

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AND JUDICIAL  
MAGISTRATE FIRST CLASS AT KUNDAPURA**

**Present : SMT. SHRUTHI SHREE S, *B.A. LL.B.*  
Prl. Civil Judge & J.M.F.C.,  
Kundapura.**

**Dated this the 15<sup>th</sup> day of April, 2024**

**Original Suit No. 68/2024**

**Parties to I.A. No. XLIX:**

**Applicant/s:** 1) Sarveshi Poojarthi  
- Since suffering from  
unsoundness of mind  
- represented by  
her son, plaintiff No.2

2) Chandrashekar Poojary

**(By Advocate Sri. M.J.S.)**

*//Vs//*

**Opponent/s:** The State of Karnataka and 3 others

**(AGP for defendant Nos. 1 to 3)  
(By Advocate Sri. C.S.H. for defendant No.4)**

**Parties to the suit:**

**Plaintiff** : 1) Sarveshi Poojarthi and another

**V/s**

**Defendant** : 1) The State of Karnataka and 3 others

i.	Provision under which the application is filed	Sec. 151 of CPC
ii.	Relief sought for	Permission to lead evidence and to produce documents

iii.	The date on which the application is filed	02-04-2024
iv.	Number of the application	I.A. No. XLIX
v.	The date on which the objections are filed by different opponents	08-04-2024
vi.	The date on which the orders were passed on the said application	15-04-2024

### **ORDER ON I.A. NO. XLIX**

Plaintiffs have filed this application seeking permission to lead evidence and also to produce documents in support of the suit and in compliance of directions of Hon'ble High Court of Karnataka in W.P. No. 4603/2023.

2. In the accompanying affidavit contentions raised through this suit are also contended along with further contention that Hon'ble High Court of Karnataka expressed its view in Para No.3 in its order dated 12-06-2023 in W.P. No. 4603/2023 where Hon'ble High Court after hearing both parties was pleased to take view that material on record discloses that several contentions are involved of which issues are to be decided by considering contentions of parties only after full pledged trial. Therefore all aspect of the matters were kept open and Hon'ble High Court has directed

this Court to given an opportunity for plaintiffs to prove their contention in this suit. Therefore seeks that plaintiffs are intending their oral evidence to prove their contention and accordingly contends that preliminary issues or issue No. 5 and 6 framed by this Court also require oral evidence and it is not possible to answer the issue without evidence. Therefore in order to due justice and give opportunity for adjudication, seeks to lead evidence on merits. Accordingly seeks to allow this application.

3. Per contra, defendant No.4 filed objections contending that issue regarding bar of suit being considered as preliminary issue are to be decided at this stage to save time of this Court and also that Hon'ble High Court directed this Court to dispose the suit in accordance with law. Hence as per provisions of law, when a preliminary issue regarding maintainability of suit has arisen, the same must be taken at preliminary stage. There is no sufficient grounds to permit plaintiff to lead evidence as sought for. Accordingly seeks to reject the application.

4. Heard arguments from both the sides on I.A. No. XLIX and perused materials available on record.

5. The points that would arise for my consideration are as under:

## P O I N T S

- 1) Whether the plaintiff has made out sufficient grounds to allow I.A. No. XLIX?
- 2) What order?

6. My answer to the above points are as follows:

**Point No.1 : In the Negative**

**Point No.2 : As per final order,  
for the following:**

## R E A S O N S

7. **POINT NO. 1:** This application was filed while the suit was posted for hearing on preliminary issue. Based on materials available on record, it is notable that after re-registering this suit on the file of this Court, issues were framed where issue Nos. 5 and 6 were considered as preliminary issues. That with regard to maintainability of suit in respect of law involved in the suit, deciding issue Nos. 5 and 6 at preliminary stage would be necessary as contemplated under order XIV Rule 6(1)&(2) of CPC. Also it would be necessary that if at all there are issues that would involve only law but not fact, be it regarding jurisdiction or bar to the suit created by law for the time being in force and for the purpose to decide such preliminary issue, until and unless the same is settled or determined,

Court ought not to consider any issues which involves both mixed question of fact and law.

8. Looking into issue Nos. 5 and 6, it is considerable that both issues are more particular with regard to jurisdiction which question of law. Thus as provided under the above said provision, it should primarily be settled until and unless it is determined, any issue involving both fact and law cannot be discussed and determined. However, it was open for both parties to chose deposing oral evidence in respect of preliminary issues instead of submitting their hearing. Also it is yet open for both parties to lead their preliminary enquiry regarding preliminary issues that are subjected under discussion at this stage, which would only be considered as part and parcel of trial of the suit.

9. That with regard to directions of Hon'ble High Court of Karnataka in W.P. No. 4603/2023, it can be seen that Hon'ble High Court has directed this Court that the matter involved in dispute cannot be decided without providing opportunities for both parties to subject their materials for evidence before Court. Even now the stage is for the same but only with respect to issue Nos. 5 and 6. Until and unless those issues are settled as

already above stated, considering other issues and subjecting them to oral evidence along with preliminary issues would not only be procedural lapse but also would not aid this Court to ascertain if primarily the suit is maintainable or barred under any specific law for being in force. Hence until and unless maintainability of this suit is ascertained by arriving at a conclusion on issue Nos. 5 and 6, it does not deem proper to provide plaintiff and opportunity to lead oral evidence on all the issues together. However it is again clarified that both parties would be at liberty to subject issue Nos. 5 and 6 to enquiry on their behalf or may submit their hearing as they intend to. For all the above stated reasons, **POINT NO. 1 is answered IN THE NEGATIVE.**

**10. POINT NO.2:** In view of findings on point No. 1, this Court proceed to pass the following:

## **O R D E R**

I.A. No. XLIX filed by the plaintiff  
under Sec. 151 of CPC is hereby rejected.

(Dictated to the stenographer, directly on computer, corrected by me and then pronounced in the open Court on this 15<sup>th</sup> day of April, 2024)

**(Smt. Shruthi Shree S.)  
Prl. Civil Judge & J.M.F.C.,  
Kundapura.**