B v I (FORCED MARRIAGE)

Family Division

Baron J

23 November 2009

Marriage – Forced marriage – Court proceedings more than 3 years after ceremony – Nullity – Jurisdiction to make a declaration that no marriage capable of recognition

Having been successful in her GCSEs, the 16-year-old girl talked to her parents about her desire to take A-levels, with the aim of going on to college or university to study art or architecture. The family began to discuss visiting Bangladesh, the parents' country of origin, to find a husband for the girl; the girl made it clear that she had no intention of being married while abroad, but went to Bangladesh with the rest of the family for what she believed to be a holiday. While she did not particularly dislike the 18-year-old cousin to whom she was introduced, the girl explained to her family that she did not wish to marry him. The day before the family was due to return to England, the girl was dressed in special clothes and prevented from leaving her bedroom until after an Imam had entered and performed a ceremony in Bengali. The girl was instructed to say 'I accept' at key intervals. The girl's own understanding was this was an engagement ceremony; in fact it was a ceremony purporting to marry her to the cousin, in his absence. The following day the cousin had sexual intercourse with the girl without her consent; when she complained, the family explained that she was now married to the cousin and must accept this. The family, including the girl, returned to England as planned. However, a financial dispute between the girl's family and the cousin's family meant that the cousin did not join the girl in England; instead, the girl assumed a range of domestic duties. More than 3 years later, the girl was finally able to make contact with someone via the internet and, with their help, to leave the family home. Because her actions put her at risk of serious injury and loss of life, for bringing shame upon her family, she had to assume a secret identity. By the time the girl brought formal proceedings in relation to the 'marriage', the 3-year statutory period within which nullity could be granted had passed; she, therefore, sought a declaration that there had never been a marriage capable of recognition in England and Wales.

Held – granting a declaration that there had never been a marriage capable of recognition within the jurisdiction –

(1) There had been no valid consent to the marriage, as a consequence of duress; the girl had been forced into marriage against her will. Had the application for nullity not been statute-barred, the court would have granted nullity (see paras [11], [14], [16]).

(2) It was a matter of judicial knowledge that a number of women within the Bangladeshi community were subjected to forced marriage, and it was still the case, as suggested in *P v R (Forced Marriage: Annulment Procedure)* [2003] 1 FLR 661, that a real stigma attached to such women if there was a divorce, rather than a decree of nullity, because a divorce acknowledged that the woman in question had been married (see paras [14], [16]).

(3) Although s 58 of the Family Law Act 1986 prohibited the making of a declaration that a marriage had been void at inception, the court could make a declaration that there had never been a marriage capable of recognition in the English jurisdiction. Although this was an extremely fine distinction, and might not be thought to be wholly logical, it was eminently fair to provide such a declaration in a case of forced marriage. The inherent jurisdiction was a flexible tool that enabled the court to provided justice for parties where statute had failed to do so (see paras [12], [14], [17], [18]).

Statutory provisions considered
Matrimonial Causes Act 1973
Family Law Act 1986, ss 55, 58(5)
Forced Marriage (Civil Protection) Act 2007

Cases referred to in judgment
Hudson v Leigh [2009] EWHC 1306 (Fam), [2009] 2 FLR 1129, FD
P v R (Forced Marriage: Annulment: Procedure) [2003] 1 FLR 661, FD

Michael Gration for the plaintiff
The defendant did not attend and was not represented

BARON J:
[1] This originating summons comes before the court under the terms of its inherent jurisdiction. As such I have a duty to act fairly, do justice between parties and make declarations only where they are fit to be made. The originating summons is issued by B against I, to whom apparently she went through a form or ceremony of marriage on about 15 January 2006. The fact that the ceremony took place so long ago means that she cannot issue a petition based upon nullity. The crux of her case is that she was forced into marriage with a gentleman in circumstances where she did not freely give her consent. It is her case, inter alia, that she did not appreciate that the ceremony was a marriage as opposed to a betrothal.

