
CANADA / JUDGMENT

Bagga v. Rajput

2014 BCSC 2394

COURT

Supreme Court of British Columbia

DECIDED

10 November 2014

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2014 BCSC 2394 Bagga v. Rajput

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bagga v. Rajput,

2014 BCSC 2394

Date: 20141110

Docket: E130127

Registry: Vancouver

Between:

Jaspreet Kaur Bagga

Claimant

And

Jatinderpal Singh Rajput

Respondent

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

S.J. Endacott

Counsel for the Respondent:

G.S. Badh

Place and Date of Hearing:

Vancouver, B.C.

August 25 and November 10, 2014

Place and Date of Judgment:

Vancouver, B.C.

November 10, 2014

- [1] THE COURT: There are two applications for summary trial before me, but it was agreed that it was more convenient to hear both together as one application because of the overlap of issues.
- [2] The respondent in the family law claim, Jatinderpal Singh Rajput, seeks among other things a divorce, an order that neither party shall pay spousal support to the other, and an order granting him full ownership of the vehicle purchased during the marriage.
- [3] The claimant in the family law claim opposes the divorce and the declaration regarding the vehicle. She also seeks spousal support and a declaration about the respondent's obligation to pay extraordinary expenses.
- [4] The parties were married in India on April 12, 2010. I understand it was an arranged marriage. The claimant was living in Vancouver, but travelled back in order to get married. She returned to Canada on April 27, 2010. She went back to India in September and the couple went on a honeymoon. She then sponsored the respondent's entry to Canada. He arrived in December 2010. Although he did change jobs a few times, the respondent has been continuously employed since January 2011.
- [5] The couple had a child born October 5, 2011. The parties agree that the child's name shall be changed from Gurekam Singh Rajput to Gurekam Singh Bagga, and I make that order.
- [6] The respondent says the couple began experiencing problems and began to fight daily. It got to the point where the respondent says he could not tolerate the marriage and he moved out on March 29, 2012. He went to Toronto for a week, but then moved to Saskatchewan because he had a friend who was working there. Within 10 days, he found a job at Shaw Pipe Protection Ltd. where he still works today.
- [7] The claimant travelled to Regina with her sister in September 2012 for seven or eight days in an attempt to reconcile. This was not successful. The respondent says there is no reasonable prospect of reconciliation. The claimant's affidavit made October 25, 2014 appears to accept this by stating the parties have been separated as of March 29, 2012.

- [8] The claimant filed a notice of family claim in January 2013, seeking custody and access of the child of the marriage and spousal support. The respondent filed a response and counterclaim on or about February 2013, claiming an order for divorce.
- [9] The parties attended a judicial case conference on November 19, 2013, at which the following interim orders were granted by consent: the claimant has sole custody and guardianship of the child; the respondent will pay child support in the amount of \$536 per month; the respondent owes \$9,332 in retroactive child support and will pay \$200 per month for that; and, the respondent will pay \$100 per month for daycare.
- [10] The respondent delivered to the claimant's previous counsel the application for a summary trial on March 20, 2014. The hearing date was set for July 21, 2014. Respondent's counsel says that he and the claimant's previous counsel negotiated and resolved a consent order just prior to that hearing. On July 21, 2014, the summary trial was adjourned for one day because the claimant requested changes to the consent order. Counsel for the parties agreed on a revised consent order incorporating the claimant's changes.
- [11] Early on the day of the hearing, July 22, 2014, the claimant apparently fired her lawyer, appeared in court on her own behalf, and said that she had never agreed to any consent order. In her affidavit evidence, the claimant said she was never informed by her counsel about the draft order. Although there was no evidence before me to suggest her former counsel would have breached her professional and ethical obligations to consult the claimant before making an agreement with opposing counsel, I will not refer to the terms of that draft consent order.
- [12] The July hearing was adjourned again and the parties appeared before me on August 25, 2014. At that time, the claimant appeared with an articulated student from a firm, whom she said she had only recently retained, seeking an adjournment. I granted that adjournment and the matter was subsequently set for today.
- [13] Because the parties were apparently in discussions for settlement, the claimant did not file her responsive materials to the March 20, 2014 summary trial until October 29, 2014. Apparently she did not retain her current counsel until mid-October. At the same time, the claimant filed her own application for summary trial.
- [14] I will now turn to the issues in dispute.
- [15] The respondent seeks a divorce on the basis that the parties have been living separate and apart for more than a year. Counsel for the respondent sought to correct an oversight in the respondent's counterclaim. It failed to confirm that the divorce was available because the claimant lives in British Columbia (the respondent still lives in Saskatchewan). Counsel for the claimant appropriately agreed that the correction was acceptable.

