

G.Kishore Kumar and ors. Vs. R.Padmini and ors.

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Court : Chennai

Decided On : Jan-03-2012

Judge : R.Banumathi; R.Mala, Jj.

Acts : Hindu Succession Act - Section 8; Indian Succession Act - Section 213

Appeal No. : O.S.A.Nos.322 to 324 of 2011

Appellant : G.Kishore Kumar and ors.

Respondent : R.Padmini and ors.

Advocate for Def. : Mr.Yashod Varadan, Adv.

Advocate for Pet/Ap. : Mr.S.Suresh Kumar, Adv.

Judgement :

Original Side Appeals arise out of the common order dated 18.11.2010 made in O.A.Nos.298 and 451 of 2006 in C.S.No.272 of 2006 & O.A.No.1162 of 2008 in C.S.No.75 of 2006, respectively.

2.One Varadarajan and Nandakumar, who are the father and son filed a suit in C.S.No.75/2006 for specific performance against the defendants on the basis of the oral sale agreement and other consequential reliefs stating that the first plaintiff Varadarajan's Mother Kumudhammal got the property under the registered Settlement deed dated 20.10.1945. She died intestate in the year 1971 and her

husband Srinivasan pre-deceased her. She is having five sons and her first son Kannan died in the year 1971 leaving behind his widow Seetha and daughters Padmini & Meera. Subsequently, Seetha died and Padmini and Meera as their legal heirs entitled to the share of Kannan.

3.Padmini, who is plaintiff in C.S.No.272/2006 has relinquished her right in the property in favour of the first plaintiff/Varadarajan. The other co-sharer Padmanaban died as bachelor, leaving behind the testamentary disposition (i.e.) leaving the Will. Another brother Veeraragavan, who died intestate, leaving behind his widow and daughters namely, Rajam, Jayanthi and Preethi. The last brother Bashyam and the legal heirs of Veeraragavan entered into a sale agreement in respect of their 2/5th share in the suit property with Varadarajan and Nandakumar. Hence they filed a suit for specific performance on the basis of oral sale agreement allegedly to be entered by Bashyam and legal heirs of Veeraragavan. During the pendency of the suit in C.S.No.75/2006, Padmini has come forward with the suit in C.S.No.272 of 2006 for her 1/40th share in the suit scheduled property, as if she has inherited the property of Padmanaban.

4.Along with the suit, S.Varadarajan and V.Nandakumar filed O.A.No.1162/2008 in C.S.No.75/2006 for an ad interim injunction restraining the defendants 5 to 10, their men, servants, agents and representatives from encumbering, alienating or dealing with the schedule mentioned property either by way of lease, mortgage, Development Agreement and or by joint venture either by themselves or with any 3rd parties pending disposal of the suit.

5.Padmini filed O.A.Nos.298 and 451 of 2006 in C.S.No.272/2006, for interim injunction restraining the defendants/respondents from alienating the suit property and restraining the respondents 7 to 12 from altering the physical features of the property or dealing with the suit property pending disposal of the suit respectively.

6.The learned Single Judge after hearing both sides allowed all the three applications in O.A.Nos.298 and 451 of 2006 in C.S.No.272 of 2006 and O.A.No.1162/2008 in C.S.No.75/2006. Interim Injunction already granted in O.A.No.451/2006 in C.S.No.272/2006 was made absolute, against which, the present O.S.A.No.323/2011 is preferred by the purchasers of the property alone.

Since injunction has been granted in O.A.No.298 of 2006, against which, the present O.S.A.No.322 of 2011 has been preferred.

7.Challenging the order, Mr.S.Suresh Kumar, learned counsel for the Appellants would submit that originally the properties belonging to one Kumudhammal, who died intestate leaving behind five sons and they divided the property under the registered Partition Deed dated 28.3.2005 and that has been registered only on 3.11.2005 after receipt of the deficit stamp duty of Rs.6,38,500/-. As per the registered partition deed, 'A' schedule property was allotted to Varadarajan and Nandakumar, 'B' schedule property was allotted to the share of legal heirs of Veeraragavan and 'C' schedule property was allotted to the share of Bashyam. They executed two sale deeds on 29.05.2006 in favour of appellants herein. Appellants herein had purchased 5208 sq.ft. under two registered sale deeds and they are the bonafide purchasers.

