

IN THE FAMILY DIVISION
OF THE HIGH COURT OF FIJI
AT SUVA

ACTION NO : 16/SUV/0259

BETWEEN : **DEEPAK DINESHWAR CHAND**

APPLICANT

AND : **KOMAL KAVITA PRAKASH**

RESPONDENT

Coram : The Honorable Mr Justice David Alfred
Counsel : The Applicant in Person
The Respondent in Person

Date of Hearing : 1 August 2016
Date of Judgment : 5 August 2016

JUDGMENT

1. This is an Application for an Order of Nullity of the Marriage solemnized on the 14 August 2015 between the Applicant and the Respondent at the Suva Registry (the Marriage). In these proceedings both Applicant and Respondent acted in person and were not represented by Solicitors.
2. The Applicant in the said Application said he is the husband and the Respondent is the wife and they were married in the Civil Registry on the said date. There was no religious rite because it was cancelled.
3. The ground on which he claimed the marriage is void is that there was no real consent given because the marriage was induced by the Respondent's fraud.

4. The Respondent in her Response asked for the Application to be dismissed for the reasons that the Applicant and her had been married on the said date and she denied all the allegations of fraud to induce the Applicant to marry her.
5. The Application came up for hearing on 1 August 2016, when both parties appeared in person. The hearing commenced with the Applicant giving evidence. He said he and the Respondent were married in the Civil Registry on 14 August 2015 and tendered the Marriage Certificate as Exhibit P1. He said the Respondent had, after their conversations, found out he was migrating to New Zealand and said she would not have the traditional marriage until she got her open work visa to New Zealand. He had gone to New Zealand on 31 October 2015 and had sent her the partnership visa application. She now said she wanted to defer the traditional marriage by one year.
6. The Applicant tendered the Wedding Invitation, distributed to his relatives, as Exhibit P2. This stated the Wedding would take place on 24 April, the Pritibhoj on 23 April and the Tilak on 22 April, 2016.
7. He then tendered copies of the Respondent's facebook on 14 March 2016 as Exhibit P3. A perusal of this makes it as clear as daylight that she had made an unequivocal and firm decision not to marry the Applicant.
8. The Applicant said he and his parents tried to persuade the Respondent but she and her parents did not agree to the wedding. This was after she had her visa application to New Zealand approved on 15 February 2016. He found out she had emailed her passport and approved visa to one, Gyanen Sharma in Auckland.
9. The Applicant now tendered as Exhibit P4, copies of the email trail from Gyanen Sharma to the Respondent and his photograph. These were accepted by the Respondent as authentic.

10. The Applicant said he now realised she was using him to make her way to New Zealand. He concluded his testimony by stating they did not live together after the marriage and asked the Court to nullify the marriage.
11. When questioned by the Respondent, the Applicant said he went back to Labasa to work while she continued staying in Suva so they were not staying together.
12. The Respondent now gave evidence. She wanted the Court to declare her marriage to the Applicant is a nullity.
13. The Applicant and the Respondent, when asked by me, both stated they had nothing further to say.
14. At the conclusion of the hearing, I informed I would take time for consideration. In reaching my decision I have perused:
 - (1) The Application for an Order of Nullity.
 - (2) The Response.
 - (3) The Family Law Act (The Act)
 - (4) The Family Court Rules and Regulations.
15. I now deliver my judgment. At first appearance this appeared to be an Application for Nullity which the Response indicated she desired to be dismissed. However after hearing the sworn testimony of the Respondent it became crystal clear that in fact she too desired the marriage to be declared a nullity.
16. Section 32(1) of the Act provides that an application for an order of nullity of marriage must be based on the ground that the marriage is void. Section 32(2) states a marriage is void if (d) the consent of either of the parties is not a real consent because (i) it was obtained by duress or fraud.
17. I am satisfied after hearing the testimony of both parties including the unchallenged evidence of the Applicant that indeed here there was fraud carried

out by the Respondent on the Applicant. I am applying here Osborne's Concise Law Dictionary definition of fraud as the "obtaining of a material advantage by unfair or wrongful means. It consisted of the Respondent using the Applicant to obtain her partnership visa approval to make her way to New Zealand. It is clear that if the Applicant was aware of her true intention he would never have contemplated let alone consented to the marriage to her.

18. The applicable maxim of public policy translated from the original Latin into English states "It is consent, not cohabitation, which makes a marriage."
19. I therefore find and so hold the Applicant's consent was not a real consent because it was obtained by fraud and therefore the marriage is void in the eyes of the law.
20. I consequently make an Order of Nullity of the Marriage solemnized between the Applicant and the Respondent and further direct the Registrar of the Family Division of the High Court to raise the necessary certificate to this effect and transmit the same to the relevant authorities for notation.
21. There shall be no order as to costs.

Delivered at Suva this 5th day of August 2016.




David Alfred
JUDGE

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