[16] The claimant seeks an adjournment of the divorce. She claims granting the divorce will jeopardize claims she has made in the Indian courts. In her application response, she states she commenced proceedings against the respondent in India regarding the return of a dowry. She further claims in her response that she was unable to commence the Indian legal proceedings until she was physically present in India, and that she was unable to travel to India until October 13, 2014 because of work and family obligations.

[17] In support of these statements, the claimant relies on the following:

- (a) In her October 25, 2014 affidavit she states she is in the process of commencing litigation in India. This is not the same as her statement that she has commenced proceedings;
- (b) A letter dated October 7, 2014, from Mandeep Singh Sachdev in Jalandhar, India, which states that litigation "in due time" is going to be filed by the claimant against the respondent (and apparently his father) pertaining to shares in a property to which the child of the marriage is entitled as the son of the respondent;

(c) That letter also states:

A complaint has been filed by [the claimant] against [the respondent] & others and same is pending investigating by NRI cell Jalandhar and once the F.I.R. [first information report] is registered then the Dowry articles . . . would be recovered by the Police [according to] Law. The Process [will only] start once [the claimant] comes to India personally to pursue the same.

I note again that the proceedings had not been commenced yet, but were due to be commenced;

(d) Mr. Sachdev sent another letter dated October 7, 2014, apparently clarifying certain matters:

It is to be mentioned here in as per section 13 of code of civil procedure applicable in India, foreign Judgment would be conclusive in case it has been duly adjudicated upon between the parties. Any divorce granted in [the current family claim] would have direct bearing upon rights of Ms. Bagga as she would not be considered legal wedded wife of Mr. Rajput in India. All her legal rights except right to maintenance would be jeopardized. With regard to [the son of the marriage], his entitlement would be only in ancestral property.

I am left to infer this means Mr. Sachdev would not be able to recover the dowry given at the time of the marriage, which is otherwise the claimant's entitlement as per the law in India if she gets divorced.

(e) An October 21, 2014 email from Mr. Sachdev to claimant's counsel providing more information. It states:

A complaint was initially filed by Ms. Bagga to the police by Email which was to be preliminarily inquired into but could not be completed as Ms. Bagga was not here in India. Now that she is in India the process would start qua the same and after inquiry it can be converted to a F.R.I. which would result in Trial.

He also says:

We would be filing another petition under the Domestic Violence Act applicable in India by the end of this month as now that Ms. Bagga is in India as this petition has to be filed in person . . .

. . .

. . . [the] Trial . . . in both litigations which are to be filed in the criminal F.I.R. . . . and secondly petition under Domestic Violence Act. With regard to Time it can not be said with certainty as it depends how early Mr. Rajput and his family appears and once they appear for investigation and then trial mediation would be initiated by Courts for sure.

This is the first mention of any domestic violence to appear in this case. I also note that there appears to be some expectation or suggestion that Mr. Rajput is required to travel back to India to deal with that litigation.

