

CANADA / JUDGMENT

Jaura v. Jaura

2025 BCSC 503

COURT

Supreme Court of British Columbia

DECIDED

20 March 2025

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2025 BCSC 503 Jaura v. Jaura

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Jaura v. Jaura,

2025 BCSC 503

Date: 20250320

Docket: E06283

Registry: Abbotsford

Between:

Arshnoor Kaur Jaura

Claimant

And

Napinder Singh Jaura

Respondent

Before: The Honourable Justice Caldwell

Reasons for Judgment

In Chambers

Counsel for the Claimant:

M. Chhibber

For the Respondent:

No appearance

Place and Date of Hearing:

Abbotsford, B.C.

January 28, 2025

Place and Date of Judgment:

Abbotsford, B.C.

March 20, 2025

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- [1] The claimant, Arshnoor Kaur Jaura, applies for an order annulling her marriage to the respondent, Napinder Singh Jaura. The civil ceremony of marriage took place on April 26, 2023 in Abbotsford, B.C.

BACKGROUND

- [2] The parties and their respective families are members of "Dera Sacha Sauda" ("DSS"), which the claimant described as a "religion-based cult group" in India. No further information about DSS was provided.
- [3] The claimant is a permanent resident of Canada. The respondent is a resident of New Zealand and has a visa to visit Canada.
- [4] The parties first made contact in or about October 2022, when the claimant was 18-years-old and the respondent was approximately 32-years-old. That contact was by way of the respondent calling the claimant by telephone.
- [5] Within a week of that initial contact, the respondent was discussing marriage with the claimant. The claimant did not wish to marry - she was not yet 19 and would require parental consent.
- [6] The respondent persisted:
- he had his mother call the claimant's mother - she was rebuffed;
 - he travelled from New Zealand in early 2023, staying in the Lower Mainland for approximately 15 days during which time he visited the claimant at her workplace and brought her a sacred food gift allegedly provided by a DSS priest;

- he met her in person in Abbotsford and suggested travelling to Toronto where she, at age 18, did not require parental consent to marry;
 - he advised her that their marriage had been blessed by a DSS priest and that failing to marry could result in harm to their families;
 - he had his sister telephone the claimant to again advise her that this marriage had been blessed by a DSS priest and that by saying no to the marriage, she was inviting the wrath of the DSS community;
 - after returning to New Zealand in early February 2023, he maintained contact with the claimant and advised her that, in fact, it was the head saint of the DSS who had blessed their marriage;
 - he returned to Abbotsford in April 2023 to celebrate the claimant's birthday and again pressed her to marry him now that she was 19 and no longer required her parents' consent. He had both his sister and his mother contact the claimant by way of WhatsApp to reiterate this point; and
 - On April 25, 2023, after having been told by the claimant that she did not wish to and would not be marrying him, he advised her that the head priest at DSS had "given him a sign" about the marriage and that the DSS community would do everything they could to get them married, and that the DSS community might never forgive her if she didn't agree to the marriage.
- [7] As a result of this barrage, the claimant agreed to the marriage on April 25, 2023.
- [8] On April 26, the respondent and a relative of his picked the claimant up from work and drove her to the relative's home. A Punjabi wedding suit had been prepared for her to wear, and she put it on. The marriage commissioner arrived shortly after and the ceremony took place, including the exchange of rings - both of which the respondent had obtained and brought to the ceremony.
- [9] The claimant described her emotional condition during this process in the following terms:
- unable to comprehend what was going on;
 - stressed and overwhelmed;
 - in a state of shock; and
 - manipulated into a situation I didn't fully understand.
- [10] Those in attendance consisted only of the respondent's family. The claimant's family was in no way included. She was alone and without any support of any kind.

- [11] The claimant deposed she is a Sikh, and that she and the respondent did not marry by way of the religious Sikh marriage ceremony known as the Anand Karaj involving the sacred Guru Granth Sahib. She deposed that she "cannot think of marrying someone without adherence to my Sikh faith."
- [12] Following the ceremony on April 26, the respondent drove the claimant to her home. She removed the ring that she had been given and returned it to the respondent. He visited her at her workplace the following day at which point she again protested the whole process, indicated that she did not want to be married to him, and that it was not the right decision for her.
- [13] The parties had no further contact with each other. The marriage was never consummated. The respondent returned to New Zealand in early May 2023. He invited the claimant to join him there but she declined. She blocked his attempts to contact her. The respondent had his mother contact the claimant via WhatsApp and he contacted the claimant via his mother's WhatsApp.
- [14] In June 2024, the respondent returned to Canada for approximately 20 days. The parties met twice, briefly, in Abbotsford. He had told her that he wanted to arrange for the dissolution of the marriage. When they met, however, the respondent again told the claimant that the head priest of the DSS wanted them to stay together forever.
- [15] This time, the claimant maintained her position and has refused to meet with the respondent further.
- [16] The claimant did not inform her family of any of these circumstances surrounding the marriage ceremony for more than a year.
- [17] In September 2024, the claimant finally advised her family of the situation and they assisted her in retaining counsel to seek an annulment.
- [18] The Notice of Family Claim was filed and was served on the respondent in New Zealand. He has not filed a response but has communicated with counsel via email to indicate that he consents to the annulment without any cost accruing to him.

