

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

BAMCHANDRA VASUDEO (ORIGINAL OPPONENT), APPELLANT, v. **1908.**
KRISHNARAO VASUDEORAO DESHPANDE (ORIGINAL APPLI- January 29.
 CANT), RESPONDENT.*

*Hindu Law—Guardianship—Joint Hindu family—Minor co-parceners—
 Guardian of the family property appointed by the Court—Guardianship
 ceases when one of the co-parceners attains majority—Guardianship goes
 to the adult co-parcener.*

Where a joint Hindu family consists of co-parceners who are all minors, the co-parceners forming one group, the Court has jurisdiction to appoint a guardian of the property of that group as a whole. But when, subsequently, one of that group arrives at the age of majority, the guardianship of the person appointed by the Court ceases, and the Court is bound to hand over the joint-family property to the adult co-parceners, notwithstanding the fact that other co-parceners are minors.

Virupakshappa v. Nilgangava (1), applied.

Bindaji v. Mathurabai (2), followed.

APPEAL from the decision of S. J. Murphy, Assistant Judge, at Satara.

There was a joint Hindu family consisting of two brothers: Krishnarao (applicant) and Ramchandra (opponent). They were both minors. The Court appointed the Collector of Satara guardian of the property in 1905.

Krishnarao attained majority in 1906.

On the 4th March 1907 he applied to the Court asking that he should be appointed guardian of the whole property.

Ramchandra opposed this application, contending that there was ill-feeling between the two brothers, and that the property should remain in the Collector's possession till he attained majority: and that in any event the minor's share in the property should remain with the Collector.

* First Appeal No. 118 of 1907.

(1) (1894) 19 Bom. 309, F. B. (2) (1905) 30 Bom. 152; 7 Bom.

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The District Judge held that the guardianship of the Collector had ceased by reason of one of the co-parceners attaining his majority and he ordered that the Collector should hand over the estate in his charge to Krishnarao. The reasons were as follows:—

“The ruling case on the point is one decided by a Full Bench of the Bombay High Court in 1894, *Virupakshappa v. Nilganagava* (I. L. R. 19 Bom. 309). The ruling laid down in this case was that under the present Act a guardian cannot be appointed to the property of a minor who is a member of a joint Hindu family governed by Mitakshara Law. The present case is practically a converse of this ruling, and it seems to me that the principles authoritatively enunciated in the judgment of their Lordships of the High Court apply with equal force to the facts of the present case. The principle is where the family is joint no ownership of any particular piece or portion of the property can be predicated of any one of the members of the Hindu joint-family, and that, such an interest as the members individually possess, is not property of which a guardian appointed by the Court can take care. This family remains joint, and the member having attained majority, he is *de facto* and *de jure* manager. He cannot be kept out of his inheritance by the mere fact that another co-parcener is still a minor and he clearly has a right to manage the property.”

The opponent appealed to the High Court.

Sellur (with *M. V. Bhat*) for the appellant.

M. B. Chaubal (Government Pleader) for the respondent.

CHANDAVARKAR, J :—We are asked to reverse the order of the District Judge in appeal upon the ground that he ought not to have removed the guardian under the Guardians and Wards Act. In *Bindaji v. Mathurabai* ⁽¹⁾ this Court expressed an opinion in these terms: “The reason of the rule that when the joint-family originally comprises an adult, a guardian of the property cannot be appointed, (in our opinion) involves the conclusion that as soon as there is an adult co-parcener any guardianship of the property previously constituted either ceases or is liable to cease, for then there is no longer any property in respect of which there can be a guardian.” No doubt this was a mere dictum which was not strictly speaking necessary for the purposes of the decision in that case. But it was an opinion which appears to have been

(1) (1905) 30 Bom. 152 at p. 155.

expressed after a careful consideration of the law upon the point, and we accept it as laying down the correct law in such cases.

Where a joint Hindu family consists of co-parceners who are all minors, the co-parceners forming one group, the Court has jurisdiction to appoint a guardian of the property for that group as a whole. But when, subsequently, one of that group arrives at the age of majority, the ruling of the Full Bench in *Virupakshappa v. Nilgançava* (1) must apply and the guardianship of the person so appointed by the Court must cease. The District Judge is right in the present case in holding that as soon as the respondent arrived at the age of majority, the order appointing the Collector guardian of the property ceased to be operative, and the Court was bound to hand over the joint family property to the co-parcener who had become an adult, although the other co-parcener is a minor.

We confirm the order with costs.

Order confirmed.

R. R.

(1) (1894) 19 Bom. 369, F. B.