[18] The claimant sought leave to file a late affidavit made November 8th and filed this morning. Counsel for the respondent graciously took no position on its admission into evidence, so I allowed it. Attached to that affidavit are further documents purporting to relate to proceedings in India. As I will discuss below, there are serious concerns with the documents' admissibility and certainly their admissibility for their truth. However, some statements in the documents are enlightening as they reveal, in my view, insight into the motives and intent of the claimant.

[19] The first document is from Mandhir Singh, Assistant Inspector General of Police for non-resident Indian and Women's Wing, Punjab, dated October 27, 2014. It states the claimant is a non-resident Indian and the respondent deserted her in Canada. Another document submitted to the Inspector General by the claimant contains the following allegations:

Her entire dowry articles have been misappropriated by her husband and his parents . . . she has been treated with utmost cruelty after marriage . . .

[20] Also attached is a 10 September 2014 letter, not addressed to anyone in particular, in which the claimant says she believes the respondent had a marriage of convenience for the purpose of getting permanent residence in Canada. She details allegations of threats made by him and his family against her and her family.

[21] The claimant relies on the case of *Bhullar v. Bhullar* (1997), 49 B.C.L.R. (3d) 147 ("Bhullar") to say that the divorce should be adjourned pending resolution of the claims she has made in Canada.

[22] I find no reason not to grant an order for divorce. My reasoning follows. The uncontroverted facts establish that the parties have been living separate and apart for over two years. The respondent says there is no prospect of reconciliation and I see no statement from the claimant contradicting this.

- [23] The claimant says certain legal rights of hers in India will be in jeopardy if the divorce is granted now. Unfortunately, the evidence she has brought forward from India is hearsay and inadmissible for the truth of the statements. Those documents also purport to include inadmissible opinions about the impact of legal proceedings in Canada will have on legal proceedings in India. There is no context or explanation given for the Indian lawyer's opinions or conclusions. Even if there was, I would first have to be satisfied that the evidence was properly sworn and reliable.
- [24] Even if I were to apply a more lenient test for admissibility of hearsay, the probative value of the evidence is dubious compared to the extreme prejudice they represent to the respondent's position, and I would not admit them on that basis. The correspondence is not clear, lacks details and is vague about timing.
- [25] More telling, however, is that the documents, even if I were to admit them and place any weight on them at all, are not conclusive. It is clear when reading through all the documents, that while certain initial steps have been taken, the further attendance of the respondent and/or the claimant is required to move matters forward.
- [26] Even then, the evidence suggests there would be an adverse impact on the respondent's claim except, notably for maintenance. It is not spelled out what would be included in maintenance under Indian law. But this is particularly important because it is one of the reasons that the Bhullar case can be distinguished. The court in Bhullar did grant an adjournment of an order seeking divorce, but the evidence in that case included an Indian barrister's opinion that the divorce would severely prejudice the wife's right of maintenance. That is contrary to the advice from the Indian lawyer in this case.
- [27] More generally, Bhullar is distinguishable because the Indian legal proceedings in that case had already been commenced (evidenced, in part, by the mere fact that a barrister was already involved, suggesting it was already in the court system). That case also concerned land in India, whereas here no real property is at issue in this case. There was also some suggestion in Bhullar that the spouse against whom divorce was sought was possibly leaving the jurisdiction soon, making enforcement of spousal maintenance that much more difficult. This was important in that particular case, because there were no assets in Canada, and so the maintenance of and access to Indian property was crucial. That is not the case here.
- [28] I have further reasons to reject the claimant's opposition to divorce. She makes a general claim about pursuing her dowry. No itemized list of items with their value is given. The respondent provides his statement that his family gave the claimant \$20,000 in jewellery and he is not asking for it in return. Although I cannot make any finding to this effect, but it would not be surprising if in India, whether under law or custom, the breakup of a marriage leading to the return of the dowry may also entail return of the gold jewellery bestowed upon the bride by the groom's family. I am also left to wonder whether a claim for return of the dowry is the claimant's, her parents or both to launch.