8.It is further submitted that in the injunction application, Appellants herein had given an undertaking, which is as follows: "We have invested substantial money for the purchase of the property and intend only to put a residential house for our own living. We do not intend to enter into any joint development agreement or sell any part of the property to any third party. We are going to build our residential house and live there with our family. We undertake not to claim any compensation for the superstructure we build in the event of the decision in this suit going against our interest." Contention of appellants is that the learned Single Judge has not considered this aspect and granted an injunction restraining the appellants herein not to proceed with the construction in the suit property, which was purchased by them from their co-owners. He further submitted that both respondents/plaintiffs /petitioners, Padmini, Varadarajan and Nandakumar have not come to the Court with clean hands and that they suppressed the material facts and obtained discretionary relief of injunction. Hence, he prayed for setting aside the order passed by the learned Single Judge.

9.Resisting the same, Mr.R.Thiagarajan, learned counsel appearing for Varadarajan & Nandakumar would submit that it is true, the properties originally owned by Varadarajan's mother Kumudhammal, who died intestate

leaving behind five sons. One son by name Padmanaban, who died bachelor leaving behind the Will. The Will was yet to be probated and in that Will, life interest has been given to Rajam, who is one of his brother's wife and vested interest given to one Nandakumar, who is none other than the son of one of his brothers, namely, S.Varadarajan. So without probating the Will, the appellants are not entitled to maintain the appeal. He further submitted that after filing of the suit in C.S.No.75/2006 by Varadarajan and Nandakumar, appellants purchased the property and they are "pendente lite" purchasers and the appellants herein cannot be entitled to any relief. The learned Single Judge has considered this aspect in a proper perspective and came to the correct conclusion. He further submitted that after disposal of the application in O.A.No.1162/2008 in C.S.No.75/2006, the appellants herein have filed another suit in O.S.No.7305/2011 before the City Civil Court for damages and for injunction and obtained an interim injunction on 22.09.2011. Hence, he prayed for the dismissal of the appeals.

10.Mr.S.Namasivayam, learned counsel appearing for the vendors to the appellants would submit that Varadarajan and Nandakumar have filed the suit in C.S.No.75/2006 for specific performance on the basis of the oral agreement. But there is no oral agreement for sale. They instigated Padmini to file a suit for partition, who is neither legal heir of the deceased Padmanaban nor has right under the testamentary disposition. So the suit filed by Padmini in C.S.No.272/2006 itself is not maintainable. So the injunction granted in the applications in O.A.Nos.298 & 451 of 2006 deserve to be dismissed.

11.Mr.Yashod Varadan, learned senior counsel appearing for Padmini would submit that she is the grand daughter of original owner Kumudhammal, who died intestate. The father of Padmini is Kannan, who had inherited 1/5th share in the property. It is true, Padmini and Meera, who are the daughters of Kannan, executed two release deeds in favour of Varadarajan in the year 1991. Padmanaban, who is one of the sons of Kumudhammal, had died bachelor. So she is entitled to 1/40th share in the suit property and hence, she constrained to file an application for injunction not to alienate and encumber the property and also not to alter the physical features of the suit property. Learned Single Judge has considered this aspect in a proper perspective and came to the correct conclusion

and hence, prayed for dismissal of the appeals.

12.Considered the rival submissions made on both sides and materials available on record.

13.The brief history of the litigation between both the parties are necessary for the disposal of the appeals: The properties acquired by Kumudhammal under the registered settlement deed executed by her father Diwan Bahadur T.Rangachariar on 20.10.1945. Her husband Srinivasa Iyengar pre-deceased her and she died intestate leaving behind five sons. The genealogy between the parties as follows: SRINIVASA IYENGAR (DIED) KUMUDAMMAL (DIED INTESTATE) |

|-----|-----|-----

|-----| S.Kannan S. Varadarajan S. Padmanabhan S. Veeraragavan S.Bashyam (Died) (Bachelor-Died) (Died) | | (1st plaintiff in | (D6 in C.S.272/06)

| C.S.No.75/2006) V.Rajam (wife) Seetha (wife) | (D1 in C.S.75/2006 & D3 in C.S.272/2006) | |

| |-----| |-----| | V.Nandakumar D. Vilasini V. Jayanthi V. Preethi | (son) (daughter) (daughter) (daughter) | (2nd plaintiff in

| C.S.No.75/2006) (D2 in C.S.75/2006 & D3 in C.S.75/2006 & | D4 in C.S.272/2006) D5 in C.S.272/2006)

|-----|

Padmini Meera

(daughter) (daughter)

