from the said Vatnipatra that defendant no.1 Sakahari Ghule has given 6½ R land each to defendant Ramdas and defendant Prabhakar and as such OH 13 R land pretended to have been allotted to them by way of said 'Vatanipatra'. It is not a registered document. Thereafter, said defendants have sold their said share in favour of defendant no.5 by executing a registered sale-deed dated 20.4.2018. According to the respondent/plaintiff, defendants tried to encroach the land owned and possessed by the respondent on the basis of false and fabricated Vatanipatra, so also the sale-deed dated 20.4.2018. The respondent, thus

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constrained to institute the suit for a decree of perpetual injunction.

4. The petitioners/original defendants appeared in the suit and resisted it by filing written statement as well as the Counter-claim. Even, the petitioners/original defendant no.5 has also filed an application seeking temporary injunction in his counter-claim, belatedly. According to the petitioners/defendants, petitioner no.1-Sakhahari was intending to sell 50R of land out of gat no.767. However, respondent/plaintiff got executed the sale-deed for the area admeasuring 70R from petitioner no.1-Sakhahari under the pretext that respondent/Sanstha requires more area on document for the purpose of getting grants for construction of the building from the Government. Petitioner no.1/original defendant no.1 believed the words of the respondent and executed registered sale-deed of the area admeasuring 70R, but, in fact, possession of 50R land was given to the respondent-Sanstha. Further, at the instance of the respondent/plaintiff correction deed has been executed.

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According to the petitioners/defendants on 11.12.2009 petitioner no.1 has executed partition-deed of the land admeasuring 13R land towards Southern-East corner of the land gat no.767 in favour of the petitioner nos.2 and 4 and thereafter petitioner no.4 has executed partition deed of the area admeasuring 6½ R of the suit land in favour of his son petitioner no.3. On the basis of the said partition deed dated 11.12.2009 and 06.02.2018 mutation entries came to be sanctioned in the name of petitioner nos.2 to 4. On 20.4.2018 petitioner nos.2 and 4 have executed the registered sale-deed of the area admeasuring 13R in favour of the petitioner no.5 and necessary mutation came to be sanctioned in the name of petitioner no.5. After the said sale-deed, petitioner no.5 permitted the petitioner nos.2 to 4 to continue their residence till the alternate arrangement is made alongwith a place for animals and agricultural equipments. According to the petitioners, after execution of the said sale-deed, petitioner no.5 covered the purchased area of land admeasuring 13R by erecting a tin shed.

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5. The respondent/plaintiff has filed an application Exh.5 for issuance of the temporary injunction to protect its possession over the suit property, whereas petitioner no.5 has filed counter-claim and in the counter-claim petitioner no.5 has filed an application Exh.22 for temporary injunction. After hearing both the sides, the learned Civil Judge J.D. Khultabad by a common order passed below Exh.5 and Exh.22 in R.C.S. No.29 of 2018 rejected both the applications.

6. Being aggrieved by the same the respondent/original plaintiff has preferred M.C.A. No.145 of 2018 and the petitioners/original defendant no.5 has preferred M.C.A. No.146 of 2018. After hearing both the sides, by impugned order dated 10.07.2019 the learned District Judge-4, Aurangabad has allowed the M.C.A. No.145 of 2018 filed by the respondent/plaintiff and thereby restrained the petitioners/defendants from obstructing the possession of respondent/plaintiff over the suit land as described in paragraph no.2 of the plaint. Learned District Judge has dismissed the

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M.C.A.No.146 of 2018 preferred by the petitioner/original defendant no.5. Being aggrieved by the same, the petitioners have preferred Writ Petition No.12521 of 2019, whereas the said petitioner Ambadas Abaji Mankape/original defendant no.5 has preferred the Writ Petition no.12545 of 2019.

