

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

WRIT PETITION 6754 OF 2014

Trija Subramanyam Nadar ... Petitioner
Versus
The Municipal Corporation of Greater Mumbai
and Anr. ... Respondents

Mr. Mohit P. Jadhav a/w Gayatri Kumar for the Petitioner.
Mr. Om Suryawanshi for the Respondent 1.
None for the Respondent 2.

CORAM: ROHIT B. DEO, J.
DATE : 21st JULY, 2022

P.C. :-

. The petitioner is the plaintiff in L.C. Suit 1994 of 2011 which is instituted against the Municipal Corporation of Greater Mumbai (for short 'Corporation') seeking declaration that the notice dated 26th September, 2011 issued under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short 'Act') is illegal and consequential perpetual injunction.

2. Respondent 2 took out chamber summons invoking the provisions of Order 1, Rule 10 of the Code of Civil Procedure, 1908 seeking impleadment in the suit. Briefly, the third party contended that the erstwhile owner of the suit property Mr. Krishna Hari Patil and others had entered into an agreement for sale dated 27th May, 1982 with the third party whereunder the third party was put in possession of the entire land assigned survey 39 (part) and 54 admeasuring 24 acres and

36 gunthas. The third party then contended that the erstwhile owner resiled from the terms and conditions of the agreement for sale and suit 2788 of 1983 was instituted by the erstwhile owner questioning the validity of the agreement, which was dismissed in default. It is on such averments, that the third party claimed to be necessary party to the suit.

3. The learned Trial Judge was pleased to allow the chamber summons holding that the third party – respondent 2 herein is necessary party.

4. It is difficult to agree with the view taken by the learned Trial Judge. The challenge in the suit is to the validity of the notice issued by the Corporation under the provisions of the Act. It would have been a different matter, had the third party be the owner of the property. However, even according to the third party he is the holder of an agreement for sale. It is well settled that no right or interest is created in property merely by virtue of an agreement for sale.

5. In this view of the matter, the third party is neither necessary nor proper party.

6. The order impugned is set aside.

7. The petition is allowed.

[ROHIT B. DEO, J.]

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