- [29] However, in my view, it does not matter what the law or custom is in India. This is a claim in Canada by a Canadian citizen. She has provided little evidence about the dowry and importantly, its legal significance of it with regard to this Canadian family law claim. The claimant has failed to particularize or otherwise describe the items she wants returned. I was not directed to any evidence about when the dowry was given or to whom it was given.
- [30] She has failed to establish on what basis in Canadian law she is entitled to a return of items that are in India. The last point is fatal in my view, because if there is a basis in Canadian law, and there very well may be, the claim is one she ought to have brought in this Court. Presumably, those items are located in India and therefore not in the respondent's possession or control because he lives in Canada.
- [31] Lastly, the timing of her claim is suspicious. The claim about a dowry and reference to legal actions in India are being raised for the first time. After the parties' previous appearance before this Court, I made it clear no further adjournments of the respondent's summary trial would be entertained.
- [32] The claimant's counsel was as helpful as she could be on the limited information provided to her by her client. I find that the claimant herself has failed to properly put information before this Court, despite being aware of the application for summary trial since March of 2014, and having had the benefit of at least three lawyers to advise her.
- [33] Having appeared in front of the Chief Justice in July 2014 and before me in late August, saying she needed more time to retain a lawyer to respond to the case, I am told it was only mid-October that she retained her most recent counsel. In the meantime, she was filing allegations and attempting to start proceedings in India, some of which I have already commented might have been needed to be pursued in this litigation.
- [34] The respondent suggests that the claimant's motives are simply to provide an easier avenue to continue to harass him. I cannot make that finding, but I do make a specific finding that the claimant has been less than forthright with this Court about her circumstances, especially with regard to needing previous adjournments, and for that reason I find whatever evidence she does have must be subjected to careful scrutiny.
- [35] For all those reasons, I grant a divorce to be effective 31 days from today.

The Vehicle

- [36] The couple bought a vehicle during their marriage. The evidence shows that the respondent paid the down payment of just over \$8,000 from his bank account. The financing arrangements were made with him as buyer and the claimant as co-buyer. The respondent gives evidence that he has always paid the insurance and maintenance for the vehicle. He continues to pay off the loan. He seeks an order granting him full ownership of the vehicle. He does not seek any contribution from the claimant for the loan.

- [37] The claimant says the car is matrimonial property, that the respondent took it without her permission, and she is entitled to receive from him her share of that vehicle.
- [38] Under s. 84 of the Family Law Act, property owned by at least one spouse is family property, presumptively subject to equal division. Counsel for the respondent fairly conceded that the car would not fall into any category of excluded family property under s. 85. However, he is seeking an unequal division of the vehicle pursuant to 95(1)(a) on the following basis: the marriage was very short, the period of cohabitation was even shorter, the claimant made no contribution by way of supporting the respondent to take training or further his career potential and he was paying back the loan from his funds.
- [39] I agree. This was a very short marriage. The uncontroverted evidence is the respondent has continually made maintenance and insurance payments on the vehicle. Most importantly, he does not seek division of the remaining debt.
- [40] The claimant has provided very little information about her financial circumstances currently or during the marriage. The respondent says the claimant maintained her own bank account and did not share her income with him. She says she did not pay for the car or make payments on the loan. She did not contradict this evidence.
- [41] In all those circumstances, I find it would be unfair to divide the value of the vehicle, and I therefore declare the respondent is entitled to 100 percent ownership of the vehicle, as well as 100 percent responsibility for its remaining debt.

Spousal Support

- [42] The claimant seeks spousal support. In her affidavit filed today, she states that she continues to live with her parents because she is not financially capable of moving out and living with her child as a single parent. She says the respondent took all the furniture, for which he paid about \$4,000. The respondent's income in 2011 was \$18,426; in 2012, \$50,141; and in 2013, \$76,928.
- [43] In the notice of family claim filed January 16, 2013, the claimant said her annual income was \$17,159.61. This was confirmed by her Form 8 financial statement filed at the same time, which attached the notice of tax assessment for two years. In 2010, her income was \$36,792 and in 2011, was \$25,091.
- [44] The claimant has not updated her financial statement, nor has she provided any other evidence in support of her claim that she is financially incapable of moving out on her own. Given that she made a trip to India very recently, it was incumbent upon her to explain how she was able to afford that. It may be, because in her mind that trip was extremely important, that she was willing to borrow money. But no evidence on this point was presented. The Court is left to assume that she paid for her own ticket. That, of course, is not consistent with her description of her financial condition.

