

**Manda Vs. Pandurang and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/344352](http://sooperkanoon.com/344352)

**Court :** Mumbai

**Decided On :** Sep-26-1967

**Reported in :** AIR1968Bom340; (1968)70BOMLR293; 1968MhLJ258

**Judge :** Abhyankar, J.

**Acts :** Hindu Law; Hindu Women's Rights to Property Act, 1937 - Sections 3; [Code of Civil Procedure \(CPC\), 1908](#) - Order 20, Rule 12

**Appeal No. :** Second Appeal No. 317 of 1961

**Appellant :** Manda

**Respondent :** Pandurang and ors.

**Advocate for Def. :** M.W. Samudra, Adv.

**Advocate for Pet/Ap. :** B.A. Udhoji, Adv.

**Judgement :**

(1) The appellant Manda is the plaintiff in Civil Suit No. 120-A of 1957 and defendant No. 1 in Civil Suit No. 92-A of 1957. She challenges by this appeal the decree and judgment which are common to both the suits and also common to the appeal in the lower appellate Court.

(2) Civil Suit No. 92-A of 1957 was filed by respondents Pandurang and Aba against the appellant Manda and one Keshao Vyankatesh. The Keshao was the

maternal grand-father of Manda and is dead. This suit was filed on 18-9-1957. In this suit respondents Nos. 1 and 2 of this appeal claimed a declaration of their ownership and title to Khasra No. 3/4 K and Khasra No. 3/3 Gh situate at Akola in Hinganghat taluk of Wardha District. They also claimed declaration and confirmation of their possession over these lands and an injunction against the appellant from in any way interfering with their peaceful possession.

(3) Manda, the appellant in this appeal, filed her suit (Civil Suit No. 120-A of 1957) on 21-11-1957. She claimed a decree for possession of the four pieces of land described in para 4 of the plaint which include khasra No. 3/4K and Khasra 3/3 Gh, which were the subject matter of the earlier suit filed by Pandurang and Aba and, in addition, Khasra No. 4/18 and Khasra 4/19 both also situate at village Akola. She also claimed in the alternative a decree directing partition of the property claimed to be a joint family property described in Schedule A to the plaint. She wanted a decree for Rs. 100 on account of loss of profits for the fields in suit for the year 1957-58 and other ancillary reliefs. To Manda's suit she had impleaded only the first two respondents to this appeal. But the principal contest being between the appellant Manda on the one hand and Aba and Pandurang on the other, the two suits were between the same parties and raised common questions of law and fact. By an order dated 9-8-1958. Manda's suit was consolidated with the earlier suit filed by Aba and Pandurang for the purpose of evidence and judgment and thereafter the two suits were tried together. It may be mentioned that the appellant Manda had made an application for appointment of a receiver but that application was dismissed by the trial Court.

(4) According to the appellant, the parties were related as follows

Balaji-----| | Haribhau = Indirabai Pandurang Aba| Manda (daughter)

The above genealogy would show that Balaji was the father of Manda's father Haribhau and her uncles Pandurang and Aba and formed a joint coparcenary with them. When Balaji died the three brothers became the members of a Hindu Joint family having coparcenary property. This position is not disputed before me Haribhau died in March 1951 leaving his daughter Manda the appellant and his widow Indirabai Schedule. A filed with the plaint gives details of the joint family

property owned by the joint family when Haribhau died. After Haribhau's death some time in April 1951 according to the appellant a partition took place between the appellant's mother Indirabai and the respondents Aba and Pandurang, and as a result of this partition Indirabai was allotted the fields mentioned in Para 4 of the plaint and also put in their possession. This was the position till 1957 summer. The appellant then alleged that her mother Indirabai remarried by Pat and as a result of this remarriage of her mother, the four fields came in possession of the appellant, but it was in June 1957 that the defendants Aba and Pandurang took forcible possession of the fields. Thus the cause of action for the suit, according to appellant Manda arose on account of her dispossession by the respondents Nos. 1 and 2. In the alternative she claimed that she was the sole heir of her mother entitled to the immoveable property mentioned in plaint Para 4 and also the sole survivor of her parents i.e. her father and was entitled to separate possession of one-third share in the property mentioned in Schedule A.

