

55

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 70 of 1984

Between:

R. v. REGISTRAR-GENERAL

and

Exparte ABDUL HAMID

Mr. G.P. Shankar for the Appellant
Mr. S.D. Sharma for Registrar-General
Mr. R.C. Prasad for Mohammed Iqbal

Date of Hearing: 12th March, 1985

Delivery of Judgment: 27.3.85

JUDGMENT OF THE COURT

Mishra, J.A.

This is an appeal against an order of the Supreme Court, Suva, refusing a declaration that the marriage of the appellant's son, a minor, solemnized by the Registrar-General was void.

It is common ground that the appellant was opposed to the marriage and that his son, Mohammed Iqbal, applied to a Magistrate for consent under section 13 of the Marriage Act which provides that the Magistrate "shall make inquiry on oath as to the facts and circumstances of the case" and that he may then give the required consent to the marriage if satisfied that the parent had refused such consent unreasonably. It is not clear from the papers filed in the Supreme Court what

inquiry, if any, the Magistrate held but the appellant, at any rate, was accorded no hearing at all and was, therefore, in no position to advise the Magistrate of his reasons for refusal.

The application for consent was made on the prescribed form the bottom half of which contains the consent to be signed by the Magistrate. This was duly signed but many of the details required to be filled were left blank. These, however, appear in the top-half of the form containing the application.

On 31st May, 1984, the marriage between the parties was solemnized by the Registrar-General who accepted and filed the Magistrate's consent. Mohammed Iqbal was then 19 years 9 months of age and the bride, Ameeta Bibi, 23 years.

There is no allegation against the Registrar-General of non-compliance with any formality required under the Marriage Act. The appellant's sole submission here is, and was in the Court below, that the form of the consent should have put the Registrar-General on inquiry and that he should have held his own investigation into the matter before accepting it.

Learned Counsel for the appellant, however, concedes that his real complaint is against the granting of the consent by the Magistrate and that the Supreme Court should have quashed it so that a proper inquiry might have been held again under section 13 of the Act. There is considerable force in that submission as the learned Judge would himself appear to have accepted in the Court below. No application to that effect, however, was made between the granting of the consent and the solemnization of the marriage. It is not seriously challenged that a marriage was entered into by the parties believing that they had

obtained a valid consent which belief was also shared by the Registrar-General.

Can such a marriage be held void under the Marriage Act, even if there was a serious irregularity affecting the validity of the requisite consent? The learned Judge answered the question in the negative. He said :-

"Mohammed Iqbal and Ameeta Bibi, both having power to contract a valid marriage, voluntarily went through a proper marriage ceremony. They thus became married to each other, I hold, notwithstanding the absence of parental consent or proper judicial consent. "

He consequently declined to declare the marriage void. Having come to that decision he saw no good purpose in making the other two declarations sought by the appellant viz. that the Magistrate's purported consent was no consent in law and that the denial of a hearing to the appellant made the purported consent null and void.

We accept the appellant's submission that he was entitled to a hearing at any inquiry held under section 13(2) of the Marriage Act to determine the reasonableness, or otherwise, of his refusal and that, in an appropriate case, he would have a valid ground for challenging the outcome of such an inquiry. We are, however, unable to accept that this is such a case. Marriage here has been solemnized and registered. Its validity cannot now be upset by bringing into question the procedural propriety of an inquiry leading to the granting of the necessary consent.

In *The King v. The Inhabitants of Birmingham* (8 B&C 30; 108 E.R. 954) it was held that disobedience to directory provisions of the Marriage Acts of England did not invalidate the resulting marriage. In our view, the

same result is achieved by section 38 of the Marriage Act of Fiji which provides :-

" Every marriage duly solemnized under the provisions of this Act unless therein expressly declared to be void shall be deemed to be good and valid in law until the contrary be proved. "

Section 13 of that Act does not expressly declare a marriage void for non-compliance with its provisions. The introductory words of that section are :-

"13(1) If either of the parties to a proposed marriage is under the age of twenty-one years, such marriage shall not be performed without the prior consent of - "

In the absence of any express declaration required by section 38, these words must be construed as being merely in the nature of a direction to marriage officers authorised under the Act to solemnize marriages. A marriage, therefore, entered into by parties who are of marriagable age under section 12 of the Marriage Act remains a valid marriage despite failure to comply with the procedural requirements laid down in section 13 of that Act.

In enacting section 38 of the Marriage Act, Parliament must be taken to have intended that a contract of marriage solemnly entered into should not be avoided by parties thereto except in very special, and expressly stated, circumstances. The injunction must, in our view, apply with equal, if not greater, force to a person not party to the marriage.

We are, therefore, unable to uphold any of the three grounds of appeal which are the same as those on which declarations were sought from the Supreme Court.

The appeal is consequently dismissed.

As for costs, learned Counsel submits that the appellant's grievance, recognised by the Court as genuine, has remained unremedied and he should, therefore, not be penalised for seeking relief. Counsel for the Registrar-General concedes serious irregularity in the conduct of the magisterial inquiry - and has made no comment on the appellant's submission as to costs.

We therefore, consider it appropriate that, in the special circumstances of this case, there should be no order for costs.

J. Hoyle
.....
VICE PRESIDENT

J. Hoyle
.....
JUDGE OF APPEAL

J. Hoyle
.....
JUDGE OF APPEAL