

## **Mallawa father Irbasaya Hiremathod minor by her next friend Virpaxaya Adiveya Hiremath Vs Shivrudraya Fakiraya Desayamathod and Another**

**Court:** Bombay High Court

**Date of Decision:** April 6, 1923

**Citation:** AIR 1924 Bom 114 : 81 Ind. Cas. 1052

**Hon'ble Judges:** Norman Macleod, C.J; Crump, J

**Bench:** Division Bench

### **Judgement**

1. The plaintiff, a minor, filed this suit by her next friend to recover possession of the suit property. It belonged to her father Irbasaya who left a

widow Nilawa. She died in September 1914. Thereafter Shivrudraya who had been living with the widow gave the plaintiff in marriage to the

present third defendant, in November, 1914. Six months later Virupasaya the grandson of Irbasaya's brother took the plaintiff to his house and she

had been living with him ever since. The minor was clearly entitled to possession of the suit property. But her suit has been dismissed by the lower

Appellate Court on the ground that her husband's right to the guardianship of his minor wife's property was irresistible. That proposition we

cannot accept. The minor is entitled to bring a suit through her next friend according to the provisions of the Civil Procedure Code, to recover her

own property, and the only person who would be entitled to resist such a proceeding would be the person appointed as the guardian of the

minor's property under the Guardians and Wards Act. The third defendant in his capacity as husband had no title to resist the present suit which

was wrongly dismissed. The appeal must be allowed and the decree of the Trial Court must be restored with costs throughout.

2. It appears from the memorandum of appeal filed in the lower Appellate Court that some proceedings were pending in the Court of the District

Judge under the Guardians and Wards Act. Nobody can tell us what has become of those proceedings. If the proceedings, should, result in the

appointment, of a guardian of the property of the minor then the District Court would determine whether such guardian should take possession of

the minor's property.