

In the Family Division of the High Court of Fiji at Labasa
Civil Jurisdiction
Case No. 16/LAB0002
Between
Parnil Premit Chand
Applicant
And
Shimal Swastika Devi
Respondent

COUNSEL: Ms S. Devi for the applicant
The respondent absent and unrepresented
Date of hearing : 17th February, 2017
Date of Judgment: 24th February, 2017
Category : Not reportable

Judgment

1. Parnil Premit Chand, the applicant seeks a nullity of his marriage to the respondent on the ground that there was no real consent given by him to the marriage, since he was not aware that the respondent was pregnant with the child of another man, when he married her.
2. In his affidavit, the applicant stated that there was no real consent given as he was mistaken as to the identity of the respondent. His consent was obtained on the basis that he was marrying a single person, who is "*definitely not pregnant*".
3. The respondent was served with the application. She did not file a response or appear at the hearing.
4. The applicant, in his evidence stated that a relative brought a marriage proposal to him from the respondent. On 14th February, 2016, he went to the respondent's house with his family. He agreed to marry her. Thereafter, he was in contact with her on the phone. On 16th March, 2016, he legally married the respondent. The wedding day was the second occasion on which he met her. The marriage certificate was produced. A religious wedding ceremony was to take place in the third week of April, 2016.

5. The applicant said that a week before the traditional ceremony, his family were informed by Pandit, a relative and neighbor of the respondent that she was four months pregnant. The applicant said that he was never in a sexual relationship with the respondent. When he contacted her, she admitted that she was pregnant. He did not have a sexual relationship with her. He would not have given his consent to the marriage, if he knew that she was pregnant. Since then, he has had no contact with the respondent. She has found another partner and moved on with her life. She gave birth to a child on 8th July,2016. The birth certificate of the child was produced.
6. The applicant's father, Prem Chand also testified. He corroborated the applicant's evidence on the marriage that was arranged for his son with the respondent. He and his family together with the applicant went to see the respondent on 14th February,2016. She was nicely dressed in saree and appeared to be normal. Subsequently, he was informed by Pandit, a relative of the respondent that she was pregnant. The traditional marriage did not take place.

The determination

7. Section. 32(1) of the Family Law Act provides that a party can apply to have the marriage nullified on the grounds that the marriage is void. One of the grounds set out in sub-section(d) where a party can assert that his marriage is void is that the "*consent thereto of either of the parties is not a real consent because –*
 - i) *It was obtained by duress or fraud.*
 - ii) *that party is mistaken as to the identity of the other party or as to the nature of the ceremony performed; or*
 - iii) *that party is mentally incapable of understanding the nature and effect of the marriage ceremony."*
8. The date of the civil marriage was 16th March,2016. The respondent gave birth to a child on 8th July,2016.

9. I have examined the marriage certificate of the parties and the birth certificate of the child. The material facts, viz the date and place of birth of the respondent and her father's name are the same in the two documents. The birth certificate states that the father of the child and informant is "ROHIT RAM" and the parents were not married.
10. In my view, the birth certificate establishes that the respondent was pregnant at the time of the legal marriage of the applicant and the respondent on 16th March, 2016.
11. I accept the applicant's evidence that he would not have married the respondent, if he knew that she was pregnant.
12. In my judgment, the applicant's consent was obtained by fraud, as he did not consent to marry a woman pregnant with a child by another man. This was an arranged orthodox Indian marriage. The parties had met once before their marriage with their respective families. The plaintiff is from Labasa. The respondent was in Bua.
13. The facts of the present case closely parallel the case of **SK V. RRD**, (09/LBS/005) where it was held that consent to marry a woman with child was obtained by fraud. Alternatively, there was a mistaken identity of the person the applicant consented to marry. Wati J stated as follows:

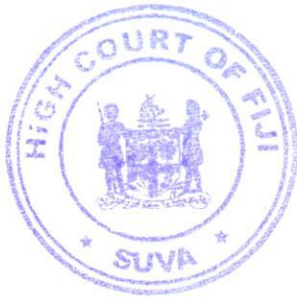
The material nondisclosure regarding the pregnancy goes to the root of the contract of marriage. At the time of the marriage the applicant had consented to marry a person who was single and only one human being excluding the others. He did not consent to marry her with a child and his consent to marry the person he did is not his real consent. His consent was obtained by fraud.

There could be an alternative argument that the applicant was mistaken as to the identity of the respondent. He was intending to marry a single woman and not a pregnant woman and he married her believing her to be single and when he married her in her pregnancy, there was no contract of marriage because she did not possess the characteristics of the human being he intended and believed to have married.

14. In the light of my finding that the applicant's consent was obtained by fraud, it follows that the marriage that took place between the applicant and the respondent on 16th March, 2016, is void.

15. **Orders**

- a. I annul the marriage of the applicant and the respondent that was solemnized on 16th March, 2016.
- b. I make no order as to costs



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam

Judge

24th February, 2017

At Suva