ANALYSIS AND DECISION

- [19] It is alleged that this is a voidable marriage - that the claimant entered into the marriage as a result of duress and that, accordingly, it is voidable at her instance.
- [20] There is no allegation or suggestion that the marriage was a "sham" undertaken for alternate purposes such as immigration.
- [21] Cases involving annulment of marriage for duress are rare.

[22] In *Parihar v. Bhatti* (1980), 17 R.F.L. (2d) 289, 1980 CanLII 362 (B.C.S.C.), this Court considered the case of a woman pressured into marriage by her own family. MacKinnon L.J.S.C. did not find the duress brought on by such pressure to be at the degree necessary to set aside the marriage:

[11] There are many situations where families, or others, bring great persuasion upon a person to enter into marriage. However, the cases indicate that the duress sufficient to set aside the marriage must be of such a nature that her powers of volition were so affected that it really was no consent.

[12] In *Parojcic (Ivetic) v. Parojcic*, [1959] 1 All E.R. 1 (P.D.A.) at 6, Davies J. states:

"I am quite satisfied and find that from and after Nov. 11, when this marriage was first mooted by the petitioner's father at Victoria right up till Dec. 29, the subject was the cause of constant quarrels between them. The father was always insisting that the petitioner should marry the respondent and the petitioner was constantly refusing. On more than one occasion, as he himself admits, he threatened her that if she persisted in her refusal he would send her back to Yugoslavia. Whether he could have done so or not, both of them believed it was possible, and the threat not unnaturally after her past experience terrified the petitioner. She told her father that she would rather commit suicide than return to Yugoslavia. There is no doubt that during this period of six weeks the petitioner was very unhappy and constantly crying, as also as her mother who was equally opposed to the match. Finally on the day before the wedding her father hit her in the course of an argument about the matter, no doubt when he was telling her that she must go to Oxford on the following day. On this evidence, which I accept, there is no doubt that this young woman was terrified into obedience by her father who was almost a stranger to her after years of separation and who may well have been imbued with ideas of *patria potestas* which were fundamentally foreign to his daughter. In the words of Butt J. in *Scott v. Sebright* (1886), 12 P.D. 21 at p. 31:

'long before the ceremony was gone through the feelings of this young lady towards the respondent were such that of her free and unconstrained will she never would have married him; that she had been reduced by mental and bodily suffering to a state in which she was incapable of offering resistance to coercion and threats which in her normal condition she would have treated with the contempt she must have felt for the man who made use of them; and that, therefore, there never was any such consent on her part as the law requires for the making of a contract of marriage.'

"Every single word of that is applicable to the present case, except that in this case it was the father who exercised the duress on her. I am quite satisfied in accordance with that, and the other authorities, that this petitioner has shown that she never in fact consented to this marriage and she was driven to go through the ceremony by the terror instilled in her by the threats exercised and made to her by her father in the course of the six weeks preceding the marriage; indeed, the only six weeks of her life that she had spent in this country."

- [13] In my opinion, the evidence here does not satisfy me the marriage ought to be declared null and void. There was no corroboration at all of the plaintiff's allegations of fear. It may be that the alternative to her going through with the marriage would be most unpleasant for her but I do not consider that the facts presented to me justify the relief requested.
- [23] In that 1959 case of *Parojcic*, referenced in *Parihar* at para. 12, the Court found that duress was made out in respect of a young woman who, for her refusal to marry the respondent in that case, was physically beaten at the hands of her estranged father and threatened with transportation to a distant land.
- [24] The degree of duress exemplified in *Parojcic* (use of physical force, terrorization, and threats) is no longer the threshold that must be met to vitiate consent. By 1988, some eight years after *Parihar*, in *S.(A.) v. S.(A.)* (U.F.C.), [1988] O.J. No. 1407, 1988 CanLII 4713 (O.N.S.C.), the Ontario Unified Family Court held, quite rightly in my view, that duress is made out where there is an absence of free choice, or oppression generated by fear, persuasion, or pressure:

