

1962
Oct. 6
Dec. 15
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NADIA
UMBERTO
MANTOVANI
v.
UMBERTO
V. MANTOVANI

[VASSILIADIS, J.]

NADIA UMBERTO MANTOVANI THEN NADIA
STAVROU PANTZARI

Petitioner,

v.

UMBERTO V. MANTOVANI

Respondent.

(*Matrimonial Petition No. 8j62*).

Matrimonial Causes—Dissolution of marriage—Civil marriage—Parties thereto, a Roman Catholic and a member of the Greek-Orthodox Church of Cyprus—Civil marriage valid by being contracted under the Marriage Law, Cap. 279—Not falling within the exceptions in section 34 and 36—Jurisdiction—The High Court has jurisdiction to entertain the petition for dissolution of such marriage—Notwithstanding that a religious ceremony in the Roman Catholic Church followed the civil marriage—Articles 111 and 160 of the Constitution—The Courts of Justice Law, 1960, (Law of the Republic No. 14 of 1960), section 19(b)—The Courts of Justice Law, Cap.8, section 20(b)—English Law applicable—The Courts of Justice Law, 1960, (supra), sections 19(b) and 29(2)(b)—The Courts of Justice Law, Cap.8, sections 20(b) and 33(2).

Constitutional Law—Articles 111 and 160 of the Constitution.

The parties were married on 22nd September 1954 at the Commissioner's Office Nicosia under the provisions of the Marriage Law, Cap. 279. A religious ceremony in the Roman Catholic Church followed the aforesaid civil marriage. The parties are both Cypriots, domiciled in Cyprus. The husband is a Roman Catholic and the wife a member of the Greek-Orthodox Church of Cyprus. The wife petitioned to the High Court in its matrimonial jurisdiction for dissolution of the civil marriage on the ground of adultery on the part of the respondent. The Court, assuming jurisdiction and being satisfied that there was no collusion, granted a decree nisi to the petitioner.

Held : (1) This Court has jurisdiction to hear and determine the present cause.

(2) Not falling within the exceptions in sections 34 and 36 of the Marriage Law, Cap. 279 in force at the time of their marriage, the parties were legally entitled to be married at the

Commissioner's Office, under the provisions of that Law. And having done so, they left the Commissioner's Office, a legally married couple ; each acquiring the status of a married person.

(3) As far as the law is concerned, the subsequent religious ceremony in the Roman Catholic Church, did not add anything to that status ; nor did it, in any way, affect it at all. Same as the non-performance of a religious ceremony in the Greek-Orthodox Church, of which the wife is a member, did not in any way affect the legal status acquired by each of the parties, after their civil marriage. And cannot in any way affect the status of their child.

(4) Prior to the establishment of the Republic, in August, 1960, under its present constitution, the Supreme Court of the Colony of Cyprus would undoubtedly have jurisdiction to entertain a matrimonial cause arising in this marriage, under section 20(b) of the Courts of Justice Law, Cap.8, in force at the time.

(5) This being so, the position is now governed by section 19(b) of the present Courts of Justice Law, (Law of the Republic No. 14 of 1960) and the petitioner was entitled to have recourse to the Matrimonial Jurisdiction of this Court, in exercise of which, I have already granted to her by the decree made on October 6th, the remedy sought by her petition, with costs. (*Darmanin v. Darmanin*, *Herta Iasonos v. Iasonos*, *Phidias Christodoulou v. Katerina Christodoulou*, followed).

Divorce granted.

Cases referred to :

Cosgrove v. Cosgrove, 1961 C.L.R. 221 ;

Tyllirou and Tylliros 3 R.S.C.C. 21 ;

Darmanin v. Darmanin, reported in this volume at p. 264, ante :

Herta Iasonos v. Iasonos, Matrimonial Petition No. 14/61 decided on 2.3.62, unreported ;

Phidias Christodoulou v. Katerina Christodoulou, reported in this volume at p. 68, ante

Matrimonial Petition.

Petition by wife for the dissolution of her marriage on the ground of adultery.

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Char. Ioannides for the petitioner.

Lefkos N. Clerides for the respondent.

VASSILIADIS, J. : On the 6th of October, last, I gave judgment in this cause granting the petitioner a decree nisi for the dissolution of her marriage with the respondent with costs. The reasons for that judgment were to be delivered later, which I now proceed to do.

The parties to this petition were married at the Commissioner's Office, Nicosia, on the 22nd September, 1954, by a Marriage Officer, under the provisions of the Marriage Law, Cap.279. They are both Cypriots, domiciled in Cyprus and residing within the jurisdiction of this Court. The husband is a Roman Catholic ; the wife a Greek Orthodox.

A few hours after their civil marriage in Nicosia, the parties, at the instance of the husband, went through a religious ceremony of marriage at the Roman Catholic Church of the Terra Santa, at Larnaca.

The couple made their matrimonial home at Famagusta, where the respondent-husband works as a branch-office manager of a shipping agency belonging to his family. About a year later, on the 6th September, 1955, the parties had their first child, a son, now living with his mother.

