

IN THE FAMILY DIVISION OF THE HIGH COURT

AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: 09/SUV/0609

BETWEEN: PRASHNIL

APPLICANT I

AND: NADIA

APPLICANT II

Appearances: Mr. Tarere of LAC for the Applicants.

Date/Place of Judgment: Tuesday, 25th January, 2011 at Suva.

Judgment of: The Hon. Justice Anjala Wati.

Category: All identifying information in this judgement have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any person is purely coincidental.

Anonymised Case Citation: Prashnil v Nadia- Fiji Family High Court Case Number: 09/SUV/0609.

JUDGMENT OF THE COURT

MARITAL STATUS PROCEEDINGS - APPLICATION FOR AN ORDER FOR NULLITY - application by parties jointly on the ground that they did not provide their real consent to the marriage because their consent was obtained under duress- the ground of duress not established-application dismissed with no order as to costs.

Legislation

Family Law Act No. 15 of 2003.

Cases/Texts Referred To

Scott (falsely called Sebright) v. Sebright (1886) 12 P. D. 2.

Cooper (falsely called Crane) v. Crane 11891] P. 369.

Szecltter (orse. Karsov) v. Szechter 11971] P. 286.

Re Meyer [1971] P. 298.

Hirani v. Hirani (1982) 4 Fant. L. R. (Eng.). 232.

In the Marriage of S (1980) 42 F.L.R. 94.

In the Marriage of Teves and Campomayor (1994) 122 F. L. R. 172.

Dickey, A, "Family Lam" 4th Edition (2002) Lawbook Co. Sydney.

The Application

1. This is a joint application by the parties to have their marriage solemnized at Suva Registry in 2009 nullified on grounds that the parties did not provide their real consent to the marriage as the same was obtained under duress.

The Law

2. Section 32 (1) of the Family Law Act No. 18 of 2003 states that a party can apply for an order for nullity of the marriage on the grounds that the marriage is void. There are certain grounds under which a marriage can be held to be void. In this case the particular ground is alleged is to be pursuant to the first limb of section 32 (2) (d) (i). I will have to state the law in respect of the ground alleged.
3. The first limb of section 32 (2) (d) (i) of the Family Law Act No. 18 of 2003 states that a marriage is void if the consent of either party to the marriage is not a real consent because it was obtained by duress.
4. Duress has been defined as follows:-
 - State of mental incompetence, whether through natural weakness of intellect or from fear (whether reasonably held or not) that a party is unable to resist pressure improperly brought to bear: (Scott (falsely called Sebright) v. Sebright (1886) 12 P.D. 21.)

- A person's mind is so perturbed by terror that he or she does not understand what he/she was doing or alternatively if he/she understood what he/she was doing then their powers of volition had been so paralysed that he/ she succumbed to another's will: (Cooper (falsely called Crane) v. Crane [1891 P. 369.]
- If there is a threat of immediate danger to life, limb or liberty: (Szechter (orse. Karsov) v. Szechter [1971 P- 286.]
- If there is a threat of immediate danger to life, limb (including serious danger to physical or mental health), or liberty: (Re Meyer [1971 P. 298 at pp. 306 and 307.]
- If the threats, pressure, or whatever it is, is such as to destroy the reality of consent and overbears the will of the individual: (Hirani v. Hirani (1982) 4. Fam. L.R. (Eng.). 232.)
- If one is caught in a psychological prison of family loyalty, parental concern, sibling responsibility, religious commitment and a culture that demands filial obedience. If these matters operate and a party has no consenting will then there is duress: (In the Marriage of S (1980) 42 F.L.R 94.)
- Duress does not necessary need to involve a direct threat of physical violence as long as there is sufficient oppression from whatever source, acting upon a party to vitiate the reality of their consent. It must be duress at the time of the marriage ceremony and not duress at some time earlier unless the effect of this continues to overbear the will of a party to a marriage ceremony at the time of the ceremony itself: (In the Marriage of Teves and Campomayor (1994) 122 F. L. R 172)

The Evidence

5. The husband gave the following evidence:-

- He did not agree to the marriage. He does not know the wife personally. His parents organised and arranged the marriage.
- He met the wife on the day of the legal marriage. His parents were happy with the wife and they asked him to agree and he did agree.

- Now the girl does not want to marry him. The traditional wedding was in October.
 - The wife has threatened that she will take poison and die.
6. The applicants⁷ mother also gave evidence. She said as follows:-
- The wife does not want the traditional marriage to take place. She said that even if she comes to their place, she will commit suicide.
 - They asked his son twice or thrice and he agreed to get married. There was no force as such. They just said that he is of marriageable age and he should get married. The mother testified that she asked the son to get married for his sake. He initially said no but they said that she was a good girl and he agreed.
 - They saw the girl and her parents. When both parties and their families agreed then the marriage took place.
 - They would have gone ahead with the traditional marriage but for the threats by the wife. They do not want any problems and so they want the marriage to be nullified.
 - They do not know why she is threatening to commit suicide. They really liked the wife. She still likes her.
 - They had printed wedding cards and bought the ornaments for the wife. They were ready to go ahead with the marriage but for this threat.
7. The wife gave evidence that she got married because she did not want to retaliate. There was no pressure from her family. She does not want to remain married.

The Determination

8. This is yet again a case where there is change of heart after the legal marriage and the parties now wish to nullify their marriage. The husband agreed to his parents request and did not resist the marriage. His parents requests does not amount to oppression at all or sufficient oppression to vitiate the husbands consent. He had the powers to express Iris wishes and maintain them. There is no reason why he did not do so. The test for duress on Iris part is not met.
9. There is no evidence that the wife was under pressure. She agreed to get married and did not

resist. Now she wishes to get out of the marriage. At the time of granting consent she was not under pressure or oppression.

10. The test for duress has not been met.

The Final Orders

11. The application for an order for nullity of marriage is refused.

12. There shall be no order for costs.

ANJALAWATI

Judge

25.01.2011

To:

1. Mr. Tarere for LAC for the Applicants.
2. File Number 09/Suv/0609.