(plaintiff in

C.S.No.272/2006

& D4 in C.S.No.75/2006)

Since Kumudhamma died intestate, her children inherited the property equally. One of the sons of Kumudhammal viz., Padmanaban died as bachelor. Admittedly, one of the daughters of Kannan (i.e.) Padmini, who is the plaintiff in C.S.No.272/2006 and Meera executed two release deeds dated 18.03.1991 in respect of their 1/10th each share in the property in favour of Varadarajan. Since Varadarajan got 1/5th share by succession and 1/5th share under two registered Release deeds. Hence, he is entitled to 2/5th share in the suit property. So there was a partition between Varadarajan, Nandakumar and heirs of Veeraragavan namely, Rajam, Jayanthi, Preethi and another brother Bashyam on 28.03.2005, which was presented for registration. On 16.08.2005, the District Registrar has issued proceedings directing the parties to pay the deficit stamp duty of Rs.6,38,072/-. After hearing both sides, order has been passed on 23.09.2005, directing the parties to pay the deficit stamp duty of Rs.6,38,072/-. On 28.10.2005, Bashyam and Rajam paid that amount and the challan finds place in page-18 of the typed set of papers filed by the appellants and the document was registered on 3.11.2005.

14.It is pertinent to note that 'A' schedule properties measuring 9667.07 sq.ft. were allotted to Varadarajan and Nandakumar who are shown First Party. 'B' schedule properties consists of 2604.11 sq.ft. were allotted to the Second party, who are the legal heirs of the deceased Veeraragavan. 'C' Shcedule properties comprising of 2604.11 sq.ft. were allotted to the third party, who is Bashyam.

15.The problem arose after the partition deed dated 28.03.2005 presented before the Registrar for registration. Varadarajan has filed a writ in W.P.No.35818 of 2005 against the District Registrar(Incharge), Office of Inspector General of Registration and Sub-Registrar, Purasawalkam for the relief of 'Writ of Mandamus', "forbearing the respondents 2 and 3 from releasing the original deed of partition deed dated 28.3.2005 pertaining to the property situate at Door No.84, 85 & 86 Dr.Alagappa road, Chennai-84 or any certified copies in favour of any other person other than the petitioner till the disposal of the appeal dated 5.11.2005 preferred by the first respondent to the second respondent herein." On 13.11.2005 in WPMP No.38633/2005 this Hon'ble Court was pleased to order interim injunction and notice to the 2nd and 3rd respondents. Subsequently, Bashyam, Rajam, Jayanthi

and Preethi have filed an application to implead themselves as respondents 3 to 6 in the above writ petition. Since several proceedings have been initiated between both the parties, we may usefully refer to the details of the proceedings, which are as follows: Sl.

No

Suit or Writ

Petitioners Name

Respondents Name

Nature of the relief

Date of filing

Result/Remarks

1.

W.P.No.

35818/

2005

S.Varadarajan

1.The District Registrar(Incharge),O/o Inspector General of Registration.

2.The Sub-Registrar, Purasawalkam

[Subsequently

1.S.Bashyam

2.V.Rajam

3.V.Jayanthi

4.V.Preethi are impleaded as respondents 3 to 6]

Writ of Mandamus forbearing the respondents 2 and 3 from releasing the original deed of partition deed dated 28.3.2005 pertaining to the property situate at Door No.84, 85 & 86 Dr.Alagappa road, Chennai-84 or any certified copies in favour of any other person other than the petitioner till the disposal of the Appeal dated 5.11.2005 preferred by the first respondent to the second respondent herein. On 13.11.2005 in WPMP No.38633/2005 this Hon'ble Court was pleased to order interim injunction and notice to the 2nd and 3rd respondents. 7/11/2005

2

O.S.No.

824/2006

S.Varadarajan

1.The District Collector, Chennai.

