



Randhawa v Randhawa: set aside of Decree Absolute on the finding of forged divorce document

The case of *Randhawa v Randhawa* (Divorce: Decree Absolute, Set Aside, Forgery) [2022] EWFC B7 which came before HHJ Moradifar is most definitely an interesting case, and whilst the facts of this case might not represent many family situations, with increasing numbers of international couples, the issue of whether a divorce is valid is far more common than many think.

When a divorce will be valid

A divorce that was obtained before 31 December 2020 within the European Union whilst the UK was a member of the EU, in accordance with the laws of another member state of the EU, will almost always be automatically recognised in England.

If the divorce was obtained outside of the EU, or was obtained after the UK left the EU, the question of whether it will be recognised in England is more complicated.

If the divorce was obtained in a **country which is a signatory to the 1970 Hague Divorce Recognition Convention**, it will be recognised.

If the divorce was obtained after the UK left the EU in a country that is not a signatory to the 1970 Hague Divorce Recognition Convention, recognition will depend on whether the divorce was obtained by way of *'proceedings'* or *'other than by means of proceedings.'* This includes *'non-court proceedings'* but in such circumstances, there needs to be a degree of state or official involvement.



For a foreign divorce obtained by way of '*proceedings*' to be recognised, the following criteria must be satisfied:

- The divorce must be valid in the country in which it was obtained
- Both spouses must have had notice of the proceedings
- Neither spouse can be habitually resident in the UK for a year before the divorce and each party must be domiciled in the country where the divorce was obtained, or in a country which recognises the form of divorce; and
- The divorce should have started and finished in the same country

Mr and Mrs Randhawa

Mr and Mrs Randhawa were married on 15 August 1978 and their relationship was of some 30 years until, on Mr. Randhawa's case, they separated in 2009 when he left the family home. Mr. Randhawa petitioned for divorce on 22 January 2010. However, Mrs. Randhawa only became aware, when she filed for judicial separation, in December 2019 that they were in fact divorced in 2010 and that her husband had gone onto remarry and have a child with his new wife.

Mrs. Randhawa alleged that to her mind, although she and her husband were separated, they remained married, and they continued to attend family functions as husband and wife. Her case was that the divorce had proceeded without any notice to her; the Acknowledgement of Service form purportedly signed by her was not signed by her; and the signature on the Acknowledgement of Service form was a forgery. She therefore asked the Court to set aside the Decree Absolute.

Mr. Randhawa denied the allegations, asserting that Mrs. Randhawa was fully aware of and engaged in the divorce proceedings and that for cultural reasons and to save any embarrassment for their children, they had agreed to keep the divorce secret.

The issues before HHJ Moradifar were:

- What was Mrs. Randhawa's knowledge of the divorce petition dated 22 January 2010?



- Did Mrs. Randhawa sign the Acknowledgement of Service that was signed on 11 February 2010? If not,
- Was the signature forged by Mr. Randhawa or on his behalf?
- Depending on the answers to the above questions, should the Decree Absolute stand or be dismissed?

During an eight-day contested fact finding hearing, evidence was presented by nine witnesses (including a forensic document examiner) and property transactions were reviewed.

The judge ruled in favour of Mrs. Randhawa and set aside the divorce on the basis that Mrs. Randhawa's signature on the Acknowledgment of Service form had been forged by or on behalf of her husband. The judge ruled that Mr. Randhawa "*had a vested interest to be divorced from Mrs. Randhawa*" and he was "*the only person with opportunity and motive to ensure that the divorce proceeded without difficulties*". The Decree of divorce granted upon the petition for divorce filed by Mr. Randhawa was therefore set aside. This case shows that the Family Courts take a very robust approach to forgery of divorce documents, which might result in a divorce being deemed invalid.

The team at the International Family Law Group LLP comprises international family law specialists that advise regularly on the validity of marriages and divorces. We would be happy to help with any enquiries relating to these issues.

Annie Boxer

annie.boxer@iflg.uk.com

The International Family Law Group LLP

www.iflg.uk.com

© March 2022