- [45] After the lunch break, the claimant provided her counsel with income tax assessments for the years 2012 and 2013. The respondent appropriately objected to the late admission, while at the same time fairly admitting that the court's first duty must be to ensure that justice be done. I decided to read and accept into evidence the total income from these two statements, but I emphasize I did not do so lightly.
- [46] I note that the claimant's attitude towards responding to this litigation in a timely manner and coming to court prepared (having sought in sufficient time legal representation when a matter had been adjourned for that purpose), leaves a lot to be desired. There was no reason given for the claimant failing to provide this vital information to her lawyer earlier. Her counsel purported to take some blame, which I will not assign, but given that the circumstances are unclear as to why the information was not filed earlier, in the overarching interests of justice, I have admitted it into evidence.
- [47] Both parties agree that if spousal support is payable at all, it is only on the basis of non-compensable spousal support. The leading case, *Chutter v. Chutter*, 2008 BCSC 507, describes non-compensable spousal support in the following terms at paragraph 54:

Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state . . . Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.

- [48] Under both the Divorce Act and the Family Law Act, the following considerations are taken into account when determining whether someone is entitled to spousal support:
- 1) to recognize the economic advantage or disadvantage to spouses arising from the marriage or its breakdown;
 - 2) to apportion between the spouses financial consequences arising from the care of a child over and above support payments;
 - 3) to relieve economic hardship of spouses arising from the breakdown of the marriage; and
 - 4) insofar as practical, to promote the economic self-sufficiency of each spouse.
- [49] The legislation also stipulates that a court must consider the condition, means, needs, and other circumstances of each spouse which requires looking at, too, how long the parties lived together, the functions each performed in the marriage, and each spouse's needs and standards of living. In terms of needs, the Court of Appeal has confirmed that the court looks beyond the basic necessities. It is a very flexible concept.

- [50] The respondent says the claimant is not entitled to spousal support at all. The marriage was short. Both parties worked, although I do note the claimant did not go back to work until after the birth of the child in November 2012. The child was born only a few months before the separation. The respondent has been paying child support and arrears since November 2012.
- [51] The respondent says it is significant that the claimant has waited two and a half years to make a claim for spousal support. He says if there was true urgency to her financial situation, she would have sought support sooner.
- [52] The claimant pointed out that the claim for spousal support was in the notice of family claim. The claimant was optimistic that marriage would not break down. Even if that was true, by the time she returned from Saskatchewan in September 2012, she must have known that the marriage had no hope of lasting.
- [53] The claimant does point out that she has been living with her parents as a way of making ends meet. She is right that the obligation for support of the child is not her parents' but the respondent's. However, she is not automatically entitled to spousal support. She must meet the criteria in the legislation and she has not provided evidence to substantiate her claim of hardship. There is no indication if she pays rent, if she helps with her parents' household expenses, et cetera. If her mother looked after the child, I note the respondent is paying \$100 a month for daycare. If this was insufficient and she was paying compensation to her mother, that again was not put into the evidence. It was the claimant's burden to provide sufficient evidence.
- [54] In this case, the respondent says the claimant has not been disadvantaged as a result of the marriage breakdown, because her income is about the same or a bit higher than before the child was born. No further details are given by the claimant and one assumes she is at the same job. In addition, she has provided absolutely no information about her expenses.
- [55] It is true that the respondent's income has risen substantially but, as counsel says, that has nothing to do with the marriage. He took no training or career-enhancing skills while married. He just appears to have gotten into a better situation. It is not unusual to see a rise in the income of a new immigrant to Canada as they get accustomed and settle into life here. The significant increase in his income has not been the result of any career change, as there is no indication that he is doing significantly different work than he did when he was married.
- [56] Turning to the factors in 15.2(6) of the Divorce Act and 161 of the Family Law Act, I agree with the respondent that the claimant has failed to show disadvantage to her as a result of the marriage breakdown. I also agree there is insufficient evidence to show, on a balance of probabilities, that the claimant is suffering economic hardship. Because of the short length of the marriage, I do think that the promotion of self-sufficiency in this case is reasonably met without an order for spousal support.

