

MHKO070010452025



**ORDER BELOW EXH.45 IN REGULAR CIVIL
SUIT NO.120/2025.**

Chandsaheb Hasan Sutar

Vs.

Tahsildar, Shirol

The defendants No.3, 4 and 14 have filed the present application to frame the preliminary issue regarding the non-joinder of necessary party. The plaintiffs have filed their say (Exh.48) and objected the application.

2. Heard both sides. Perused the record. It is submitted by the learned advocate for the defendants that, the Collector, Kolhapur was required to join as a representative of the State in the present suit. However, he is not joined as a necessary party in the present suit. The plaintiffs have joined Tahsildar as a defendant No.1. However, he is not a proper legal representative of the State. Therefore, the suit is barred by the principle of non-joinder of necessary party. Hence, it is necessary to frame such a issue. On the other hand, the learned advocate for the plaintiffs has submitted that the application is not maintainable. The Collector, Kolhapur is not the necessary party in the present suit. Hence, he has prayed to reject the application.

3. The defendants have filed the present application to frame a preliminary issue that the suit is bad for non-joinder of necessary party. However, the defendants have not quoted the provisions under which the present application is filed. On perusal of the application, it appears that the present application is filed vide Order 14 Rule 2 of the Code of Civil Procedure. Under the said provision, the Court can frame a preliminary issue if that issue relates to i) jurisdiction of the Court and ii) when the suit is barred by law for the time being in force. In the present suit, the defendants have sought to frame the issue that the suit

is bad for non-joinder of necessary party. However, the said issue is not relating to the jurisdiction of the Court. Moreover, it is not purely the question of law. It is mixed question of law and fact. Hence, the preliminary issue as prayed by the defendants regarding the non-joinder of necessary party cannot be framed.

4. It appears that the plaintiffs have filed the present suit for declaration that the order passed by the Tahsildar, Shirol under Section 143 of Maharashtra Land Revenue Code is illegal. The plaintiffs have not challenged any order passed by the Collector, Kolhapur. Moreover, it appears that the Tahsildar and not the Collector is empowered to pass the order under Section 143 of Maharashtra Land Revenue Code. Therefore, it is not legal and proper to frame the preliminary issue as prayed by the defendants.

5. Learned advocate for the defendants has relied on District Collector, Srikakulam & Ors., v. Bagathi Krishna Rao & Anr. 2010 GoJuris (SC) 400 and submitted that the suit cannot be entertained without impleading the Collector, if relief is sought against the State. However, the present application is filed to frame the preliminary issue and not to decide the issue whether the suit is bad for non-joinder of the Collector in the present suit. Therefore, the ratio laid down in the case (cited supra) is not helpful to the defendants at this stage. In view of above discussion, the application is liable to be rejected. In the result, I pass following order.

ORDER

The application (Exh.45) is rejected.

Jaysingpur.
Date : 15.12.2025.

(P. A. Patil),
Jt. Civil Judge Senior Division,
Jaysingpur.