7. Learned counsel for the petitioners submits that the petitioner no.1 in fact has sold 50R of the land to respondent/plaintiff (Sanstha) for the purpose of establishment of the College, however, the sale-deed came to be executed showing excess area for the reason that the respondent/Sanstha wanted the excess area on paper for the purpose of completing various formalities including the grants to be obtained from the Government for construction of the building. Learned counsel submits that petitioner no.1 is unsophisticated and pious person and believing the words of the respondent had executed the registered sale-deed mentioning the excess area in the document as desired by the respondent. Learned counsel submits that, for

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the same reason since the petitioner no.1 came to know about the consequences of the registered sale-deed, correction deed came to be executed reducing the area from 70R to 65R. However, at the request of the respondent as against the area admeasuring 50R, the area of 65R was shown in the correction-deed. On 11.12.2019 petitioner/defendant no.1 had executed the partition deed and allotted the share admeasuring 13R out of the land gat no.767 to petitioner/defendant no.2 Ramdas Ghule and petitioner no.4-Prabhakar Vithoba Ghule admeasuring 6½R each. The petitioner/defendant no.4 has entered the name of his son petitioner no.3 Aadesh Ghule in respect of his share. Thereafter, the petitioners/defendant nos. 2 and 4 have sold their 13R of land to petitioner/defendant no.5 Ambadas under the registered sale-deed for a valuable consideration. Learned counsel submits that the petitioner no.5's claim is based on the registered sale-deed executed in his favour for a valuable consideration. He has covered the land sold to him by erecting a tin shed. There are documents such as electricity bills, etc., to show the

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possession of the petitioner/defendant no.5 over the land admeasuring 13R out of the land gat no.767. Learned counsel submits that undisputedly the petitioner no.1-Sakhahari is owner in possession of the land gat no.767 to the extent of 99.5 R land and out of the said land, even assuming that 65R of land is sold under the registered sale-deed to the respondent-original plaintiff, the remaining land comes to 34R land out of the land gat no.767 still owned and possessed by petitioner/defendant no.1. The petitioner nos.2 and 4 acquired the title of the land ad-measuring 13R out of the remaining land owned and possessed by petitioner no.1 under the partition-deed and, as such, the document i.e. the sale-deed executed in favour of petitioner/defendant no.5 cannot be doubted. Petitioner/defendant no.5 has placed on record the affidavits of the adjacent land holders supporting his case about his possession over the suit land admeasuring 13R land as per his counter-claim. In view of the same, the lower appellate court should have allowed the application Exh.22 filed by the

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petitioner/defendant no.5 seeking temporary injunction and rejected the application filed by the respondent at Exh.5.

8. Learned counsel for the petitioners submits that the lower appellate Court has considered the provisions of section 91 and 92 of the Evidence Act and observed that as per section 91 of the Evidence Act, which is a best evidence, in terms of the contract has been reduced in writing, in respect of a transaction required by law to be reduced in writing, no oral evidence shall be allowed in terms of such contract. Learned counsel submits that it is well settled that even if formal execution of document is proved, same by itself cannot lead to a presumption. Mere execution of a document does not lead to conclusion that recital made therein are correct and subject to the statutory provision contained in sections 91 and 92 of the Act, it is open to the parties to raise a plea contra.

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9. Learned counsel for the petitioners, in order to substantiate his submissions, placed reliance on the following cases :-

- (a) Niranjan Kumar and others Vs. Dhyan Singh and another reported in 1976 (4) SCC 89.
- (b) Roop Kumar Vs. Mohan Thedani reported in 2003 AIR (SC) 2418.
- (c) Gangamma and others Vs. Shivalingaiah reported in 2005(9) SCC 359.
- (d) Manohar Pamandas Jani Vs. Madhukar Trimbak Waychal and others reported in 2017(1) ALL MR 102.
- (e) Vithal Saidu Lokhande Vs. Rama Mahadev Gund Since (D) thr. Lrs. and others reported in 2015(1) ALL MR 324.
- (f) Mukesh S/o. Ashok Sonar Vs. Maya W/o Dashrath Sadawarte reported in 2014(7) ALL MR 561.
- (g) Tulsi and others Vs. Chandrika Prasad and others reported in 2007 ALL SCR 39.
- (h) Shankarlal Ganulal Khandelwal Vs. Balmukund Surajmal Bharuka reported in 1999(2) ALL MR 85.