The factual matrix
[2] In late 1995, the plaintiff went to Bangladesh for what she believed to be a holiday. On about 15 January, at the instigation of her father and her mother, she was involved in the ceremony, to which I have already referred. The plaintiff comes from a Bangladeshi family. Both her parents come from the province of Sylhet and were born there. The plaintiff's father came to the UK when he was a child, aged about 4, and so he grew up in this jurisdiction. When the time came for him to marry, in accordance with tradition, his bride was chosen for him and he married a girl from a village in Bangladesh. She came to this country and they set up a home. It would seem from what I have heard that the plaintiff's father was hardworking by nature, originally he had a job as an overlocker in a clothing factory and thereafter became a radio control operator for a minicab firm. The couple had four children, the eldest, a boy, then the plaintiff, and finally two younger sisters.
[3] It would seem that the eldest son was not academic by nature, but, in accordance with tradition, he held a favoured place within the family. The plaintiff herself was/is not only a beautiful young woman, but she was/is obviously highly intelligent. Consequently, at what I am sure was great financial sacrifice, she was sent to an Islamic boarding school in the Bradford area. Her parents' intention was that she would be schooled in all the tenets of Islam and emerge from the school with a degree in Islamic studies. The plaintiff told me that in accordance with many such families in this jurisdiction, her father and the children of the plaintiff spoke good/fluent English, whilst her mother spoke primarily Bengali. Thus within the family setting, most discourse was undertaken in English, although they used Bengali as a second language. The plaintiff tells me that she thinks and speaks primarily in English. Whilst she understands Bengali, she is not fluent in the

same way as she is in English. At school, a number of lessons were undertaken in Bengali, but the primary language was English. In about June or July of 2005, the plaintiff took her GCSE's and was successful. She returned home and told her parents that she would like to leave school in order to enter education within the English system, leading to A-Levels. It was her hope that she could then go on to college or university to study art or architecture.

[4] She told me that her father, who she described as a very well-educated man, encouraged her in this regard, but her mother did not think it was appropriate for a girl to be 'out in the world'. She thought a woman's place was as a wife and mother within the home. The plaintiff hoped that her father would sign the necessary forms to enable her to enter a new school, but he delayed. Shortly thereafter she became aware that a plan had been hatched within the family to take her back to Bangladesh and introduce her to a 'suitable boy' in the expectation that she would become married. I note that at this time, the plaintiff was barely 16 years of age. So she was in every sense a young girl, unschooled in the arts and sophistication of life. She tells me, and I accept, that she made it clear to her parents that, whilst she was a dutiful daughter, she was too young to become involved in a marriage. She wanted more from her life than the confines of domesticity. She said that, on several occasions before the holiday, she made it very clear to her parents that she did not want and she did not expect to be married whilst she was abroad. She felt that they had accepted that this was her position even though they may have hoped to persuade her otherwise when she was presented with the candidate. She is clear, and I accept, that they knew she did not want to be married.

[5] All the family embarked on a holiday to Bangladesh on about 15 December of 2005. The plaintiff and her parents, together with her brother (then aged 18 years) and her two sisters (one about 13 years and the other about 7 years) boarded the plane and landed at Dhaka. The first night was spent in a local hotel and the family then travelled to their extended family village. The plaintiff was introduced to a young man, aged about 18 years, who was her cousin. She was, she says, pushed in his direction in the sense that the family introduced them and gave them periods of time alone. The plaintiff's mother in particular encouraged her to form an attachment with this young man. The plaintiff tells me, and I accept, that she made it clear to her mother and to her father that whereas she found this young man congenial as a brother/cousin, she did not in any sense consider him as suitable or appropriate as a husband. She informed me that she was always polite and dutiful, but that no one could have been under any misapprehension or misconception other than that she did not wish to marry this young man.

[6] She told me that the family enjoyed the holiday with visits to theme parks, picnics and the like. They were due to return to the UK on about 16 or 17 January 2006. The plaintiff states, and I accept, that shortly before their departure the family informed her that a dress was to be brought and that she was to be given it by way of a present. On about 15 January, the new clothes, being a lengha and blouse were presented to her. They were in a purple and silver colour. Obviously they were very nice items of clothing, I note they were not the traditional red and gold that a bride is accustomed to wearing in the subcontinent. Accordingly, the plaintiff was not immediately alerted to the fact that this was a marriage. She told me she put on the clothes in the bedroom, but they were too large and her sister assisted with tightening them.

She said that neighbours were peering in through the windows. Obviously, people understood that some form of ceremony was in the offing. The family closed the windows to stop prying eyes and the plaintiff was told to remain at the end of the bed to await the next part of the day.