- [57] However, the fact remains that the claimant will carry an increased financial burden because of the care of the child. I do commend the respondent for keeping up child support payments and addressing his arrears and \$100 worth of daycare. I still think that this factor requires careful consideration.
- [58] The question is, has the claimant proven on a balance of probabilities, that her sole custody and care of the child is deserving of an award of spousal support. I find that she has not placed enough evidence before me to establish that. However, the child is only three years old and circumstances may change. The best way to address that, in my view, is variations as necessary to the child support amount.
- [59] For all these reasons, I find the claimant has not proven, on a balance of probabilities, that she is entitled to spousal support.
- [60] The respondent seeks that the parties share extraordinary and special expenses on a 50/50 basis. The claimant says it should be proportionate to their income. The child is young and the respondent has already agreed to pay, on top of support, for extracurricular and preschool upon receipts being shown. In my view, that is appropriate at this time and I do not see justification for any different proportion for those expenses at this time. Of course, this may be revisited in the future.
- [61] Anything else, counsel?
- [62] MR. BADH: That's about it, My Lady. It's just that the orders as indicated in the -- in my written submissions are the ones that would be --
- [63] THE COURT: Yes, let me just -- all right, so the order that I am granting are that neither party shall pay spousal support to the other. Sole custody and guardianship of the child shall be granted to the claimant. The respondent shall pay child support according to the Child Support Guidelines, indicating his residence is currently in Saskatchewan. The respondent shall also pay \$100 a month towards daycare expenses of the child.
- [64] Subject to s. 12 of the Divorce Act, the claimant and the respondent, who were married in Nakodar, India, on April 12, 2010, are divorced from each other; the divorce to take effect on the 31st day after the date of this order.
- [65] I am adjourning the issue of access.
- [66] MR. BADH: Yes, My Lady, and it's -- the retroactive payments continue.
- [67] THE COURT: Yes, I am sorry. Is that not part --
- [68] MR. BADH: Yes. My Lady, I --
- [69] THE COURT: Oh yes, the way it is worded.
- [70] MR. BADH: It's in the written submissions that I prepared this morning. It's --

[71] THE COURT: Yes.

[72] MR. BADH: And My Lady --

[73] THE COURT: So I will confirm that those retroactive payments are still required up until he has fulfilled his debt, and I think it was at \$100 a month, is that right?

[DISCUSSIONS WITH COUNSEL]

[74] THE COURT: All right. So I do order that the parties must exchange financial information, especially income tax information, on the 1st of July each year, and then make adjustments as necessary to the child support payable.

[75] The parties are at liberty to apply at a later time for reapportionment of the special and extraordinary expenses as the child gets older.

[76] MR. BADH: And My Lady, as for extraordinary expenses and the daycare expenses are concerned, those will be payable upon receipt of --

[77] THE COURT: Yes, yes.

[78] MR. BADH: -- proof of this.

[79] THE COURT: Yes, payable within 14 days of receiving the receipt, if that makes any sense.

[DISCUSSIONS]

[80] THE COURT: All right, so I think the same thing applies to the daycare, which is upon presentation of a receipt, it should -- payable within 14 days upon being received.

"Sharma J."

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Prepared on 26 October 2026 · Esheria