10. Learned counsel for respondent/plaintiff submits that the respondent/Sanstha (original plaintiff) has purchased the suit land from petitioner no.1 Sakahari Dagadu Ghule through a registered sale-deed dated

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16.1.2019 and the said sale-deed reveals that respondent has purchased 0H 70R of land out of the land gat no.767 situated at village Bajar Sawangi Tq. Khultabad, District Aurangabad alongwith one third share in the water of well for a valuable consideration. The sale-deed bears four boundaries of the land and it has been specifically mentioned Government road towards east. However, due to typographical mistake, the area of the land was mentioned as 70R instead of 65R and, accordingly, correction deed was executed on 26.8.2009. Thereafter, respondent/plaintiff has made huge construction of the college building over the suit land by keeping parking place etc.

11. Learned counsel for the respondent further submits that petitioner no.1-Sakhahari with some oblique intention has partitioned the land admeasuring 13R land in favour of the petitioner/defendant Ramdas and petitioner/defendant Prabhakar to the extent of 6½ R each. Learned counsel submits that in the year 1981 itself there was a partition of the ancestral land between

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three bothers namely i] Pandurang Dagadu ii] Vithoba Dagadu and iii] Sakhahari Dagadu (present petitioner no.1) in respect of the ancestral land including the suit land gat no.767. All the three bothers got equal share of 5 Aana 4 Pai in the ancestral lands. Petitioner/original defendant no.2 Ramdas and defendant no.4-Prabhakar are the nephews of petitioner no.1 Sakhahari Ghule and there was no reason for him to partition his land amongst his nephews, since petitioner no.1 is having his own son. Learned counsel submits that the so-called partition deed came to be executed on 11.12.2009. It is pertinent that as per the boundaries shown in the said unregistered partition deed, towards Eastern side the Government road is shown, however, towards the western side the college building of the respondent/plaintiff is shown, whereas, towards North side the road goes to the respondent no.4 College is shown. Learned counsel submits that it is pertinent that in the original sale-deed dated 16.1.2009 and in the correction deed dated 26.8.2009 in the boundaries nowhere remaining land of the petitioner no.1-
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Sakhahari (vendor of the sale-deed) has been shown. Learned counsel submits that said nephews of the petitioner no.1 i.e. petitioner no.4 Prabhakar and petitioner no.2 Ramdas are the witnesses on the correction deed. Learned counsel submits that after the so called partition deed, there was no interference into the peaceful possession of the respondent/plaintiff over the purchased area, however, in the year 2018 petitioner nos.2 and 4 stated to have been sold the land admeasuring 13R of their share to petitioner/defendant no.5, and, accordingly on the strength of the said false sale-deed petitioners have tried to obstruct the possession of the respondent/Sanstha over the suit land. Respondent/Sanstha has preferred to lodge a complaint in the police station. Petitioners are not only trying to obstruct the possession of the plaintiff, but they are trying to create nuisance to the students taking education in the Institution.

12. Learned counsel for respondent/original plaintiff submits that the appellate Court has rightly considered

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the provisions of section 91 and 92 of the Evidence Act. Section 91 is based on what is sometimes described as the “best evidence about rule” and the best evidence about contents of a document is the document itself and it is the production of the document that is required by section 91 in proof of its contents. It excludes the admission of oral evidence by proving the contents of the document except in a case where secondary evidence is allowed to be led under the relevant provisions of Evidence Act. Section 92 excludes the evidence of oral agreement or statement for the purpose of contradicting, varying, adding to or subtracting from its terms. Learned counsel submits that there is no substance in both these writ petitions and both the writ petitions are thus liable to be dismissed.

13. Learned counsel for the respondent, in order to substantiate his contentions, placed his reliance on following cases :-

- (a) Bai Hira Devi and others Vs. The Official Assignee of Bombay, reported in AIR 1958 SC 448.

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- (b) Dalpat Kumar and others Vs. Prahland Singh and others reported in AIR 1993 SC 276.

14. I have carefully considered the submissions advanced by learned counsel for the respective parties. With their able assistance, I have perused the pleadings, the grounds taken in the petition, annexures thereto and the reply filed by the respondent.