[7] I accept that the plaintiff was not permitted to leave the bedroom. Later her mother, father and grandmother entered the room, together with an Imaam and the defendant's brother, (who was in training as an Imaam). She described a ceremony being conducted in Bengali. Her father told her to say the word 'Kabool' on three occasions. She understood that the word meant 'I accept'. Her grandmother placed a ring, which was too large, upon her finger. As she understood it, she was thereby betrothed to the absent prospective bridegroom. She maintains, and I accept, that she did not understand that this was a ceremony of marriage. Her Bengali was not good enough to make that clear, whatever document was provided for her to sign, she did not have time to read it through and she did not understand it. I accept all her evidence. Thus, I am clear that insofar as she consented to anything it was only a betrothal. Her circumstances were, in reality, very restrictive and I doubt that she had any choice at all, even in relation to what she believed to be a betrothal. No doubt she thought that when she returned to the UK, she could persuade her parents that the betrothal should in some way be annulled. Certainly, at the end of that day, she did not regard herself as a married woman.

[8] The documents which have been provided show that in fact, the ceremony was a marriage. The certificate, the Nikah Nama, appears to have been dated days before this ceremony took place, for it bears the date of 5 January 2006. It also states on its face that a ceremony of marriage was contracted on 31 December 2005, that is some 2 weeks before the ceremony, which I have described. Therefore, the document does not square with the applicant's evidence, which I make clear I have already accepted as being correct. Her written statement confirms that her signature is nowhere upon the original document. Indeed, it is clear from the face of that document that it was completed in one hand. After the ceremony had been completed, the defendant apparently arrived at the house from the mosque where he had been securing his devotions, whereupon he signed a document. There was no celebration and no party.

[9] The following day, the family left the plaintiff's grandmother's home on their way to Dhaka, in order to return to the UK. They stayed in a hotel that night. There was a family room but the defendant booked a single room for himself. The plaintiff was asked to go into that room. She informed me, and I accept, that the defendant had sexual intercourse with her absent her consent. She did not inform her parents of what had occurred until many weeks later, because she was so ashamed. When she returned to the UK, she told her sister what had occurred, and, with her sister's encouragement, she informed her mother. Her sister thought that the defendant's behaviour was so outrageous that, insofar as there has been a betrothal, the parents would immediately agree to nullify it. When the applicant gave the full explanation to her mother, she was told effectively she had to grin and bear it for she was now married. I accept that this was the first time that this young woman knew that the ceremony in which she was forced to take part was a ceremony of marriage, rather than a ceremony of betrothal.

[10] She was very upset by this news. However, she was mollified because, even after that conversation, there were references within the family to the ceremony of 'betrothal' being set aside. It would seem that these were within the context of a disagreement with I's family about financial ramifications resulting from the ceremony. The expectation had been that the defendant's family would assist financially to ensure that he could come to the UK. When those financial expectations were not satisfied, the families began to fall out. On her return to England, B remained in her family home and was confined to domestic duties. She described assisting her mother with the care of her sisters, brother and father. However, in order to assist with household expenses, she was required to seek State assistance. It is compulsory for those on Jobseeker's Allowance to attend various courses. In this way, B managed to make contact with someone on the internet and with their assistance, eventually she left the family home. By so doing she has brought 'dishonour' on her family. Accordingly, she has had to assume a secret identity. She is now living at a secret address, unknown and separated from her birth family. I am clear that her actions will be regarded as having brought shame upon the family, with the result that in accordance with the prevailing 'code of honour', she will risk serious injury and, potentially, death (if the family considered that that degree of punishment were merited). Accordingly, her current identity must remain secret.

[11] The factual matrix makes it patently clear that if she had been able to apply within the relevant 3-year period for a decree of nullity, I would have had no hesitation in granting it because I am satisfied that, under the laws of this country, there was no valid consent to marriage. The difficulty in this case is that the plaintiff was not able to leave her family home until the middle of 2008. Even then, she could not bring herself to start formal proceedings for a long time. Accordingly, an application for a nullity is no longer open to her. For that reason she seeks a declaration pursuant to the inherent jurisdiction. It is accepted that such relief is generally available in respect of a marriage that has been solemnised in circumstances where either of the parties did not validly consent to it as a consequence of duress, mistake or otherwise. In this case, I consider the relevant ground would be duress.

[12] It is also clear that no declaration can be made by this court under the terms of s 55 of the Family Law Act 1986 if it offends against the terms of s 58. I quote, 'No declaration may be made by any court, whether under this part or otherwise, that a marriage was at its inception void'. That term was included in the Family Law Act 1986 to ensure that the Act was not used to circumvent the strict requirements of the Matrimonial Causes Act 1973. However, it is clear that the inherent jurisdiction must be used in a manner that is flexible enough to ensure that justice is provided for all. The plaintiff in this case does not seek a declaration that the marriage was void at its inception, rather, she seeks a declaration that there was never was a marriage capable of recognition in England and Wales.

