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B v I (Forced Marriage)

[2010] 1 FLR 1721 : [2010] Fam Law 348

23/11/2009

Barristers
Michael Gration KC

Court
Family Division

Practice Areas
Private Children Law

Summary
A declaration made pursuant to the Family Law Act 1986 s.55 that a forced marriage had never been a marriage capable of recognition in England and Wales was not outwith s.58(5) because there was a distinction between that declaration and a declaration that a marriage was void at its inception.

Facts
The applicant (B) applied for a declaration that her purported marriage to the defendant (X) was not a marriage capable of recognition in England and Wales.

B, who came from a Bangladeshi family living in the United Kingdom, had gone on holiday to Bangladesh with her family when she was aged 16, four years before the instant hearing. She spoke some Bengali but her first language was English. While in Bangladesh, B was confined to a bedroom where a ceremony took place. After the ceremony, X entered the room and signed a document. B maintained that she did not understand that ceremony to be one of marriage, but thought that it was a ceremony of betrothal only. She said that her Bengali was not good enough to understand the words spoken and the document that she was asked to sign. The following day X had sexual intercourse with B without her consent. B's mother later told her that she was married. B remained in the family home for another two years but then managed to leave. She assumed a secret identity to protect her from reprisals from her family. Because over three years had passed since the ceremony, B could no longer apply for a decree of nullity. She accordingly sought a declaration under the court's inherent jurisdiction.

Held
If B had been able to apply for a decree of nullity within the requisite three-year period, it would have been granted unhesitatingly because there had been no valid consent to marriage. The court could not make a declaration under the Family Law Act 1986 s.55 if it offended against the terms of s.58, in order to prevent use of the 1986 Act to circumvent the strict requirements of the Matrimonial Causes Act 1973. However, B was not seeking a declaration that the marriage had been void at its inception, but rather that there had never been a marriage capable of recognition in England and Wales. The inherent

jurisdiction was a flexible tool enabling the court to assist parties where statute was unable to do so. It was a matter of judicial knowledge that a number of women from the Bangladeshi community had been subjected to forced marriage, and B's case was an example of that. Having regard to the cultural stigma that attached to women in B's situation where a decree of divorce were pronounced, it was desirable that the court should, where appropriate, grant a decree of nullity if at all possible, P v R (Forced Marriage: Annulment: Procedure) [2003] 1 F.L.R. 661 considered. Although nullity was not an option in the instant case, the premise on which the judgment in P v R was based remained valid. Although there was a fine distinction between holding that a marriage was void at its start and declaring that a marriage never existed, it was eminently fair to provide such a declaration in the instant case, Hudson v Leigh [2009] EWHC 1306 (Fam), [2009] 2 F.L.R. 1129 applied.

Permission
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