15. It is the case of the respondent/plaintiff that the land admeasuring 70R out of land gat no.767 was purchased under the registered sale-deed dated 16.1.2009 for a valuable consideration from petitioner/defendant Sakahari Dagadu alongwith one third share in the water of the well. It further appears that the correction-deed was thereafter carried out in the Month of August i.e. on 26.8.2009 for correcting the area as 65 R of land instead of 70R land. In both the documents, boundaries and other contents are the same. Prima facie, it is difficult to believe that though petitioner/original defendant no.1 Sakahari, who claims to be unsophisticated person has believed the

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words of the respondent and shown excess area in the sale-deed to facilitate the respondent/Sanstha to complete the paper work for obtaining the grants. However, in the correction deed also instead of correcting the area as 50R, it was corrected to the extent of 65R only. It is also pertinent that, even though, there was a partition of the ancestral land way back in the year 1981 amongst the brothers of petitioner/defendant no.1 Sakhahari including the suit land gat no.767, the petitioner/defendant no.1 Sakhahari has partitioned his remaining land to the extent of 13R and allotted a share of $6\frac{1}{2}$ R each to the petitioner Prabhakar and petitioner Ramdas, who are his nephews.

16. It is necessary to repeat here that as against the contents in writing in the registered document, the petitioner no.1 is coming with the oral agreement about the selling of an area to the extent of 50R to the respondent/plaintiff as against the actual area shown in the sale-deed and correction deed to the extent of 65R.

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In the backdrop of these pleadings, boundaries shown in the sale deed/correction deed and said partition deed executed in favour of the nephews by petitioner Sakhahari are important :-

A]. Boundaries as shown in the sale deed dated 16.1.2009 and correction deed dated 26.8.2009.

East :- Government road.

West :- Agricultural land of Govind Sukhaji Gaikwad.

South:- Agricultural land of Pandharinath Nana Ghule.

North:- Agricultural land of Vithoba Ghule

B]. Boundaries as shown in the partition deed dated 11.12.2009.

East :- Government road.

West :- Building of Swarajya Shikshan Sanstha (respondent/plaintiff)

South:- Agricultural land of Pandharinath Nana Ghule.

North:- Road leading to Swarajya Shikshan Sanstha.

17. The dates of the aforesaid documents are important. Sale-deed was executed on 16.1.2009 by petitioner no.1-Sakhahari in favour of the respondent/plaintiff for the land admeasuring 70R. Thereafter, correction deed was executed on 26.8.2009 correcting the area of the land as 65R land as against 70R land shown in the sale-deed. The said unregistered document of the partition-deed was executed on 11.12.2009. It is pertinent that there was no interference in the suit land of the respondent/plaintiff for years together till the sale-deed of the said 13R of the land executed (area as shown in the so-called partition deed dated 11.12.2009) in favour of the petitioner no.5 under the registered sale deed dated 20.4.2018. It is interesting to reproduce herein below the boundaries of the said sale deed executed in favour of petitioner/defendant no.5.

East :-	Government road.
West :-	Sayajirao Gaikwad College (Respondent/plaintiff)
South:-	Agricultural land of Karbhari Himmatrao Thorat.

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North:- Sayajirao Gaikwad College
(respondent/plaintiff)

18. The said boundaries are also not in consonance with the boundaries mentioned in the said unregistered document of the partition deed.

19. Prima facie, it appears that with some oblique intention the document of said partition deed has been created wherein the land admeasuring 13R shown to have been allotted to the petitioner no.2-Ramdas and petitioner no.4-Prabhakar by petitioner no.1-Sakhahari Dagadu Ghule. Said Petitioner Ramdas and Prabhakar are the nephews of petitioner Sakhahari Dagadu Ghule. It has come on record that the petitioner Sakhahari has his own family and son, however, as per the said partition deed, the land shown to have been allotted to the nephews. As per the partition of the year 1981, all the three brothers including the petitioner Sakhahari got equal shares in the ancestral properties including the suit land gat no.767. I do not find any justification even prima facie for allotment of the land by preparing
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unregistered document of the partition in favour of the nephews by petitioner no.1 Sakhahari Ghule. Though, petitioner Sakhahari has got his remaining land admeasuring 34R of land in the land gat no.767, however, as per the boundaries shown in the original sale-deed/correction-deed, the remaining land of the petitioner Sakhahari Ghule admeasuring 34R of land is not adjacent to the land from any side sold to the respondent/plaintiff. In view of the same, prima facie, it appears that petitioner no.1 as against the contents of the registered document propounded a theory of actual area sold to the respondent/plaintiff and area shown in the sale-deed and under that pretext there seems to be an attempt to disturb the possession of the respondent/Sanstha.