(5) The defence raised by the respondents in resisting Manda's suit and in support of their own suit appears to be more or less common. The defendants admitted the existence of joint family after the death of Balaji i.e. their father and also that Haribhau died in a state of jointness possessing joint family property as mentioned in Schedule A and that Haribhau had one-third share in the property. The respondents also admitted that on the death of Haribhau his widow Indirabai i.e. appellant's mother, had a one-third share in the joint family property but they denied that there was any partition between the appellant's mother Indirabai, and themselves as alleged in April 1951 or that the fields mentioned in Para 4 were given in their possession. According to the respondents, Indirabai had filed Civil Suit No. 124-A of 1953 which was decided on 5-11-1954 against the respondents for partition and separate possession of her one-third share in the joint family property; that this suit was ultimately compromised and Indirabai was given the two fields Khasra Nos. 3/4K and 3/3Gh of Akola for enjoyment till her lifetime according to Hindu Women's Rights to property Act. They also alleged that the respondents had reserved to themselves right to take possession of those fields after her death civil or natural and that this was expressly agreed to between the parties in the compromise. They denied that Khasra Nos. 4/18 and 4/19 were allotted to Indirabai was in possession from March 1951 to 1957 summer or that

Indirabai remarried on 20th July 1956. They merely alleged that on account of civil death of Indirabai probably meaning her remarriage, the fields had come in possession of the respondents on or about 1-4-1957 and that they are in possession of the same as owners as a result of the compromise decree. They denied the claim of the appellant for a one-third or any share as heir of her father in the joint family property or its partition and separate possession. They denied the claim for compensation or mesne profits which was styled as premature. As regards the cause of action for their own suit (Civil Suit No. 92-A of 1957), the respondents Nos.1 and 2 alleged that Keshao the maternal grand-father of appellant Manda, had tried to take forcible possession and created disturbance in their possession on 28th June 1957. The suit was filed by the respondents for a declaration and confirmation of their possession and for restraining the defendants from interfering with the same.

(6) On the pleadings of parties, the salient issues which arose in both the suits were settled in the trial Court and the nature of the contest will be reflected from the issues in Civil Suit No. 120A of 1957. They are as follows.

- '1. Whether in April 1951 there was a partition between the Plaintiff's mother Indirabai and the defendants?
2. Whether in the said partition field khasra No. 3/4K, 3/3Gh, 4/18 and 4/19 were allotted to the share of the plaintiff's mother?
3. Whether the plaintiff's mother was in possession of the said fields till her remarriage on 20th July 1956?
4. Whether the Plaintiff inherited the suit fields on the civil death of her mother?
5. Whether the Plaintiff was in possession of the suit fields and whether she was forcibly dispossessed by the Defendants in June 1957?
6. Whether the Plaintiff is entitled to get Rs. 100 on account of loss of crops?
7. Whether the Plaintiff has joint one-third share in the joint family property shown in Schedule A annexed to the plaint?

Whether the Plaintiff is entitled to partition and separate possession of her share?

8. Whether in the consent decree passed in Civil Suit No. 124-A of 1953 filed by the Plaintiff's mother for partition only field khasra No. 3/4K and 3/3Gh were allotted to her share?

9. Whether it was agreed that the Plaintiff's mother would have only life interest in the said fields and after her death the same would revert to the Defendants?

10. Whether Defendants became owners of field khasra No. 3/4K and 3/3Gh on account of the remarriage of the Plaintiff's mother on 12th June 1956?

11. Whether the Defendant entered into possession of the said fields as owners on 1st April 1957?

12. Whether the Plaintiff's claim for mesne profits is premature?

13. Relief and Costs?

(7) The learned trial Court found that the claim of the appellant that there was a partition between the plaintiff's mother Indirabai and the defendants was proved. He also found that at this partition all the four pieces of land described in para 4 of the plaint were allotted to the share of the plaintiff's mother. He found that in Civil suit No. 124-A of 1953 filed by the appellant's mother only khasra Nos. 3/4K and khasra No. 3/4Gh were allotted to her and there was an agreement between the appellant's mother and the two respondents that Indirabai would have only life interest in these fields and that after her death the same would revert to the defendants. As regards legal effect of the remarriage of Indirabai, the trial Court held that the respondents i.e. Aba and Pandurang, became the owners of Khasra Nos. 3/4K and 3/3Gh on account of the remarriage which the Court found had taken place on 29th June 1956 and not on 20th July 1956. It was also found that the appellant had not inherited the suit fields after the remarriage of her mother and the appellant had no share or one-third share in the joint family property as claimed by her. The trial Court also found that the defendants entered into possession of the fields on 1-4-57 and as appellant's title to the property was negated on his findings the suit was dismissed. On the point of quantum of

compensation the Court found that if the appellant was held entitled to any compensation, it would be Rs. 60 and not Rs. 100 as claimed by her in the year 1957-58. Against this judgment and decree which were common to both the suits appellant-Manda preferred Civil Appeal and the two points, which were decided by the learned Judge of the lower appellate Court, were whether the present respondents proved that the suit property would revert to them after the remarriage of Indirabai, which he found in favour of the respondents and he also found that it was not proved that Indirabai by compromise had altered the mode of succession and curtailed the right of defendant No. 1 i.e. the present appellant. There is only one finding of the learned Judge of the two courts below which required to be noticed. The lower appellate Court also confirmed the finding of the trial Court that there was a partition between Indirabai on the one hand, and respondents Nos. 1 and 2 on the other, in 1951, as found by the trial Court. It was also, therefore held that at that partition, the four pieces of land described in Para 4 of the plaint of the appellant's suit were allotted to Indirabai.

