

Sayali Upasani

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

**APPEAL FROM ORDER NO. 1072 OF 2022  
WITH  
INTERIM APPLICATION NO. 1500 OF 2023  
WITH  
INTERIM APPLICATION NO. 20184 OF 2022**

Bipin Madhusudan Morjaria And Others ...Appellants

**Vs.**

Jayesh Vinayak Choudhary and Others ...Respondents

Mr. Vishal Kanade a/w Mr. Shashwat Rai, Ms. Nikita Ganesh  
for Keystone Partners for the Appellants.

Mr. J. K. Shah a/w Ms. Pooja Shah i/b RJ Law, for  
Respondent Nos. 1 to 6 and 8.

**CORAM:- N. J. JAMADAR, J.**

**DATED:- 15<sup>th</sup> JUNE, 2023**

**PC:-**

- 1) Heard the learned Counsel for the parties.
- 2) The challenge in this Appeal is to an order dated 22<sup>nd</sup> November, 2022, whereby the Notice of Motion taken out by the appellants/plaintiffs to restrain the defendants from interference

and/or obstructing the plaintiffs from the use and occupation of 22 feet wide right of way, came to be dismissed.

3) Plaintiffs property is situated at Survey No. 65 (part) forming part of larger property bearing the CTS No. 1691 of village Erangal, Tal. Borivali. The plaintiffs claim to have the right of way through the defendants adjoining land admeasuring 986 sq. mtr., bearing CTS NO. 1693 of village Erangal, Tal. Borivali.

4) The learned Counsel for the appellants submitted that the prime reason, which weighed with the learned Judge, City Civil Court to dismiss the Notice of Motion was the non- production of the power of attorney on the strength of which the defendant No. 9 had executed the Deed of Conveyance and the Agreement of Right of Way, dated 6<sup>th</sup> April, 1994. It was submitted that the plaintiffs had placed adequate material on record to substantiate their claim and the plaintiffs could not have been non situated at an interim stage on the ground of non-production of power of attorney. Nonetheless, the appellant-plaintiffs have placed the power of attorney on the record of this Court.

5) The learned Counsel for the respondents, on the other hand, submitted that the non-production of the power of

attorney was not the only reason for dismissal of the Notice of Motion. The learned Judge, City Civil Court has ascribed reasons, apart from the failure on the part of the plaintiffs to place the power of attorney on record, which warranted dismissal the Notice of Motion.

6) I have perused the impugned order. The observations in paragraph Nos. 10 to 13 indicate that the failure on the part of the plaintiffs to place power of attorney on record predominantly influenced the exercise of discretion by the trial Court.

7) It is true that the learned Judge, City Civil Court has ascribed other reasons as well. One of them was that the plaintiffs failed to give proper description of the property. The agreement under which the right of way was allegedly granted prima facie furnishes adequate particulars.

8) At this stage, it would be difficult to appreciate as to how the trial Court would have exercised the discretion had the power of attorney been placed on the record of the Court.

9) In the aforesaid view of the matter, the parameters which are required to be considered while granting temporary injunction deserve to be examined afresh.

10) The learned Counsel for the respondents made an endeavor to assail the genuineness of the power of attorney on the

strength of which deed of conveyance and agreement of right of way were allegedly executed by the defendant No. 9.

11) All these issues can be raised before the trial Court and the Court may then decide as to whether the case for grant of temporary injunction is made out.

12) For the foregoing reasons, I am persuaded to partly allow the Appeal.

13) The impugned order stands set aside.

14) The Notice of Motion No.2221 of 2021, stands restored to the file of the learned Judge, City Civil Court.

15) The appellants/plaintiffs shall place the power of attorney on the record of the court with an affidavit.

16) The defendants/respondents shall be at liberty to file an affidavit to deal with the affidavit and the power of attorney, which may be filed by the plaintiffs.

17) The learned Judge, City Civil Court is requested to decide the Notice of Motion afresh after providing an effective opportunity to the parties, as expeditiously as possible, on its own merits and without being influenced by the observations made by this Court as well as in the impugned order.

18) The Appeal stands disposed.

19) In view of the disposal of the Appeal, the Interim Application also stands disposed.

20) In the circumstances there shall be no order as to costs.

**[N. J. JAMADAR, J.]**