20. I have carefully gone through the ratio laid down by the Hon'ble Supreme Court in the case i] Gangamma and others Vs. Shivalingaiah reported in 2005 (9) SCC page 359 and ii] Roop Kumar Vs. Mohan Thedani

reported in 2003 AIR SC 2418 relied upon by the learned counsel for the petitioners.

21. So far as the case at serial no.i] is concerned by referring the provisions of Section 90 of the Indian Evidence Act as to the presumption of recitals contained in the document, the Supreme Court has observed that “mere execution of the document in other words does not lead to the conclusion that recitals made therein are correct and subject to the statutory provision contained in sections 91 and 92 of the Act, it is open to the parties to raise a plea contra.”

22. In the second case Roop Kumar Vs. Mohan Thedani, in paragraph nos. 18, 19 and 20 the Supreme Court has made following observations :-

“18 In [Section 92](#) the legislature has prevented oral evidence being adduced for the purpose of varying the contract as between the parties to the contract; but, no such limitations are imposed under [Section 91](#). Having regard to the jural position of [Sections 91](#) and [92](#) and the deliberation omission from [Section 91](#) of such words of limitation, it must be taken note of that even a third party if he wants to establish a particular contract between certain others, either when such contract has been reduced to in a document or where under the law such contract has to be in writing, can only prove such contract by the production of such writing.

19. [Sections 91](#) and [92](#) apply only when the document on the face of it contains or appears to contain all the terms of the contract. [Section 91](#) is concerned solely with the mode of proof of a document which limitation imposed by [Section 92](#) relates only to the parties to the document. If after the document has been produced to prove its terms under [Section 91](#), provisions of [Section 92](#) come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms. [Sections 91](#) and [92](#) in effect supplement each other. [Section 91](#) would be inoperative without the aid of [Section 92](#), and similarly [Section 92](#) would be inoperative without the aid of [Section 91](#).

20. The two sections are, however, differ in some material particulars. [Section 91](#) applies to all documents, whether they purport to dispose of rights or not, whereas [Section 92](#) applies to documents which can be described as dispositive. [Section 91](#) applies to documents which are both bilateral and unilateral, unlike [Section 92](#) the application of which is confined to only to bilateral documents. (See: [Bai Hira Devi and Ors. vs. Official Assignee of Bombay](#) AIR 1958 SC 448). Both these provisions are based on "best evidence rule". In Bacon's Maxim Regulation 23, Lord Bacon said "The law will not couple and mingle matters of speciality, which is of the higher account, with matter of averment which is of inferior account in law". It would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory."

23. However, in the instant case, prima facie, it is difficult to accept the reasons given by the petitioners/defendants about the excess area shown in the sale deed/correction deed as against the land sold

to respondent/plaintiff. Section 91 is based upon the best evidence principle and it excludes the admission of oral evidence for proving the contents of the documents except in cases where secondary evidence is allowed to be led under the relevant provisions of the Evidence Act. The other circumstances as discussed above are in favour of the respondent/plaintiff. The respondent/plaintiff has proved prima facie case. The balance of convenience certainly lies in favour of the respondent/plaintiff Educational Institution. It is pertinent that only after execution of the alleged sale deed in favour of the petitioner/defendant no.5 or the petitioner in writ petition no.12545 of 2019, the evidence about electricity supply seems to have been created. Thus, considering the entire aspects of the case, I do not find any error of law in the impugned order passed by the learned District Judge-4, Aurangabad. Hence, I proceed to pass the following order.

ORDER

Writ petition No.12521 of 2019 and 12545 of 2019 are hereby dismissed. No costs.

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24. At this stage, learned counsel appearing for the petitioners submits that the interim order passed by this Court remained in force for a considerable period, and, in view of the same, the effect of this order may be stayed for a period of four weeks from today, so as to enable the petitioners to approach the Supreme Court.

25. In view of the above submissions and since the interim order passed by this Court directing the parties to maintain status-quo remained in force for a considerable period, the effect of this order is stayed for a period of FOUR WEEKS from today, so as to enable the petitioners to approach the Apex Court, if so desired.

(V.K. JADHAV, J.)

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