A valid marriage is grounded upon the consent of each party. Oppression may vitiate consent, and if there is no consent, there is no valid marriage. Different people may respond to oppression in different ways, and conduct that may overmaster the mind of one person may not have this impact upon the mind of another. It matters not, therefore, whether the will of a person of reasonable fortitude would - or would not - have been overborne: the issue is, rather, the state of mind of the applicant. To constitute duress, it must be established that the applicant's mind was so overcome by oppression that there was an absence of free choice. The point that falls for decision is whether the consent given at the time of the ceremony was a real, understanding, and voluntary consent. Oppression can take various forms: it may be generated by fear, or by persuasion or pressure. Essentially, the matter is one of degree, and this raises a question of fact for the court. The determination involves a consideration of all relevant circumstances, including the age of the applicant, the maturity of the applicant, the applicant's emotional state and vulnerability, the lapse of time between the conduct alleged as duress and the marriage ceremony, whether the marriage was consummated, whether the parties resided together as man and wife, and, the lapse of time between the marriage ceremony and the institution of the annulment proceeding. As long as the oppression affects the mind of the applicant in the fashion stated, physical force is not required, and, no more so, is the threat of such force a necessary ingredient. Nor is the source of the conduct material. Where duress is alleged, the onus of proof is upon the party seeking annulment, and it is an onus that is not lightly discharged.

- [25] These principles have been adopted in more recent decisions by this Court. In *R.H. v. R.T.*, 2011 BCSC 678, for instance, Justice Maisonville set out the factors to be examined to determine if a claimant's mind was so overborne by pressure to constitute duress vitiating the consent to marriage:
- [28] Oppression can take many forms and the matter is one of degree which is a question of fact for the court. The circumstances to be considered in the assessment include:

- the party's emotional state at the time of the marriage ceremony,
- the party's vulnerability,
- the time between the alleged coercive conduct and the marriage ceremony,
- whether marriage was consummated,
- the residence of the parties during the marriage,
- the amount of time until the start of the annulment proceedings.

[29] However, the most important consideration for the court when considering an annulment on the basis of duress is the parties' emotional state at the time of the marriage ceremony. If the parties are mentally competent to give consent even if they may be reluctant and feel pressured, this is not sufficient ground to grant an annulment on the basis of duress. The emotional state must completely overbear the will to consent, however reluctant or hesitant the party may be.

[Emphasis in original.]

[26] In *Kaur v. Jhamb*, 2019 BCSC 67, Justice Weatherill of this Court granted an annulment of a sham marriage entered into solely for immigration purposes. In that case, the claimant agreed to participate in the sham because of the threat of losing her job. That threat was sufficient for the Court to find her participation in the civil marriage ceremony to be under duress.

[27] The claimant in the instant case had clearly told the respondent that she did not wish to get married, and certainly not to him. She expressed this on several occasions. He refused to accept "no" for an answer.

[28] The evidence indicates that he pursued, harassed, and perhaps even stalked the claimant, beginning before she turned 19 while he was over 30. He enlisted the support of his sister and mother in such actions. He made threats to the claimant's reputation and that of her family within their spiritual community. These actions continued over a period of several months.

[29] On the day of the wedding, the claimant was picked up from work by the respondent and another male. She was taken by them to a home with which, it seems, she was unfamiliar. There, she was surrounded by members of the respondent's family. The claimant had no member of her own family present. She was dressed in a wedding outfit provided by the respondent and his family.

[30] It was in such circumstances that the claimant went through a ceremony of marriage. As noted above, the claimant said she was overwhelmed, in a state of shock, and unable to fully comprehend what was going on.

- [31] The claimant immediately returned the ring which had been provided for the marriage ceremony. She again told the respondent that the marriage was not what she wanted. She held the whole affair in secret from her family, with whom she lived.
- [32] One does not have to look far to be confronted with the realities of other young people, also in their teens, who have taken drastic actions, including suicide, in the face of such challenges and threats to social standing and reputation.
- [33] I am completely satisfied on the evidence before me that the claimant did not truly consent to the marriage, that she communicated that lack of consent to the respondent, and that she only went through the ceremony as of a result of the duress brought to bear on her by the respondent, his family, and the circumstances which surrounded the wedding ceremony. The marriage is voidable at her instance. Her application for an order that her marriage to the respondent is a nullity is granted.

"Caldwell J."

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