

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Telang.

RAMBHAT, (ORIGINAL PLAINTIFF), APPELLANT, v. TIMMAYYA,
(ORIGINAL DEFENDANT), RESPONDENT.*

1892.

February 10.

*Marriage—Contract for marriage—Consideration—Suit for return of—
Marriage brokerage—Public policy.*

The plaintiff sued to recover the value of certain ornaments which he had presented to the defendant's daughter on his agreeing to marry her to plaintiff's brother. The plaintiff alleged that the defendant broke the agreement, and gave his daughter in marriage to another person. He, therefore, asked for the restoration of the ornaments, but the defendant refused to return them: hence the present suit.

Held, that the suit was maintainable, there being nothing in the plaintiff's claim which was either against morality or public policy.

SECOND appeal from the decision of Arthur H. Unwin, District Judge of Kánara, in Appeal No. 262 of 1890.

The plaintiff gave certain ornaments to defendant's daughter upon his agreeing to marry her to plaintiff's brother. The defendant broke this agreement, and gave his daughter in marriage to another person. Thereupon the plaintiff demanded the restoration of the ornaments. The defendant refused to restore them. The plaintiff, therefore, filed the present suit to recover the value of the ornaments from the defendant, and also to recover damages for breach of the agreement.

The Court of first instance awarded the plaintiff's claim.

On appeal the District Judge raised the following issue:—

Can plaintiff recover anything upon the alleged agreement; in other words, is this action maintainable?

This issue he found in the negative, for the following reasons:—

“Whether Exhibit 51 (the agreement in question) and all the other facts alleged by plaintiff be proved or not, his whole case more than savours of an attempt to purchase a bride for his brother, and this is the more apparent from the fact that the parties are Havik Bráhmans, amongst whom this kind of conduct is unfortunately notorious; so much so, that it is strange to find a Subordinate Judge of any experience in this district countenancing a claim of this sort, which is immoral and against public policy: see *Dulari v. Vallabdas*⁽¹⁾.”

* Second Appeal, No. 773 of 1891.

(1) I. L. R., 13 Bom., 126.

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Against this decision the plaintiff filed a second appeal to the High Court.

Naráyan G. Chandáwarkar for appellant :—The plaintiff's claim is neither immoral nor contrary to public policy. The case of *Dulari v. Vallabdás*, which the lower Court has followed, has no bearing on the present case. The plaintiff does not sue to enforce a marriage brocage contract. A suit like the present is maintainable. Refers to Strange's Hindu Law, Vol. I, pp. 37, 38 and 50; *Rám Chand Sen v. Aulaito Sen*⁽²⁾; *Jaikisondás v. Harikisondás*⁽³⁾; *Amratlál v. Bápúbláirí*⁽⁴⁾; *Visvanáthan v. Samináthan*⁽⁵⁾; *Juggessur Chuckerbutty v. Panchcowree*⁽⁶⁾. The present suit should be treated as one for recovering the consideration of a promise which has failed.

Shámráo Vithal for respondent :—The District Judge's finding should be taken to mean that the ornaments were really a price paid to the bride's father for the marriage contract.

TELANG, J. :—We are of opinion that the learned Judge has erred in disposing of this case in the way he did. The authority he relies on—*Dulari v. Vallabdás*—was one in which it was held that marriage brocage contracts are against public policy, and will not be enforced by the Courts. That decision, however, has no application to this case, in which the plaintiff claims restoration of ornaments presented by him to the defendant's daughter when a contract was entered into for a marriage between the plaintiff's brother and the defendant's daughter, which contract has since been broken by the defendant. There is nothing in the plaintiff's case, as there stated, in the nature of "marriage brocage." Mr. Shámráv has suggested that the District Judge intended to hold that the plaintiff's statement of the case did not represent the facts correctly, but only attempted to give an unobjectionable disguise to what was, in truth, immoral and objectionable. Looking at the District Judge's judgment, however, we cannot see that this suggestion is borne out. The Judge finds the suit to be not maintainable, without discuss-

(1) I. L. R., 13 Bom., 126.

(4) P. J., for 1887, p. 207.

(2) I. L. R., 10 Cal., 1054.

(5) I. L. R., 13 Mad., 83.

(3) I. L. R., 2 Bom., 9.

(6) 14 W. R., 154, Civ. Rul.

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ing the nature of the suit. For the purposes of the present appeal, therefore, we can only take the case as put forward by the plaintiff. And in that form, we must hold the suit to be maintainable.

Sir T. Strange says⁽¹⁾ that such a right as is here claimed exists; and similar claims have also been enforced by the Courts. In *Umed v. Nagindás*⁽²⁾ the Court awarded to the plaintiff restoration (*inter alia*) of "the ornaments and clothes which the plaintiff had, in expectation of the betrothal being carried into effect, presented" to the girl. The only difference between that case and the present one is that the claimant here is not the intended bridegroom himself, as in that case, but the bridegroom's brother. The state of circumstances, however, which exists here is the one specifically dealt with in the *Mitákshara*, Ch. II, sec. xi, pl. 28. And, so long as the present marriage customs are permitted by the law, there is nothing against public policy in enforcing the rule as laid down in that passage of the *Mitákshara*. We may point out, too, that the High Court of Bengal has, in the case of *Juggessur Chuckerbutty v. Panchcowree*⁽³⁾, laid down a rule similar to that in *Umed v. Nagindás*⁽⁴⁾ even where the defendant, who was *not* the guardian of his sister, promised that sister in marriage. That is a stronger case than the present, because it is obvious that, in so far as there is anything against morality in such transactions, there is very much more of it in cases where the consideration is given, as it was in that case, to the guardian for his own benefit, than where it is given as a present to the intended bride and for her benefit only. Compare also the remarks of Green, J., in *Jaikisondás v. Harkisondás*⁽⁵⁾ approved in *Amartál v. Bápabhái*⁽⁶⁾.

We must, therefore, reverse the decree, and remand the case to be dealt with by the Court below on the merits. Costs to abide the result.

Decree reversed.

(1) Vol. I, 37.

(2) 7 Bom. H. C. Rep., O. C. J., at p. 136.

(3) 5 Beng. L. R., 395; s. c. 14 W. R., 154.

(4) 7 Bom. H. C. Rep. (O. C. J.) 122. See also *Mulji v. Gomti*, I. L. R., 11 Bom., 412.

(5) I. L. R., 2 Bom., at p. 15.

(6) P. J. for 1887, p. 207.