

(1923) 04 BOM CK 0025

Bombay High Court

Case No: None

Mallawa father Irbasaya
Hiremamath minor by her next
friend Virpaxaya Adivaya
Hiremamath

APPELLANT

Vs

Shivrudraya Fakiraya
Desayamamath and Another

RESPONDENT

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.