If that argument were to prevail then the principle of equity could never be applied at all. It is the plain fact that these two documents were parts of the same transaction which enables us to apply the principle of equity; and we need not consider what our decision would have been if the lease had been executed a day or two previously to the mortgage. In our opinion, therefore, the appeal must succeed, and the plaintiff must be held entitled to redeem. We pass a preliminary decree to the effect that if the plaintiff pays into Court Rs. 1,501 within six months from the date these proceedings reach the lower Court, he will be entitled to ask the Court to pass a final decree for possession. No order as to costs throughout.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

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KESHAVLAL MAGANLAL TRIVEDI, KULMUKHTYAR OF SHRI SHANKARACHARYA MAHARAJ SHRI RAJ RAJESHWARASHRAM SWAMIJI, OF SHARDA MATH (ORIGINAL APPLICANT), APPELLANT *v.* AMBALAL VENIRAM AND OTHERS (ORIGINAL OPPONENTS), RESPONDENTS*.

Guardians and Wards Act (VIII of 1890), section 8—Minor daughter four years old—Agreement for marriage—Application made to deprive the father of the custody of the minor—Rules of caste and practices prevailing in the community to be considered.

The appellant applicant applied to the District Court under the Guardians and Wards Act to deprive opponent No. 1, the father, of the custody and the natural guardianship of his minor daughter on the ground that she was about to be married at an early age of four, which would expose her to the risk of premature widowhood. It was found that such a marriage would be in

* First Appeal No. 318 of 1920.

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conformity with the rules of the caste and the practices prevailing in the community to which the father belonged,

Held, that the application could not be entertained on the ground disclosed, as the Court had to consider, before an order could be made against the father, the rules of the caste and the practices which prevailed in the particular community to which the parties belonged.

Per MACLEOD, C. J. :—"It may be conceded that any friend of a minor may approach the Court in the case of the minor being ill-treated and invoke the protection of the Court on behalf of the minor. But it is another question altogether if an outsider invokes the protection of the Court for a minor who is in the lawful custody of her father, unless the applicant can satisfy the Court that it is for the welfare of the minor that an order should be made against the father."

FIRST appeal against the decision of Dr. F. X. De'Souza, District Judge of Ahmedabad.

Application under Guardians and Wards Act.

This was an application made under section 8 of the Guardians and Wards Act, 1890, by the Kulmukhtyar of Shankaracharya Sharada Pith, Dakore, purporting to be the spiritual head of the community to which the opponents belonged. The object of the application was to obtain an injunction from the Court restraining the marriage of a girl on the ground that she was only four years of age and her marriage would leave her open to the risk of becoming a widow during infancy and a further objection to the proposed marriage was that it would partake of the character of barter being a tripartite arrangement by which the father of the bride was to obtain a wife in exchange for his daughter being given in marriage to one of the parties to the arrangement.

The District Judge found that under the rules and practices prevailing in the community to which the father belonged, infant marriages were common. He, therefore, dismissed the application.

The applicant applied to the High Court.

G. N. Thakor, for the appellant.

Y. N. Nadkarni, for respondent No. 1.

MACLEOD, C. J. :—This was an application under the Guardians and Wards Act by the Kulmukhtyar of the Shankaracharya of the Sharada Pith, Dakore, purporting to be the spiritual head of the community to which the opponents belonged. The occasion of the application was the approaching marriage of the girl for whom it was sought to get a guardian appointed. In the petition the Kulmukhtyar said : "The opponent No. 1, the father of the girl, is unfit to be the guardian of the person of the minor for the reasons stated in paragraph 2," that is to say, because he was going to marry the minor girl who was only four years old, and thus sacrifice her in order to get a wife for himself, and because the petitioner apprehended that the minor girl might be left a widow at an early age. The Kulmukhtyar, therefore, prayed that the Court should give him the custody of the minor and appoint him guardian of the person and of the property of the minor.

Now it may be conceded that any friend of a minor may approach the Court in the case of the minor being ill-treated, and invoke the protection of the Court on behalf of the minor. But it is another question altogether if an outsider invokes the protection of the Court for a minor who is in the lawful custody of her father, unless the applicant can satisfy the Court that it is for the welfare of the minor that an order should be made against the father. The reason here for asking the Court to interfere is that the father is marrying his daughter at the age of four which would leave her to the risk of becoming a widow during infancy. As the learned Judge remarks, such a marriage would be in

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conformity with the rules of the caste and the practices prevailing in the community, to which the father belongs. However shocking an idea it may seem to other minds that an infant child should go through the ceremony of marriage in a community which does not permit widow remarriage, still it is not for this Court to enter into considerations of that kind. Whatever our own opinion may be, we have to consider in every case, which comes before us, the rules of the caste and the practices which prevail in the particular community to which the parties belong. It would certainly be far more unjust and injurious if we were to set up our own opinions and enforce upon the parties the manners and customs which we consider they should conform to, rather than those amongst which they have been brought up. The Judge was perfectly right in the conclusion which he came to. The appeal must be dismissed with costs.

SHAH, J.:—I agree. The appellant in this case sought in the District Court by an application under the Guardians and Wards Act to deprive the father of the custody and the natural guardianship of the minor girl, on the ground that she was about to be married at the early age of four, which would expose her to the risk of premature widowhood, and that the father was about to sacrifice his daughter's interests by resorting to the practice of Sata marriages with a view to secure a bride for himself. I do not think that general considerations of that character, which are not opposed to the practice of the community to which the parties belong, can be ordinarily accepted as a sufficient ground for depriving the father of such rights as he has to look after the welfare of his minor children. The lower Court, it seems to me, was perfectly right in not entertaining this application on the grounds disclosed in the application. I do not say that a person in the position of

the present applicant cannot come forward as a friend of the minor to seek the protection of the Court for the minor. It must depend upon the facts and circumstances of a particular case. But in the present case the grounds alleged are based more or less upon broad considerations concerning the practice and custom in a particular community ; and it seems to me that it would be very unsafe to accept them as justifying an interference with the right of the father to the custody and guardianship of his minor daughter. The Court should require very clear and strong grounds to hold that it is for the welfare of the minor girl that she should be separated from her father and left under the care of a stranger.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

NARAYAN LAXMAN AGHARKAR AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS *v.* CHAPSI DOSA AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS*.

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Khatas—Several Khatas between the same parties—All Khatas are to be amalgamated for purposes of limitation—Dekkhan Agriculturists' Relief Act (XVII of 1879), section 13.

The defendants had business dealings with the plaintiffs in the course of which they opened five accounts (Khatas). The first three Khatas were operated upon up till 1908 ; but after that date the remaining two Khatas alone recorded transactions between the parties. In 1913, the plaintiffs totalled the credit and debit entries in all the five Khatas at the foot of which defendant No. 2 affixed his signatures to signify that the entries were correct. Even after this, transactions continued between the parties. The plaintiffs having sued in 1916 to recover the balance due on all the Khatas,

* First Appeal No. 278 of 1920.