(8) In this appeal, there is only one question that has been argued and that relates to the effect of the fact found by both the lower courts concurrently, viz., that Indirabai had successfully claimed partition of her husband's share in the joint family property and that the four fields were allotted to her share in such a partition which was complete in all respect in April 1951. This finding is not susceptible of any challenge and has not been challenged before me. It is a pure finding of fact.

(9) According to the contention of the counsel for the appellant once it is found that the surviving widow of a coparcener of a joint Hindu family exercised her right of claiming partition and partition is effected between herself and other members of the coparcenary, then the property allotted to such a widow is incapable of being reverted to the other members of the family on her death, civil or natural. According to the learned counsel for the appellant, on the facts of this case, as soon as Indirabai remarried in June 1956, the inheritance to the property has to be traced through her or her husband Haribhau to the exclusion of other members of the family and the appellant as the only daughter of her father and also of her mother Indirabai, would be the sole heir to the property allotted to her mother Indirabai at the partition in 1951.

(10) In support of this contention, the learned counsel heavily relied on the recent Full Bench decision of this Court in *Ranu v. Santu* : AIR1968 Bom1 (FB). The following placitum would seem to conclude the matter in the controversy.

'The legal position as to the effect of Section 3(2) and (3) of the Hindu Women's Rights to Property Act is that upon the widow succeeding to the interest of her husband under Section 3(2) and claiming a partition under the right given to her under sub-section (3) of Section 3, the interest of her husband in the joint family property is completely separated from the coparcenary property and that interest in the property of her husband on the death of the widow passes not by survivorship to the erstwhile members of the coparcenary but to the heirs of her husband. In the case before the Full Bench of the two brother P and G constituting a joint Hindu Family, P died in 1939 leaving a widow and daughter and a widowed daughter-in-law. On 24-3-1939, a partition took place between P's widow and G the surviving brother of P. After partition P's widow sold the property received by her on partition. She died in 1945. On the death of the surviving brother his son sued the alienee for possession of the property sold to him by P's widow claiming that the widow being a limited owner had no right to sell the joint family property in the absence of legal necessity and he was entitled to it as reversionary heir to P on the death of the widow. It was established that the alienation was without legal necessity. The Full Bench held that the plaintiff's suit was not maintainable. The interest of P was completely separated from the coparcenary property and passed to his heirs on the death of his widow and not to the plaintiff.

(11) To the instant case applies this principle under the Hindu Women's Rights to Property Act. It must, therefore, be held that on the remarriage of Indirabai, the property allotted to her at the partition in 1951 became the property of the appellant Manda, who is the sole heir of her father as well as of her mother. In this aspect of the matter, Manda's rights to claim possession of that property, which had been allotted to her mother's share in 1951 partition, cannot be resisted on any ground.

(12) It is, however, suggested that the case can be distinguished because after the partition Indirabai herself had brought the suit and in that suit, though for partition

and separate possession of her share, which was allotted to her in the 1951 partition, she preferred to compromise the claim and was satisfied getting two fields and that too with limited rights. I do not see how the action of Indirabai in curtailing her own rights in the property either as to the totality of the property either as to the totality of the property or rights therein, can in any manner, affect the position and rights of the appellant Manda as an heir of her father. Indirabai had certainly no right to bargain away or jeopardise the appellant's legal rights so far as she was minor and not a party to the suit brought by Indirabai. The legal position that emerged as a result of the partition, was that the property got separated as property representing the share of her husband when Indirabai demanded and obtained the fields as her share in the partition of the joint family property. That property, therefore, could devolve thereafter only according to law and unless it was established that what Indirabai did was necessary i.e., justified by legal necessity, her action or abridgment of her own rights in the property would in no way affect the claim of the appellant Manda as an heir to the property allotted to Indirabai as representing her husband i.e. Haribhau in the partition.

(13) Differing from the two courts below, therefore I hold that the appellant Manda was entitled to claim possession of the four fields allotted to Indirabai in the partition of 1951 and that her claim could not be resisted on any valid ground. It is also clear that Manda was entitled to mesne profits for the year 1957-58 which is the only period for which profits are claimed in this suit. Her right to mesne profits for subsequent years will be adjudicated when she makes such a claim in a property constituted action. Manda, apparently is minor and though it is suggested that she may have attained majority recently Manda's rights to claim mesne profits will be determined according to law of limitation.

(14) Thus, the result is, I set aside the judgments and decrees of the courts below and instead direct that Manda, the appellant, will be entitled to immediate possession of the property in Para.4 of her plaint and respondents Nos. 1 and 2 shall deliver possession of the same to her failing which she will be entitled to take possession through Court. The appellant is also entitled to a sum of Rs. 60 by way of compensation in respect of profits for the year 1957-58. The appellant is entitled to her costs in all the courts of her suit as well as to her costs in the suit filed by

respondents Nos. 1 and 2. The result is, the appeal is allowed.

(15) Appeal allowed.

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