



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 25TH DAY OF NOVEMBER, 2025



BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

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

BETWEEN:

DYAMAPPA
S/O LATE BASAVANTAPPA KADANNAVAR,
AGE. 73 YEARS, OCC. AGRICULTURE,
R/O. HIREFYAGERI-583 236,
TQ. YELBURGA, DIST. KOPPAL.

... PETITIONER

(BY SRI. SHRIHARSH A. NEELOPANT, ADVOCATE)

AND:

1. SMT. BHIMAVVA BASAVANTAPPA KADANNAVAR
(W/O LATE KALAKAPPA), AGE. 69 YEARS,
OCC. HOUSEHOLD, R/O. DINDUR-582 114,
TQ. GAJENDRAGAD, DIST. GADAG.
2. SMT. SHARANAVVA BASAVANTAPPA KADANNAVAR
(W/O CHANNAPPA NEELAGUND), AGE. 63 YEARS,
OCC. HOUSEHOLD, R/O. BELAVANAKI-582 202,
TQ. RON, DIST. GADAG.
3. SMT. BASAVVA
W/O LATE BALAPPA KADANNAVAR,
AGE. 68 YEARS, OCC. HOUSEHOLD,
R/O. HIREFYAGERI-583 236,
TQ. YELBURGA, DIST. KOPPAL.

... RESPONDENTS

(BY SRI. SHIVANAND MALASHETTI, ADVOCATE FOR R1 AND R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OR DIRECTION OR ORDER IN THE NATURE OF WRIT OF CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 02.03.2024 PASSED BY THE CIVIL JUDGE AND J.M.F.C. YELBURGA IN O.S. NO.61/2021 AS PER ANNEXURE-A AND DISMISS THE APPLICATION IN I.A. NO.I FILED UNDER SECTION 151 OF CPC BY THE RESPONDENTS.





THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

ORAL ORDER

(PER: THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE)

The question to be resolved is:

In a suit for partition, whether an order of interim maintenance can be passed in favor of married sisters (Plaintiffs) against their brother (Defendant), when the Plaintiffs have also claimed mesne profits.

2. In the suit for partition filed by the respondents/plaintiffs, I.A. No.1 was filed seeking a subsistence allowance and maintenance on the premise that the plaintiffs, who have share in the properties, are not in a position to maintain themselves.

3. The Trial Court granted maintenance of ₹4,000/- per month in favour of each of the plaintiffs, to be paid by defendant No.2 (the plaintiffs' brother).



4. Learned counsel for defendant No.2/petitioner submits that since the plaintiffs have claimed *mesne* profits, the application is not maintainable. He contends that as the plaintiffs are married sisters of defendant No.2, the brother has no legal obligation to pay them maintenance. Additionally, it is urged that the plaintiffs' sons are well-placed and are maintaining the plaintiffs; therefore, the application is not maintainable.

5. Learned counsel for the respondents/plaintiffs submits that the plaintiffs are widows and are the sisters of second defendant. Prima facie, the plaintiffs have a share in the suit properties but are denied the income derived there from; as such, the Trial Court is justified in awarding interim maintenance of ₹4,000/- per month.

6. The Court has considered the contentions and perused the records.

7. Going by the letter of the law, an application for maintenance filed by married sisters against their brother may not be maintainable. However, this is a suit for partition and not



a suit for maintenance. The relationship between the parties is admitted. Prima facie, it is found that the suit properties are ancestral properties and have not yet been partitioned.

8. Learned counsel for the petitioner urged that the proper remedy for the plaintiffs is to seek *mesne* profits. The expression "*mesne* profits" is defined in Section 2(12) of the Code of Civil Procedure, which reads as follows:

"2.Definitions.—*In this Act, unless there is anything repugnant in the subject or context- (12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession;"*

9. From this definition, it is evident that *mesne profits* are the profits derived by a person who is in **wrongful possession** of the property. Since the plaintiffs allege that the suit properties are joint family properties, the defendants cannot be said to be in wrongful possession. This being the position, the expression "*mesne* profits" may be a misnomer in a suit for



partition, though widely used. The expression "profits" may be more suitable in this context.

