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by the observance of the usual ceremonies, and a suit to set aside the marriage will lie. But, in the absence of these elements, the maxim of *factum valet* will govern, as the texts only refer to the greater or less eligibility of the relations who can claim the right to make the choice and perform the ceremony. The custom of the caste is not shown to be adverse to the celebration of the girl's marriage at 3½ to a boy of 7, and no fraud can be presumed from the fact of this early celebration. The circumstance that remarriage is permitted by the rules of the caste is irrelevant in the decision of the question of the validity of the marriage.

On the whole, therefore, we must hold that the appellant-plaintiff's claim was properly dismissed by the lower appellate Court. We dismiss the appeal. Costs on appellant.

*Decree confirmed.*

## APPELLATE CIVIL.

*Before Mr. Justice Parsons and Mr. Justice Ranade.*

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July 26.

RATANCHAND (ORIGINAL DEFENDANT), APPELLANT, v. JAVIERCHIAND  
(ORIGINAL PLAINTIFF), RESPONDENT.\*

*Hindu law—Widow—Funeral expenses of widow—Husband's estate chargeable with such expenses.*

Under the Hindu law the estate of the husband is liable for the funeral expenses of the widow; her *stridhan* cannot be charged with such expenses.

SECOND appeal from the decision of Rāo Bahádur V. V. Paranjpe, First Class Subordinate Judge of Broach, A.P.

One Parbhudas Kalliandas died in July, 1875, leaving a childless widow, Bai Divali.

Bai Divali died on or about the 11th April, 1893. She left a will, bequeathing the whole of the property in her possession to her brother, the defendant.

The plaintiff thereupon filed this suit, as the nearest kinsman and reversionary heir of Parbhudas Kalliandas, to recover the property in dispute from the defendant.

The defendant pleaded (*inter alia*) that the whole of the pro-

\* Second Appeal, No. 306 of 1897.

perty in suit belonged to Bai Divali; that she was competent to will it away; and that, even if any portion of the property in his possession were found to have belonged to Parbhudas Kalliandas, he (the defendant) was entitled to retain out of such property a sum of Rs. 400 which he had spent on the funeral ceremonies of Bai Divali.

The Court of first instance held that part of the property in suit, namely, a house, some ornaments and outstanding debts, had been inherited by Bai Divali from her husband; that the rest of the property was her *stridhan*; and that her husband's estate was liable for her funeral expenses.

On appeal, the Subordinate Judge with appellate powers varied the decree of the first Court by declaring that the defendant should recover the funeral expenses of Bai Divali from her *stridhan*.

Against this decision the defendant preferred a second appeal to the High Court.

*L. A. Shah* for appellant (defendant).

*Manekshah Jehangirshah* for respondent (plaintiff).

RANADE, J.:—The plaintiff in this case claimed the estate of Parbhudas as being his heir and entitled thereto on the death of his widow Divali. The defendant claimed under a will executed by Divali. The Subordinate Judge, A. P., held that the disposition by Divali, in her will, of the property of her husband was invalid, gave the plaintiff a decree for what he found to be the estate of Parbhudas, and left the defendant in possession of the *stridhan* of Divali.

The only objection raised to the decree in this Court relates to the obligation of paying for the funeral expenses of Divali. The Subordinate Judge has charged the *stridhan* of Divali with these expenses. We think that this is wrong. We are of opinion that the estate of the husband is liable for them. We can find no express authority on this point, but it has been decided that a widow can charge her husband's estate with the liability to pay these expenses. See *Sudashiv v. Dhakubai*<sup>(1)</sup>. If the plaintiff

(1) I. L. R., 5 Bom, 450.

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were administering the estate of Parbhudas, he would have to pay the funeral expenses of the widow; he would also have to pay the defendant the legacy left him by the widow, and we think that the fact that the defendant now claims his legacy by way of set-off cannot affect the merits of the claim. The Judge of the first Court was evidently right upon this point, and we do not understand why the Subordinate Judge, A. P., raised it, seeing that the plaintiff never made it a ground of appeal.

We vary the decree of the lower appellate Court by awarding the house to the plaintiff to be taken possession of only after he has paid into Court for the use of the defendant the sum of Rs. 150. Costs throughout in proportion, except the costs of Exhibit 8 in appeal, which are to be borne by the plaintiff.

*Decree varied.*

## APPELLATE CIVIL.

*Before Sir C. F. Ferran, Kt., Chief Justice, and Mr. Justice Candy.*

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July 27.

DAGDU (ORIGINAL PLAINTIFF), APPELLANT, v. BALVANT RAMCHANDRA NATU AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), RESPONDENTS.\*

*Benami—Benamidār, right of, to sue in his own name—Purchase by a non-agriculturist in name of an agriculturist—Suit by benamidār for redemption—Court fees payable as if real purchaser was plaintiff—Dekkhan Agriculturists' Relief Act (Act XVII of 1879)—Practice—Procedure.*

Where a purchase is made *benami* and a suit is brought by the *benamidār* in order that the real purchaser may escape the consequences to which the latter would be liable if he purchased and sued in his own name, the Court will look behind the record to see who the real purchaser is.

A *benamidār* may maintain a suit in his own name, but the Court will put the defendant in the same position as if the real were the actual plaintiff.

One Dagdu, an agriculturist, purchased certain land *benami* for Kellkar, a non-agriculturist, and brought a suit for redemption under the provisions of the Dekkhan Agriculturists' Relief Act (Act XVII of 1879). Under the notification of the Government of India, No. 2092, dated the 29th July, 1881, the fees in case of suits by agriculturists for redemption were remitted, and the plaintiff, therefore, paid no stamp duty on the plaint.

\* Appeal, No. 29 of 1897.