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Interim Sharing of Income in Partition Suits: Karnataka High Court’s Nuanced Approach to Constructive Possession and Co-ownership Rights

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Introduction

Partition suits involving ancestral and joint family properties are among the most prolonged and emotionally charged civil disputes in India. While the substantive right to a share in joint family property is well settled, the question of interim financial relief during the pendency of such suits has often remained contentious. This becomes particularly complex when married daughters or sisters, though legally recognised as coparceners or co-owners, are excluded from the actual enjoyment of income arising from the property.

In a significant and carefully reasoned decision, the Karnataka High Court, in ***DYAMAPPA v. SMT. BHIMAVVA BASAVANTAPPA KADANNAVAR & Ors.***[1], addressed the delicate balance between strict statutory interpretation and equitable justice. While reaffirming that married sisters cannot claim maintenance from a brother in a partition suit, the Court carved out an important exception: where a co-owner is constructively in possession yet deprived of income, the court may direct interim sharing or deposit of profits pending final adjudication.

This judgment marks a crucial development in civil procedure and property law, especially in the context of prolonged partition litigation.

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Factual Matrix of the Case

The dispute arose from a partition suit[2] filed before the Civil Judge and JMFC, Yelburga, by three sisters seeking division of ancestral joint family properties. The defendant was their brother, who was allegedly in exclusive control and enjoyment of the income derived from the suit properties.

During the pendency of the partition suit, the sisters, who were married and widowed, filed I.A. No. 1 under Section 151 of the Code of Civil Procedure, seeking subsistence allowance and maintenance. Their case was premised on the assertion that although they had a lawful share in the ancestral properties, they were being completely excluded from the income and were unable to sustain themselves.

The Trial Court allowed the application and directed the brother to pay Rs.4,000 per month to each sister as interim maintenance. Aggrieved by this order, the brother approached the Karnataka High Court under Article 227 of the Constitution, challenging the legality and maintainability of such an order.

Background and Contentions of the Parties

Petitioner's (Brother's) Arguments

The petitioner primarily contended that:

1. Maintenance claims by married sisters against a brother are not maintainable in law, especially within a partition suit.
2. Since the sisters had already claimed mesne profits in the main suit, interim maintenance could not be granted.
3. The sisters were married, their children were well-placed, and therefore they were not legally dependent on him.

4. Any claim to profits could only be adjudicated after the final decree for partition, not at the interlocutory stage.

Respondents' (Sisters') Arguments

The respondents argued that:

1. They had a prima facie share in the ancestral properties.
2. The brother was deriving income from the properties while completely excluding them.
3. Despite being co-owners, they were denied even basic sustenance from the joint family assets.
4. The Trial Court's order was justified as a measure to prevent continued deprivation during a prolonged trial.

Issues before the High Court

The High Court framed the core issue as follows:

- Whether, in a partition suit where mesne profits are claimed, a court can grant interim monetary relief in favour of married sisters against their brother, and whether such relief is legally sustainable.

This issue required the Court to navigate between formal legal doctrine and practical realities of partition litigation.

Judicial Interpretation and Analysis by the Karnataka High Court

The Karnataka High Court undertook a careful and structured examination of the scope of interim relief in partition suits, particularly where married sisters seek monetary relief against a brother during the pendency of proceedings. The Court was conscious of the distinction between a **claim for maintenance** and a **claim arising from co-ownership rights in joint family property**.

At the outset, the Court clarified that **a married sister cannot, as a matter of law, claim maintenance from her brother in a partition suit**. Such a claim does not flow from any statutory obligation under personal law or civil law. However, the Court emphasised that the nature of the application must be examined **substantively rather than merely by its nomenclature**.

The High Court observed that where a plaintiff in a partition suit establishes a **prima facie share in the suit schedule property**, and it is shown that the defendant is in **exclusive enjoyment of income derived from such property**, the court is not powerless to intervene. In this context, the Court held:

"If a prima facie case is made out to take a view that the plaintiff has share in the property, and the defendant is deriving the income from the suit property to the deprivation of the plaintiff, then in such cases, the Court as an interim measure, can direct the defendant in the suit, either to share or deposit the profits derived from the suit property, subject to the result of the suit."