2.The Tahsildar, Purasawalkam-Perambur Taluk

[Subsequently

1.S.Bashyam

2.V.Rajam

3.V.Jayanthi

4.V.Preethi are impleaded as respondents 3 to 6]

Declaration that the defendants have no manner of right or authority to issue patta either suo motu in respect of property bearing Door Nos.84,85&86, Dr.Alagappa Road, Chennai-84 and other consequential reliefs. 30.1.2006

Dismissed for default on 01.04.2008

Suit was decreed on 27.4.2010

3

C.S.No.

75/2006

1.S.Varadarajan

2.V.Nandakumar

1.V.Rajam

2.V.Jayanthi

3.V.Preethi

4.R.Padmini (D4 was impleaded on 30.10.2006)

5.G.Kishore Kumar

6.G.Anand Kumar

7.G.Pavan Kumar

8.G.Vasanth Kumar

9.G.Navrathin

10.G.Harish Kumar(D5 to D10) were impleaded on 8.8.2008)

For specific performance on the basis of the oral sale agreement

6/2/2006

Pending

(i)

O.A.No.

1162/2008 in C.S.No.

75/2006

1.S.Varadarajan

2.V.Nandakumar

1.V.Rajam

2.V.Jayanthi

3.V.Preethi

4.R.Padmini

5.G.Kishore Kumar

6.G.Anand Kumar

7.G.Pavan Kumar

8.G.Vasanth Kumar

9.G.Navrathin

10.G.Harish Kumar

11.The Corporation of Chennai

12.CMDA, Chennai-8

For ad interim injunction restraining respondents 5 to 10, their men, servants, agents and representatives from encumbering, alienating or dealing with the schedule mentioned property either by way of lease, mortgage, Development Agreement and or by joint venture either by themselves or with any 3rd parties pending disposal of the suit.

28.10.2008

It was allowed on 18.11.2010 against which, O.S.A.No324 /2011 is filed.

4

C.S.No.

272/2006

R.Padmini

1.S.Varadarajan

2.V.Nandakumar

3.V.Rajam

4.V.Jayanthi

5.V.Preethi

6.S.Bashyam

7.G.Kishore Kumar

8.G.Anand Kumar

9.G.Pavan Kumar

10.G.Vasantha Kumar

11.G.Navrathin

12.G.Harish Kumar

For partition and separate possession of 1/40th share in the suit schedule property

March 2006

(i)

O.A.No.

298/2006 in C.S.No.

272/2006

R.Padmini

-do-

For interim injunction restraining the defendants/ respondents from alienating the suit property

March 2006

It was allowed on 18.11.2010, against which, O.S.A.No322/2011 is filed

(ii)

O.A.No.

451/2006 in C.S.No.

272/2006

R.Padmini

-do-

For interim injunction restraining the respondents 7 to12 from altering the physical features of the property or dealing with the suit property 1/6/2006

It was allowed on 18.11.2010 Injunction already granted on 7.6.2006 was made absolute, against which, O.S.A.No323/2011 is filed. 5

C.S.No.

788/2006

1.S.Varadarajan

2.V.Nandakumar

1.V.Rajam

2.V.Jayanthi

3.V.Preethi

4.S.Bashyam

5.G.Kishore Kumar

6.G.Anand Kumar

7.G.Pavan Kumar

8.G.Vasanth Kumar

9.G.Navrathin

10.G.Harish Kumar

11.R.Padmini

For declaration that the partition deed dated 28.3.2005 is illegal, invalid and non-est in the eye of law and other consequential reliefs. 16.10.2006

It was transferred to City Civil Court and renumbered as O.S.No. 12171/2010 on the file of III Additional City Civil Court, Chennai. 6

O.S.No.

7305/

2011

1.G.Vasanth Kumar

2.G.Navrathin

3.G.Harish Kumar

4.G.Kishore Kumar

5.G.Anand Kumar

6.G.Pavan Kumar

1.S.Varadarajan

2.V.Nandakumar

3.S.Bashyam

4.V.Rajam

5.V.Jayanthi

6.V.Preethi

7.K.Meera

8.R.Padmini

For damages and injunction

September 2011

On 22.9.2011, interim injunction granted

16.O.S.A.No.324 of 2011:

O.S.A.No.324 of 2011 arises out of the order dated 18.11.2010 made in O.A.No.1162 of 2008 in C.S.No.75 of 2006 filed by Varadarajan and Nandakumar seeking interim injunction. Learned Single Judge after considering the arguments of both sides and undertaking given by the Appellants herein as defendants 5 to 10, granted interim injunction not to alienate or encumber the property. Since the litigation is pending, the appellants herein have purchased the property from two sharers that too they are "pendente lite" purchasers'. By the interim order not to

alienate or encumber the property will not cause any prejudice or loss to the appellants. In such circumstances, we do not find any reason warranting interference with the findings of the learned Single Judge and hence, it is hereby confirmed.

