

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HON. DARRELL L. GAVRIN MM PART 52
Acting Justice

MERLE RAMYARD

Plaintiff,

- against -

AHZAD ALI

Defendant.

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NUMBER ..21297/2002..

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The plaintiff commenced this action seeking a divorce and other ancillary relief including equitable distribution. The defendant served a verified answer and counter-claim seeking a declaration that the parties were never legally married.

A hearing was commenced before this Court on October 24, 2002 and continued on November 26, 2002 to explore and determine the validity of the parties alleged marriage.

FACTS

_____ Only the plaintiff, Merle Ramyard, testified at the hearing. Plaintiff claims the parties met in Brooklyn, New York in 1979 or 1980. She testified that the parties took up residence together in 1980 in an apartment on Jefferson Avenue in Brooklyn, New York. Plaintiff claimed that the parties acquired two pieces of real property located at 122-28 Lucas Street and 206 Cornilia Street both in Brooklyn, New York.

Plaintiff claimed the parties were married on May 28, 1988. At the time the parties were residing in an apartment on Lucas Street in Brooklyn and the plaintiff was approximately eight months pregnant. Plaintiff testified that the parties participated in a Muslim wedding ceremony that was presided over by a Muslim priest whom she identified as Mr. Kalif. The plaintiff averred that immediately prior to the ceremony she converted to the Muslim religion and took the name "Farina" Plaintiff stated Mr. Kalif performed the conversion. Present at the ceremony were defendant, plaintiff, defendant's aunt, Khatoon Haq, Mr. Kalif and his friend. Plaintiff was unable to recall the name of Mr. Kalif's friend.

The marriage ceremony, which the plaintiff stated is termed a "Nika," began at about 1:00 p.m. and lasted approximately 30 minutes.

The plaintiff stated Mr. Kalif's friend "stood on her behalf" at the ceremony. Mr. Kalif conducted the ceremony in Arabic and translated the words into English for the plaintiff. During the ceremony, the plaintiff claims the parties' exchanged wedding vows wherein each promised to take the other as husband and wife. Plaintiff testified the defendant told his aunt the parties would be participating in a wedding ceremony before it occurred. She also purported to overhear the defendant admit to his parents that the parties performed a "Nika."

On cross-examination plaintiff stated that she saw no documentation confirming Mr. Kalif's identity as a Muslim priest, but plaintiff claimed defendant's aunt stated to her that Mr. Kalif was a Muslim priest. She also acknowledged that no pictures were taken that day, a post-ceremony reception was not held, and that the parties never attempted to obtain a marriage licence.

CONCLUSIONS OF LAW

The plaintiff relies on a decision of this Court, *Persad v. Balram*, 187 Misc. 2d 711 [Sup. Ct. Queens Cty. 2001], for relevant authority. In *Persad*, this Court adjudged the parties' religious marriage, conducted in accordance with the Hindu faith, to be lawful despite the absence of a marriage licence.

The defendant did not challenge this Court's legal conclusion in *Persad v. Balram* that a religious marriage ceremony, performed without a marriage licence, can be determined to be valid and binding under New York law. Defendant contended, *inter alia*, that since the plaintiff failed satisfy the requirements for a valid marriage under the Domestic Relations Law, the present case was distinguishable from *Persad v. Balram*. This Court agrees.

Plaintiff failed to establish, in accordance with section 11 of the Domestic Relations Law that Mr. Kalif was a "clergyman or minister" on May 28, 1998. Section 2 of the Religious Corporations Law defines the terms clergyman and minister as:

includ[ing] a duly authorized pastor, rector priest, rabbi, and a person having authority from, or in accordance with, the rules regulations of the governing ecclesiastical body of the denomination or order, if any, to which the church belongs, or otherwise from the church or synagogue to preside over and direct the spiritual affairs of the church or synagogue.

In *Persad v. Balram*, *supra*, the Hindu priest who performed the parties' marriage ceremony testified at the hearing and explained that he was a Hindu priest and qualified to perform a marriage ceremony in accordance with the dictates of his faith. Also introduced at that hearing were two original certificates from his religious order supporting his testimony.

In the case at bar, the testimony as to Mr. Kalif's qualifications

as a Muslim priest consisted solely of plaintiff's assertion that Mr. Kalif and the defendant's aunt claimed he was a Muslim priest. There was no direct testimony introduced that Mr. Kalif had "authority from" or was acting "in accordance with, the rules regulations of the governing ecclesiastical body of [his] denomination or order" Indeed, there was no testimony whatsoever adduced concerning Mr. Kalif's background.

The Court finds the testimony did not sufficiently establish the parties engaged in a solemn ceremony. (DRL §12) The plaintiff's testimony concerning the ceremony itself was sparse. In conclusory terms, she simply asserted that the parties engaged in a Muslim ceremony where they allegedly expressed their desire to be husband and wife. In contrast, the testimony concerning the Hindu ceremony in *Persad* was extremely detailed and "conclusively" satisfied this Court that "the parties engaged in an austere ritual pursuant to the Hindu faith." (*Persad v. Balram*, supra at 715)

Further, the Court was not persuaded from the evidence introduced at the hearing the parties possessed a mutual intent to be wed. In *Persad* there was extensive indicia to indicate that the parties express purpose was to be husband and wife. The parties in *Persad* engaged in an extensive ceremony, held a significant reception for guests afterwards and documented the event with photographs. The parties made three attempts to obtain a marriage licence, once before and twice after the religious ceremony. In addition, there was testimony in *Persad* that the parties endeavored, but failed, to enter into a pre-nuptial agreement with the assistance of an attorney. Faced with this overwhelming proof, this Court concluded the parties' unmistakable intent was to be married.

In this case, a similar determination can not be reached. This Court previously concluded that the plaintiff's testimony concerning the ceremony was conclusory and did it not establish the existence of a solemn ceremony. The only other evidence that could conceivably, in this Court's opinion, substantiate the existence of a mutual intent to be wed was plaintiff's assertions concerning defendant's statements about the ceremony to his aunt and parents. However, these statements by the plaintiff must be tempered by the fact that they are clearly self-serving.

Accordingly, the Court adjudges the parties not to be married and the Court that a declaration be entered to that effect. Therefore, the plaintiff's cause of action for divorce is dismissed with prejudice.

A copy of this order has been mailed to the parties and/or their respective counsel.

Dated: December ,2002

DARRELL L. GAVRIN, A.J.S.C.