

CANADA / JUDGMENT

Kaur v. Singh

2020 BCSC 1985

COURT

Supreme Court of British Columbia

DECIDED

28 September 2020

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2020 BCSC 1985 Kaur v. Singh IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Kaur v. Singh, 2020 BCSC 1985 Date: 20200928 Docket: E14599 Registry: Rossland Between: Prabhjot Kaur Claimant And Gurvinder Partap Singh Respondent Before: The Honourable Madam Justice Gropper (Appearing via teleconference) Oral Reasons for Judgment Counsel for the Claimant, appearing via teleconference: Z. Imtiaz No other appearances Place and Date of Hearing: Rossland, B.C. September 20, 2020 Place and Date of Judgment: Rossland, B.C. September 28, 2020

- [1] THE COURT: This is an application by the petitioner, Prabhjot Kaur, to annul her February 5, 2019 civil marriage to Mr. Singh on the basis that there has been no consummation of the marriage. She says that the parties decided not to consummate the marriage after they went through the civil ceremony until they went through a religious ceremony that they expected to take place some time after December of 2019.
- [2] Ms. Kaur gave evidence that she met Mr. Singh in October 2018 when she was 19 years old. They decided to enter into a civil ceremony because they developed a liking to each other and they wanted to stay together. After the civil ceremony, Ms. Kaur and Mr. Singh moved into the same house, but according to Ms. Kaur they did not commence a sexual relationship and did not live together as man and wife. Although they lived in the same house, Mrs. Kaur lived with her female friends and Mr. Singh lived with one of his male friends.
- [3] Ms. Kaur says that shortly after the marriage took place, and while they were living at the same house, she learned that Mr. Singh was suffering from depression and was taking some medication. He advised her that it was not of a severe nature.
- [4] Ms. Kaur says that she and Mr. Singh began to disagree and had fights. They decided to stay away from each other and did not commence any sexual relationship. Ms. Kaur moved out of the home that they shared on May 25, 2019.

- [5] Ms. Kaur is candid in saying that she and Mr. Singh agreed not consummate the marriage. She asked Mr. Singh to stay away from her and he did. He told her that he would only participate in consummating the marriage if she asked him to. She says that there is no physical or mental reason that they could not consummate the marriage; they just decided not to.
- [6] In the materials that have been filed, Mr. Singh provided a statutory declaration agreeing to the annulment. He did not make any reference to whether he and Ms. Kaur lived as husband and wife or consummated the marriage.
- [7] In *Jomha v. Jomaa*, 2010 ABQB 135 the parties entered into a civil ceremony, did not consummate the marriage. At para. 6, the Court set out the test for annulment: To support an application for an annulment the law requires proof that the marriage is unable to be consummated, which is also referred to as proof of impotence. In other words, at least one of the parties is unable to engage in intercourse. In law, impotence can arise from physical inability or a psychological incapacity.
- [8] The Court accepted that in accordance with Ms. Jomha's religion, consummation cannot take place before the wedding banquet or a second ceremony took place. Ms. Jomha and Mr. Jomaa went before a religious leader in their Islamic community and had the Islamic bond between them severed. The court granted the annulment, stating at para. 12: I accept the evidence of Ms. Jomha that the marriage was never consummated, that in her mind it was impossible for the marriage to be consummated before the wedding banquet or second ceremony took place and that the marriage can now never be consummated as the religious bond between them has been severed. I grant the annulment on the basis that her belief about the impossibility of consummation is akin to an invincible repugnance or psychological abhorrence to the act of consummation.
- [9] In *Grewal v. Sohal*, 2004 BCSC 1549, Mr. Justice Davies reviewed the jurisprudence and set out the test for inability to consummate at para. 61: Having considered all of the authorities to which I have referred, I am satisfied that the present law in British Columbia concerning the granting of an annulment of a marriage on the basis of non-consummation with a specific spouse (but not to sexual intercourse generally), which is due to psychological aversion can be stated as follows: The applicant must establish on a balance of probabilities that:
- (1) there has been no consummation of the marriage;
 - (2) the refusal to consummate has been persistent and is not due to obstinacy or caprice;
 - (3) the applicant has an invincible aversion to sexual intercourse with the specific spouse;
 - (4) the applicant's invincible aversion to sexual intercourse with that spouse has been brought about by circumstances that have resulted in a "paralysis of the will" that is consistent with incapacity; and

- (5) the applicant's incapacity may be based upon normal, predictable reactions that need not be expressed in pathological terms.
- [10] Ms. Grewal and Mr. Sohal entered into an arranged marriage. After the marriage Ms. Grewal learned that the husband had an addiction to drugs. The court was satisfied that Ms. Grewal had a psychological incapacity to the consummation of this marriage. Davies J. continued at para. 72: In my opinion, her reaction was a normal and predictable reaction to the contemplation of consummation with a spouse who was fundamentally different than the person he had represented himself to be. I also find that the defendant's deceit and manipulation of the plaintiff for immigration purposes both exacerbated and deepened her normal and predictable reaction that led to her understandable and natural psychological aversion to consummation.
- [11] Mr. Justice Davies granted the wife a declaration of nullity.
- [12] When I apply the principles to the case before me, I am not satisfied that they are met.
- [13] Annulment is not granted based on the agreement between the parties, or where the parties decide not to consummate a marriage despite an ability to do so. There is no evidence of either party having an aversion to consummating the marriage. While I accept that there does not have to be a pathological reason for non-consummation, it appears that the parties here simply decided that they would not consummate the marriage and made an agreement that the marriage should be annulled.
- [14] Neither am I satisfied that the facts in Johma have application here: Ms. Kaur said that the parties decided to wait until their religious ceremony before consummating the marriage, but she did not say that the marriage was unable to be consummated because one of the parties is unable to engage in intercourse arising from physical inability or a psychological incapacity.
- [15] While I am prepared to find that there has been no consummation of the marriage, these parties have not met the test that the non-consummation is a result of a physical inability or a psychological incapacity.
- [16] The application for a declaration that the marriage is a nullity is dismissed. "Gropper J."

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