This observation forms the doctrinal foundation of the judgment. The Court thus recognised that **constructive possession** of joint family property carries with it a corresponding entitlement to income, even if actual physical possession lies with one co-owner.

The High Court further examined the contention that since the plaintiffs had sought mesne profits in the main suit, no interim relief could be granted prior to the final decree. Rejecting this argument, the Court noted that such a rigid interpretation would defeat the ends of justice, especially in partition suits which are **notoriously protracted**.

The Court reasoned that while mesne profits are ordinarily determined after adjudication, **interim arrangements are permissible where denial of income would result in continued deprivation of a lawful co-owner**. It was observed that the concept of mesne profits is often loosely invoked in partition suits, and that courts must instead focus on whether income is being unjustly appropriated by one party.

In addressing the concern that the defendant may suffer prejudice if ultimately successful, the Court balanced equities by imposing protective conditions. It directed that the plaintiffs furnish an undertaking to refund the amount received along with interest, thereby ensuring that interim relief does not crystallise into irreversible loss.

Importantly, the Court reiterated that **the inherent powers under Section 151 of the Code of Civil Procedure** exist precisely to address such situations where procedural rigidity may otherwise perpetuate injustice. The Trial Court's order was therefore sustained, not as an order granting maintenance, but as an order **tentatively regulating profits from joint family property**, subject to final adjudication.

Through this interpretation, the Karnataka High Court harmonised settled principles of co-ownership with equitable interim relief, reaffirming that **possession and enjoyment of joint family property cannot be monopolised to the economic exclusion of other lawful sharers during the pendency of litigation**.

Analysis of 'Mesne Profits' and Constructive Possession

A critical contribution of this judgment lies in its treatment of mesne profits under Section 2(12) of the Code of Civil Procedure. The Court observed that mesne profits, by definition, arise when a person is in wrongful possession of property.

In a partition suit, however, where the property is alleged to be joint family property, a co-owner cannot ordinarily be said to be in wrongful possession. Therefore, the Court noted that the term "mesne profits" is often a misnomer in partition suits, though commonly used.

The Court instead preferred the broader concept of "profits", holding that:

- A co-owner who has a lawful share,
- And is constructively in joint possession,
- Cannot be denied a share in income merely because physical possession lies with another co-owner.

The Court reaffirmed the settled principle that "possession of one co-owner is possession of all", but clarified that constructive possession cannot be used as a shield to deny financial benefits when income is exclusively appropriated by one party.

Practical Realities and Delay in Partition Suits

A particularly pragmatic aspect of the judgment is the Court's recognition of systemic delays. Justice Hegde observed that the argument that profits can only be claimed after a final decree ignores the reality that partition suits often take years, if not decades, to conclude.

Denying interim relief in such cases would effectively legitimise prolonged economic exclusion of lawful co-owners. The Court therefore held that inherent powers under Section 151 CPC can be exercised to prevent such injustice.

Judgment and Operative Directions

The High Court ultimately held that:

1. Maintenance claims by married sisters against a brother are not maintainable in a partition suit.
2. However, such applications can be construed as requests for interim sharing or deposit of income derived from joint family property.
3. The Trial Court's order was upheld by re-characterising it as an order for tentative mesne profits, not maintenance.
4. To safeguard the brother's interests:
5. The sisters were directed to furnish an undertaking to refund the amount with 6% interest if the suit fails.
6. Only 50% of the monthly amount was to be released to the sisters.
7. The remaining 50% was to be kept in a fixed deposit, subject to final adjudication.

Conclusion

The Karnataka High Court's decision in *Dyamappa v. Bhimavva Basavantappa Kadannavar* represents a measured and humane interpretation of civil procedural law. Without diluting statutory principles or creating new maintenance rights, the Court ensured that equitable relief is not sacrificed at the altar of technicalities.

By recognising interim sharing of income as distinct from maintenance, the judgment strengthens the rights of co-owners, particularly women, who are often excluded from economic benefits despite clear legal entitlements. At the same time, safeguards imposed by the Court protect defendants from irreversible prejudice.

This decision thus stands as a balanced precedent, harmonising legal doctrine with lived realities in India's joint family property disputes.

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1. WRIT PETITION NO. 103885 OF 2024 (GM-CPC) ??

2. O.S. No. 61/2021 ??

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