17.O.S.A.Nos.322 and 323 of 2011:

These two appeals arise out of the order dated 18.11.2010 made in O.A.Nos.298 & 451 of 2006 in C.S.No.272 of 2006 filed by Padmini, in which, injunction was granted restraining the respondents from alienating the suit property and restraining the respondents 7 to 12 from altering the physical features of the property. After hearing both sides, interim injunction already granted on 07.06.2006 in O.A.No.451 of 2006 has been made absolute.

18.Challenging that order, learned counsel appearing for the appellants would submit that neither Padmini is legal heir of the deceased Padmanaban under Hindu Succession Act nor she is the legatee under the testamentary disposition alleged to be made by the deceased Padmanaban and no prima facie case has been made out. He further submitted that since Padmini has filed a suit for partition of 1/40th share in the suit property, it is only miniscule share and the same cannot be used as bar for development of the property over which the appellants have spent nearly Rs.1 crore. The applicant is indulging in a speculative litigation. Hence he prayed for allowing of the appeals and dismissal of applications.

19.It is pertinent to note while perusing counter affidavit filed in O.A.No.298 of 2006, one of the respondents by name Navarathin has specifically stated as follows: “ We have invested substantial money for the purchase of the property and intend only to put up a residential house for our own living. We do not intend to enter into any joint development agreement or sell any part of the property to any third party. We are going to build our residential house and live there with our family. We undertake not to claim any compensation for the superstructure we build in the event of the decision going against our interest.” But he has not given such undertaking in O.A.No.451 of 2006.

20. At this juncture, it is appropriate to consider the following facts: Admittedly, Padmini is a daughter of Kannan, who is pre-deceased son of the original owner Kumudhammal. Padmini and her sister Meera have released their 1/5th share in favour of Varadarajan vide two Release deeds dated 18.03.1991. He kept quiet for long time and the partition deed entered on 28.03.2005, which was registered on 3.11.2005. The suit in C.S.No.272 of 2006 was filed by Padmini in March 2006. Even though Varadarajan and Nandakumar filed a suit in C.S.No.75/2006 for specific performance on 6.2.2006, admitting the partition deed and they filed another suit in C.S.No.78/2006 for declaration that the partition deed dated 28.3.2005 is illegal, invalid and non-est in the eye of law and other consequential reliefs, in which, it was specifically stated that one of the sons of the deceased Kumudhammal (i.e.) Padmanaban died as bachelor. In para-6 of the plaint in C.S.No.75/2006, it is stated as follows:

“6. The plaintiffs state that after the demise of S. Padmanabhan, his undivided 1/5th share in all the piece and parcel of land with a building thereon situate at Old Nos.84, 85 and 86 corresponding to New Nos.48, 46 and 44, Dr. Alagappa Road, Purasawalkam, Chennai-600 084 were devolved upon V. Nandakumar, the second plaintiff and Smt. V. Rajam respectively. In and by the Testamentary Disposition, the deceased S. Padmanabhan had bequeathed life interest in favour of V. Rajam and absolute interest in favour of V. Nandakumar thereafter.”

The above paragraph would show that as per the testamentary disposition, Padmini is not entitled to any share in the property of Padmanaban, who died as bachelor. If the Will is not produced, proved and probated as per Section 213 of Indian Succession Act. As per Section 8 of Hindu Succession Act, Padmini is not entitled to any share in the property, since brothers of the deceased Padmanaban are alive. So Padmini has not proved prima facie case that she is having share in the property of 1/5th share of Padmanaban. Since she has not proved the prima facie case, she is not entitled any injunction.