According to the evidence of the petitioner-wife, the couple were never really happy. She complains that her husband did not take the proper interest in his family while, on the other hand, he was often interested in cabaret artists and other women. At times, after home quarrels, he would send the petitioner to her parents for "punishment" she said; and on one occasion, about two years ago, he went to live in a hotel for some two months in the same town where the parties had their matrimonial home.

In the summer of 1961, while the couple were living together, the wife accidentally received a hotel bill indicating that her husband had spent a night at the hotel together with another person. A discussion between them on the subject, resulted in an admission on the part of the husband that he had been, on that occasion, in the company of another woman ; but as at the time, the parties were about to leave for a pleasure trip abroad, the wife condoned the husband's

misconduct, and there was one more reconciliation between them. Apparently, it did not last long.

In January last, after an incident in a cabaret, the husband left again the matrimonial home, and went to live with his relations at a neighbouring town, while he still worked at Famagusta.

As previous interventions on the part of relatives on both sides to help the parties to overcome their difficulties, had proved futile, no attempt was made this time to bring about a reconciliation.

To make things worse, the wife came to know that during this period, her husband had shared a bed with another woman for a night in a Limassol hotel. She then consulted a lawyer, and took the present proceedings for dissolution of the marriage on the ground of adultery on the part of the husband.

The respondent put in an appearance and filed an answer to the petition through an advocate ; but he did not contest the proceeding, nor did he deny the matrimonial offence alleged against him.

At the hearing of the petition the parties were represented by counsel, and were both personally in attendance. The petitioner gave evidence from the box and her advocate called, in addition, one witness to prove his client's case. The evidence was hardly contested and it is clearly sufficient to prove the adultery complained of. I accept the evidence adduced, and I find accordingly. I am, moreover, satisfied of the genuineness of the proceeding, and the absence of collusion between these parties.

The main question for decision, in these circumstances, is whether this Court has jurisdiction to entertain the petition and to grant the remedy sought.

The learned counsel on both sides, submitted that these two questions must be both answered in the affirmative. Mr Joannides on behalf of the petitioner submitted that the parties were within their legal rights in contracting a civil marriage under the provisions of the Marriage Law (Cap.279); and referred me to section 36 in support of his contention.

As neither the Roman Catholic nor the Greek-Orthodox Church recognise such civil marriage, counsel further contended, and as the parties do not belong to the same religious

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group, article 111 of the Constitution, which is based on the division of the community in religious groups under the Constitution, is not applicable in their case. And this is the proper and only Court to deal with the matter, in its Matrimonial jurisdiction, applying the English Law as provided in section 19(b) of the Courts of Justice Law, and section 20 of Law 40 of 1953 (Cap.8).

Mr. Lefkos Clerides for the respondent, on the other hand, submitted in his final address that article 111 applies only to cases where both parties belong to the same religious group, as defined in paragraph 3 of article 2 of the Constitution. He referred me to *Cosgrove v. Cosgrove* (Matr. Pet. 10/60 in this Court) ; and to *Tyllirou and Tylliros* (Case 128/61 - in the Constitutional Court - 3, R.S.C.C., 21). He agreed with counsel on the other side, that this is the proper Court to entertain the proceeding under section 19(b) of the Courts of Justice Law, applying the English law in the matter. All the more so, counsel added, as no Ecclesiastical Tribunal in this Country, will recognise the civil marriage subsisting between the parties ; or entertain a proceeding therein.

I accept the submission made by learned counsel on both sides, that this Court has jurisdiction to hear and determine the present cause.

Not falling within the exceptions in sections 34 and 36 of the Marriage Law (Cap. 279) in force at the time of their marriage, the parties were legally entitled to be married at the Commissioner's Office, under the provisions of that Law. And having done so, they left the Commissioner's Office, a legally married couple ; each acquiring the status of a married person.

As far as the law was concerned, the subsequent religious ceremony in the Roman Catholic Church, did not add anything to that status ; nor did it, in any way, affect it at all. Same as the non-performance of a religious ceremony in the Greek-Orthodox Church, of which the wife is a member, did not in any way affect the legal status acquired by each of the parties, after their civil marriage. And cannot in any way affect the status of their child.

Prior to the establishment of the Republic, in August, 1960, under its present constitution, the Supreme Court of the Colony of Cyprus would undoubtedly have jurisdiction to entertain a matrimonial cause, arising in this marriage, under

section 20(b) of the Courts of Justice Law (Cap.8) in force at the time.

This being so, the position is now governed by section 19(b) of the present Courts of Justice Law (14 of 1960). And as I said the other day in *Darmanin v. Darmanin* (Mat. Pet. 13/61):

“Falling, as it does, outside the saving lines of section 19(b)..... the petition remains within the exclusive jurisdiction of this Court, in the exercise of the powers which before Independence Day, vested in, and were exercisable by the Supreme Court of Cyprus, under the provisions of sections 20(b) and 33(2) of Chapter 8”.

Following the decisions in *Herta Iasonos v. Iasonos* (Matr. Pet. 14/60) ; *Phidias Christodoulou v. Katerina Christodoulou* (Matr. Pet. 15/61) ; and other cases to which I need not specifically refer, I hold that the petitioner was entitled to have recourse to the Matrimonial Jurisdiction of this Court, in exercise of which, I have already granted to her by the decree made on October 6th, the remedy sought by her petition, with costs.

Divorce granted.

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