

CANADA / JUDGMENT

Saravanan v. Jayaraj

2025 BCSC 2600

COURT

Supreme Court of British Columbia

DECIDED

16 December 2025

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2025 BCSC 2600 Saravanan v. Jayaraj IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Saravanan v. Jayaraj, 2025 BCSC 2600 Date: 20251216 Docket: E252027 Registry: Vancouver Between: Nivaasini Saravanan Claimant And: Vineth Jayaraj Respondent Before: The Honourable Justice Morley Oral Reasons for Judgment Re Annulment (In Chambers) Counsel for the Claimant: V.W.S. Yung For the Respondent: No appearance Place and Date of Trial/Hearing: Vancouver, B.C. December 16, 2025 Place and Date of Judgment: Vancouver, B.C. December 16, 2025

- [1] THE COURT: This is an edited version of reasons originally given orally in chambers.
- [2] The claimant Nivaasini Saravanan and the respondent Vineth Jayaraj had a civil marriage in Victoria on December 7, 2024. What Ms. Saravanan is seeking is that it be declared a nullity, which is also referred to as an annulment. Only if I cannot grant an annulment is she seeking a divorce.
- [3] This arose out of an arranged marriage. The claimant is part of a religious community, the Tamil Gounder community, in which a civil marriage is followed by a ceremony using the Tamil Gounder wedding rituals. Under her understanding, at least, the expectation of the community would be that the parties would not be sexually intimate until after those wedding rituals are conducted.
- [4] After the civil marriage on December 7, 2024, the respondent only stayed for a week with the claimant. They were not sexually intimate during that week. He said he had to move his stuff and his car to British Columbia, but in fact when he came back to Victoria on December 28, 2024, he refused to see the claimant. He started messaging that he was sick. He stayed in his room. He left Canada shortly afterwards and has not returned since. He has communicated to the claimant's father that he is not prepared to proceed with the wedding rituals and consummate the marriage.
- [5] Maybe in some secular contexts, the distinction between an annulment and a divorce would not matter much, but it is very important to the claimant because the wedding pool she will be in will be different depending on whether she is divorced or if there is an annulment of the civil marriage.

- [6] Since the principle of no-fault divorce was introduced, common law annulments are rare, but an action for annulment on the grounds of a failure to consummate may still be brought in British Columbia. To succeed, one or both parties must establish a physical or psychological incapacity such as to render intercourse impractical. It is not enough simply to prove that there has been no sexual intercourse since the marriage, but rather that there is a practical "incapacity", which can be grounded either in a medical issue or in something "psychological": *C.(H.L.) v. L.(M.A.)*, 2003 BCSC 1461 at paras. 11-15.
- [7] The closest case to the one before me here is the decision of Justice Lander's decision in *Deo v. Kumar*, 1993 CanLII 927 (BC SC). *Deo v. Kumar* similarly involved a civil marriage prior to the religious ceremony that, from the perspective of the parties, really made them husband and wife. In *Deo v. Kumar*, as in this case, between the civil marriage and the anticipated religious ceremony, the parties did not live as husband and wife and there was no consummation. At the time of the civil marriage, at least, the obstacle to sexual consummation was that the parties accepted this norm, which made it psychologically impossible for them to consummate the marriage, at least without violating their religious principles and community norms.
- [8] Justice Lander found in that case, and I find here, that this amounts to a "practical impossibility of consummation". The obstacle is not a matter of individual choice. In the dated language of the annulment case law, it is not "wilful" or a matter of "caprice" or "obstinacy", but is a psychological incapacity based on religious conviction followed by a practical capacity based on the unwillingness of the respondent ever to go through with the religious marriage, which would be a pre-requisite for psychological capacity on the part of the claimant. Justice Lander distinguished this situation from one of the parties choosing not to engage in sexual intimacy, which was historically found not to be sufficient to be the basis for an annulment: *Heil v. Heil*, 1942 CanLII 3 (SCC), [1942] 1 D.L.R. 657 (SCC).
- [9] There has been talk of "invincible repugnance", which is an old kind of phraseology, but basically means that there is no real chance that this is going to change. I am satisfied, on the evidence, that that is the case. And as Justice Lander noted, the question of whether this condition is "incurable" really only applies in a physical context, not in a psychological context. There is nothing that the claimant can do to "cure" a situation that renders her incapable of engaging in sexual intimacy without doing violence to her religious convictions, something a secular court should surely not require her to do.
- [10] While the situation may be one of unwillingness on the respondent's part, it is one of incapacity on the claimant's part, and thus she is entitled, at common law, to the remedy of annulment.
- [11] So in my view, this is an appropriate case for an annulment, and I will grant the order sought in the form declaring that the civil marriage of the claimant to the respondent on December 7, 2024, in Victoria, British Columbia, is a nullity and of no force and effect. "J. G. Morley, J." The Honourable Justice Morley

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