

IN THE FAMILY DIVISION OF THE HIGH COURT APPELLATE JURISDICTION	
CASE NUMBER:	10/Ltk/0003
BETWEEN:	Param
AND:	Shyamal
Appearances:	Appellant in person Mr. D Gordon for Applicant II
Date/Place of judgment:	Thursday 20 th January 2011 at Lautoka
Judgment of:	The Hon Justice Anjala Wati
Coram:	
Category:	<i>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons is purely coincidental.</i>
Anonymised Case Citation:	
JUDGMENT OF THE COURT	
<p><i>Catchwords</i></p> <p><u>MARITAL STATUS PROCEEDINGS - APPLICATION FOR AN ORDER FOR NULLITY</u> - application by parties jointly on the ground that the wife did not provide her real consent to the marriage because her consent was obtained under duress - ground established-application allowed with no order as to costs.</p>	

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 [1891] P. 369.

Szechter (or. Karsov) v. Szechter [1971] P. 286.

Re Meyer [1971] P. 298.

Hirani v. Hirani (1982) 4 Fam. 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 Law" 4th Edition (2002) Lawbook Co. Sydney.

IN THE FAMILY DIVISION OF THE HIGH COURT

AT LAUTOKA

ORIGINAL JURISDICTION

CASE NUMBER: 10/LTK/0003

BETWEEN: Param

APPLICANT I

AND: Sujata

APPLICANT II

Appearances: Applicant I in Person.

Mr. D. Gordon for Applicant II.

Date/Place of Judgment: Thursday, 20th January, 2011 at Lautoka.

Judgment of: The Hon. Justice Anjala Wati.

Category: Not reportable unless case citation anonymised.

Anonymised Case Citation: PSS V. SS - Fiji Family High Court Case Number:
10/LTK/0003.

JUDGMENT OF THE COURT

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The Application

1. This is an application by the parties jointly to have their marriage solemnised at Lautoka in 2009 nullified on grounds that the wife did not provide her 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 ground is alleged 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.)
 - o 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 118911 P. 369.)
 - © If there is a threat of immediate danger to life, limb or liberty: (Szechter (orse. Karsov) v. Szechter (19711 P. 286.))
 - o If there is a threat of immediate danger to life, limb (including serious danger to physical or mental health), or liberty: (Re Meyer [19711 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.)
 - o 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. R172)

The Evidence

5. The wife gave evidence both through an affidavit and also orally. She stated :-
- o The parties know each other since their days as students at a tertiary institute . . They did not share classes but got to know each other on campus as they had common friends.
 - o She was in Pharmacy Course and the husband was in health professional Course. She graduated in 2005 and the husband graduated in 2007.

© In 2009, the husband and his parents brought marriage proposal to her parents.

o She agreed to marry the husband as she had known him and she also liked him.

- Everything leading up to the marriage was fine but two weeks before the marriage she was asked by the husband's parents to match her star signs with the husband's. This was to be done by the husband's family priest.

© She did not imagine that this matching of the stars would be a serious matter and she went along with her parents and the husband's parents to the husband's family priest.

• The priest took her date and time of birth and checked his books. The priest had a grave look on his face and told all of them that her star was "Manglik" and then he explained to all of them the implication of having that star called "Manglik Dosh".

o The priest explained that she would be a bad omen if the marriage took place and that the husband would die as per religious belief.

© She got very distressed and unhappy. She kept quiet but had the sinking feeling that she would cause the husband's death.

© Her parents asked the priest if there was a way out of the curse and he explained that certain prayers would have to be conducted to uplift that curse.

- The wedding was only a few days away. They came home and consulted their priest who said that she did not have any such curses and that the wedding should go ahead.

© Her parents told the husband's parents what their priest had said but the unhappiness and confusion did not diminish or eradicate.

© She then told her mother that she would not marry because she is considered bad omen for the husband and that she would bring about his death as everyone believed that to be so.

© Her parents consulted his parents but they were still unhappy and then she was very depressed that everyone was still regarding her as the bad omen and not suitable for marriage. On one evening she called the husband and he was reserved

and did not talk as usual. He said he was not worried but he sounded unhappy and unsure.

o The next morning she told her mother that everyone was unhappy so she will not marry the husband.

- ® Her mother spoke to her father and both of them refused to listen to her. They said that the marriage was a week away, all the guests had been invited, all the family and relatives knew about the wedding, the marriage celebrant was booked and all the rest of the preparations done. The ceremony had to go ahead.
 - © She did not want to go through the ceremony and she also felt that the husband also did not want to go through the ceremony. He stopped texting or calling her. Usually he would text her throughout the day and also send her a goodnight text message. All this stopped.
 - © The in-laws also stopped talking to her as they used to. They stopped calling and talking and if she called they were either abrupt or silent. No one was sure about the marriage.
 - o She was not given any opportunity to express her views and on the day of the marriage she told her parents that she was forced into the marriage. Again her parents said that she cannot be silly and stop the marriage because many people including friends and family were present and it would be rude and disrespectful for an Indian girl to speak her mind out in public. They said her objections will bring them so much disrespect. There would be humiliation in the society.
 - o She was also in a state of shock and disbelief and she could not think properly.
 - o The marriage was insisted upon and she was caught in a psychological prison of family loyalty, obedience to her culture and the need to respect the parents. She entered into the marriage to keep peace and harmony when she was not prepared for the marriage.
 - After the marriage, the traditional wedding was cancelled because of the same issue of her being a bad omen. The husband had called her and cancelled the wedding.
 - She is no longer in contact with him or his family members.
6. The priest who matched the stars also gave evidence. He said that upon examining the stars he found that the wife had "manglik dosh" which meant that she would bring bad luck to her husband and he would die soon thereafter marriage.
 7. The husband gave evidence and said that everything was fine until they consulted the priest. He was tensed and thought that things would calm down. It did not but they went ahead with the civil marriage with fear and reservations. After the civil marriage, he had to cancel the wedding ceremony. There was no more communication between the parties after consultation with the priest.

The Determination

8. This is a sad story for both parties. They liked each other and they wanted to get married. Their marriage was organised and both of them were very happy. Then came about this religious aspect of matching the stars which is very common in Fiji. Upon matching the stars, the wife was neglected by the husband and her family. She decided not to go ahead with the ceremony and having resisted the marriage she had to go through the same as she was caught and imprisoned psychologically to be loyal to her parents and obey them. Her culture does not expect an Indian girl to retaliate in public and refuse marriage. She could not retaliate because she had been happy once upon a time with the same boy. She had to keep her parents dignity before the many that had gathered to celebrate the ceremony. She could not resist there. Her powers of volition were paralysed and she went ahead with the ceremony despite not wanting to. She had the fear of being neglected upon marriage so she thought it was better to end it then but she could not. Her obligations had bound her. She indeed was under duress.

The Final Orders

9. The application for an order for nullity of marriage is allowed.
10. The marriage solemnised between the parties in , 2009 is declared to be absolutely null and void.

11. There shall be no order for costs.



ANJALA WATI

Judge

20.01.2011

To:

1. Applicant I.
2. AfrD. Gordon for Applicant II.
3. File Number. 10/Ltk/0003..