21. One more adding circumstance is that already Padmini has executed the release deed in favour of Varadarajan on 18.3.1991 for 1/10th share, she is not having prima facie title to the suit property and she is not entitled to any share in

the suit property. Now it is appropriate to consider the counter affidavit filed by the appellants herein. In para-22 of O.A.No.451 of 2006, it was stated as follows:

“22.I state that in a suit for partition, the purchasers are not proper and necessary parties as even if the suit succeeds, we would be entitled for adjustment of equities in the portions which falls to the share of our vendors. We are not proper parties in a proceeding where the shares of respective sharers are going to be decided. Moreover, at best, the plaintiff's claim is only to 1/40th share. A claim of an infinitesimally miniscule sharer cannot be used as bar for development of the property over which we have spent nearly Rs.1 crore. The applicant is indulging in a speculative litigation.”

Considering the same, if at all Padmini is entitled to 1/40th share, it is only a miniscule sharers and purchasers are entitled equity and that factum has not been considered by the learned Single Judge.

22.It is pertinent to note that the learned Single Judge has considered that already interim injunction has been granted, which was subsequently set aside after full-fledged enquiry on 30.10.2006, vacating the interim injunction granted. Thereafter, an appeal was preferred in O.S.A.No.327 of 2006 and it was disposed of by the Bench of this Court along with the other connected appeals and the same was set aside and it was remanded to the learned Single Judge for fresh disposal.

23.It is true that appellants are “pendente lite” purchasers. But they had invested the amount. As already discussed that Padmini has not proved her prima facie title in the property or share in the property and therefore she is not entitled to any injunction. Once a party claiming injunction, he ought to have proved his prima facie case, balance of convenience in his favour and irreparable loss, if no injunction is granted. Admittedly, Padmini has not proved her prima facie case (i.e.) already she has executed the release deed of her 1/10th share in the suit property as per Hindu Law, she is not entitled to any share in the property of deceased Padmanaban. We are of the considered view that Padmini has not proved prima facie title to the suit property.

24.The argument that there are five proceedings pending between both the parties, if the Appellants herein are permitted to construct the building, it will cause irreparable loss to the respondents herein, is does not hold good. Because, Varadarajan and Nandakumar filed a suit for specific performance, after accepting the partition deed. Subsequently they filed a suit to declare the partition deed dated 28.03.2005 as null and void. In such circumstances, even though the appellants are “pendente lite” purchasers, they had given an undertaking in their counter affidavit filed in their applications in O.A.No.1162 of 2008 in C.S.No.75 of 2006 and O.A.No.298 of 2006 in C.S.No.272 of 2006, in which, they had specifically mentioned that they will not claim any compensation and they undertake not to claim any compensation for superstructures they intended to build, in that event, the suit ends against their interest. Recording the same, we are of the view that if the application for injunction not to alter the physical feature is dismissed, no serious prejudice would be caused to Padmini. Hence, we are of the view that learned Single Judge has not considered this aspect in the legal position that Padmini has not inherited any share in the property of Padmanaban, who inherited 1/5th share of his mother's property. Hence we are of the view that Padmini has not proved prima facie case. Hence she is not entitled to injunction that restraining the appellants herein not to alter the physical features of the suit property and not to alienate the suit property.

25.Learned counsel Mr.R.Thiagarajan, appearing for R2 and R3 in O.S.A.Nos.322 and 323 of 2011, relied upon the decision reported in 1990 (Supp) SCC 727 (Wander Ltd. and another v. Antox India Pvt. Ltd.) in para-14, it is held as follows:

“The appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the

trial Court reasonably and in a judicial manner the fact that the Appellate Court would have taken a different view may not justify interference with the trial Court's exercise of discretion.”

There is no quarrel over the above said well settled principle.

26. Whenever an appeal is filed against an order of granting or refusing to grant an order of injunction, the Appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the finding is perverse or arbitrary or the Court has ignored the settled principle of law. However, in cases where the Appellate Court is satisfied that the findings of the trial Court was arrived at ignoring the material evidence the Appellate Court can certainly interfere with the order passed by the trial Court. In the case on hand, we find that the first respondent-Padmini has not established a prima facie case/prima facie right in the suit property, which was not kept in view in a proper perspective. Therefore, the order passed in O.A.Nos.298 of 2006 and 451 of 2006 in C.S.No.272 of 2006 deserves to be set aside.

27. In the result, setting aside the order dated 18.11.2010 made in O.A.Nos.298 & 451 of 2006, O.S.A.Nos.322 and 323 are allowed. Confirming the order dated 18.11.2010 made in O.A.No.1162 of 2008, O.S.A.No.324 of 2011 is dismissed. Both the parties are directed to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

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