[13] At one stage, she sought to take her case further by claiming that there were procedural irregularities in the ceremony in Bangladesh. She may well be correct in relation to that aspect of the matter, but unfortunately, the expert report that was ordered to be placed before the court has not been made available because the expert has been too unwell to provide it. In the circumstances, I have no evidence before me, which would enable me to find

that there were such procedural irregularities. Counsel, on behalf of the plaintiff, decided that it was prudent not to proceed on that aspect of the case. Accordingly, I am limiting my decision to the assessed lack of consent.

[14] A number of authorities have been placed before me which persuade me that judges at first instance and, more importantly, the Court of Appeal regard the inherent jurisdiction as a flexible tool which must enable the court to assist parties where statute fails. In a number of cases it has been held that the judges of this division have to take note of reality. It is a matter of judicial knowledge that a number of women within the Bangladeshi community are subjected to forced marriage. In order to prevent that from occurring, parliament recently passed the Forced Marriage (Civil Protection) Act 2007. Of course, I accept that forced marriage has a number of consequences, which go far beyond the ceremony itself. I am satisfied that the plaintiff in this case is but an example of what can happen to a young woman who is forced into marriage against her will.

[15] I can understand why her parents, who were very traditional, thought that they were doing their best for her by: (i) sending her to Bangladesh; and (ii) introducing her to what they regarded as a suitable boy. Equally, I am clear that from her perspective, having been brought up in the UK, it must have been unbelievably difficult to accept a code of behaviour and ethics which could not slot in with an outlook which had been influenced by the western culture to which she had been exposed. The clash between the old traditions and the modern life to which young people of Bangladeshi origin are exposed in the UK is bound to cause problems, particularly where the older generation insist upon marriage to a man or woman who is born and brought up in the subcontinent. They do not have the same mores as those who are raised in the UK. I have seen an affidavit sworn by the plaintiff's father in the context of the Bangladeshi ceremony. In that document, he states specifically, and I quote, that he is 'giving consent to this marriage because he believes that his daughter has become too westernised'. That sums up the sad clash to which I have already referred.

[16] There are long-term sequelae from a woman's perspective if a marriage is not nullified. I remind myself what Coleridge J said in the case of *P v R (Forced Marriage: Annulment: Procedure)* [2003] 1 FLR 661. The judge said at para [17]:

> 'There is a real stigma attached to a woman in the petitioner's situation if merely a divorce decree is pronounced and it is desirable from all points of view that where a genuine case of forced marriage exists, the Courts should, where appropriate, grant a decree of nullity and as far as possible, remove any stigma that would otherwise attach to the fact that a person in the petitioner's situation has been married.'

In this case, nullity is not an option for it is statute-barred. However, the intellectual premise upon which Coleridge J made his pronouncement remains completely valid. Of course, this young woman could commence divorce proceedings, but within her community, that would never be sufficient and she would be doomed, if that be the right word, to a place in her own community where she was regarded as in some way unacceptable because of her divorce.

[17] I do not think that that outcome would be fair in circumstances where she never consented to enter into marriage in the first place. It is clear from the case of *Hudson v Leigh* [2009] EWHC 1306 (Fam), [2009] 2 FLR 1129, that Bodey J thought that there was a distinction to be made between holding that a marriage was void at its start and declaring that a marriage never existed. His Lordship made that distinction clear in the body of his judgment. Although it is an extremely fine distinction and may not be thought to be wholly logical, it is eminently fair to provide such a declaration. The flexibility of declarations in this type of case has been found to be acceptable to the Court of Appeal. Thorpe LJ, who heads up the international side of the Family Division has made it clear that the law is to be used as a flexible tool in these situations. I take full note of the fact that his Lordship has accepted the position that the court should deal with cases in a sensible and practical manner.

[18] Counsel have informed me that this is the first case in which this type of declaration is being sought in the context of a forced marriage. As a result of all the matters which I have outlined, I am clear that the declaration is justified. More importantly, it is not outwith s 58(5) because there is a distinction between declaring that there never was a marriage which is capable of recognition in the UK, and there being a declaration (which is not permitted) that a given marriage was void at its inception. In those circumstances, I make the declaration which is sought. In this case there never was a marriage which is capable of recognition in this jurisdiction, and I so find. That is my judgment.

Order accordingly.

Solicitors: *Dawson Cornwell* for the plaintiff

PHILIPPA JOHNSON
Law Reporter