10. In any case, whether termed "*mesne* profits" or "profits", a plaintiff who has a share in the property, if deprived of the income from said property, is entitled to a share in the profits derived by the defendant from the suit property.

11. It is a settled position of law that the possession of one co-owner is the possession of another. In other words, a plaintiff is deemed to be in constructive joint possession of the property along with the defendant(s), even if the plaintiff is not in actual physical possession. However, that cannot be a ground to deny profits or *mesne* profits if it is established that income is being derived by one party to the deprivation of another.

12. It is not the case of defendant No.2 that the plaintiffs are in actual joint possession or are deriving income from the suit properties. More importantly, it is not the case of the petitioner that he is not deriving any income from the properties,



nor is it his defense that he has been sharing that income with the plaintiffs.

13. Thus, the contention that the plaintiffs can only seek *mesne* profits or profits after the final decree for partition and delivery of possession though sounds well theoretically, ignores the reality that it takes an unrealistically long time to realize profits in a suit for partition.

14. The Court is of the view that if an application is filed in a suit for partition to direct the defendant(s) to share the profits derived from the suit properties, and if a strong *prima facie* case is made out that the plaintiff has a share and is being deprived of income, the Court, in the exercise of its **inherent power**, can direct the defendant to deposit or pay a portion of that income to the plaintiff, subject to the final result of the suit.

15. The Court is also of the view that, in appropriate cases, an order to share or deposit the income derived from the suit property may eliminate delays in the disposal of partition suits.



16. In the instant case, though the plaintiffs have sought "maintenance," the prayer can be construed as one to share a part of the income derived from the suit properties. Hence, the order of maintenance passed by the Trial Court is read as an order to share part of the income derived from the suit properties which shall be adjusted in the event plaintiffs succeed.

17. To safeguard the interest of defendant No.2 in the event he succeeds in the suit, the Court must put the plaintiffs on terms.

18. The plaintiffs shall give an undertaking before the Trial Court that, in case the suit is ultimately dismissed, they shall repay the amount received with 6% interest from the date of receipt until the date of payment.

19. The Court is also of the view that ₹4,000/- per month ordered by the Trial Court for each plaintiff, 50% shall be paid to the plaintiffs and the balance 50% shall be kept in a deposit until



the disposal of the suit, to be disbursed subject to the final result.

20. In the event, the suit is decreed; the amount paid to the plaintiffs under this interim order shall be adjusted towards the final profits ascertained and payable to them.

21. Thus, the question framed above is answered by holding that the application for sharing/depositing the *mesne* profits by way of interim measure is maintainable, though the application for maintenance by a married sister against his brother may not be tenable in a suit for partition.

22. CONCLUSIONS:

- (a) 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.

- (b) Such an application seeking interim mesne profits or profits gets more credence in appeals against the decree for partition or in final decree proceedings where the plaintiff established that the property is joint family property and defendant is exclusively deriving the income from the suit property though the plaintiff is in constructive joint possession of the same.
- (c) Suitable interim measures, in appropriate cases, directing the defendant to share/deposit the *mesne* profits, subject to the result of the suit, may reduce the delaying tactics by defendant and may also result in amicable settlement of the dispute.

Hence, the following:-

ORDER

- i) The petition is ***disposed of.***



- ii) The defendant No.2 shall deposit the amount as ordered by the Trial Court and same shall be treated as payment towards tentative *mesne* profits.
- iii) The 50% of the amount shall be released in favour of the plaintiffs and balance 50% shall be kept in interest earning deposit in any nationalised bank with auto-renewal mandate.
- iv) The plaintiffs shall give an undertaking in writing that in case the defendants succeed in the suit the amount received by them pursuant to the interim order will be refunded to defendant No.2 with 6% interest per annum from the date of receipt till the date of payment.
- v) The amount to be received by the plaintiffs shall be subject to the final decision in the suit.
- vi) The parties to the suit shall co-operate for early disposal of the suit.

**Sd/-
(ANANT RAMANATH HEGDE)
JUDGE**