

1963
Oct. 21,
Dec. 20

[JOSEPHIDES, J.]

ANDREAS PAPA
ALEXANDROU

ANDREAS PAPA ALEXANDROU,

Petitioner,

v.
BARBARA
ANDREOU
then
BARBARA
INGERL

v.

BARBARA ANDREOU, then BARBARA INGERL,

Respondent.

(*Matrimonial Petition No. 8/63*).

Matrimonial Causes—Civil marriage solemnized in Cyprus under the Marriage Law, Cap. 279—Voidable on the ground of “wilful refusal” by a spouse to consummate the marriage—“Wilful refusal”—Meaning—The “wilful refusal” must have persisted up to the day of the presentation of the petition—Burden of proof lies on the petitioner.

Matrimonial Causes—Marriage of convenience—It may be avoided on the ground of “wilful refusal” to consummate it.

The petitioner is a Greek Orthodox aged 24, and the respondent an Austrian, Roman Catholic, aged 31. They were married in the District Office, Nicosia, on the 3rd May, 1963, under the provisions of the Marriage Law, Cap. 279. No religious ceremony took place. After the marriage, they went to live in a room in a boarding house at Pallouriotissa for a week and they slept together. On May 10th, the respondent left the petitioner and resided in the Florida hotel, Famagusta.

On the husband's petition praying for a declaration that the marriage was null and void on the ground of wilful refusal to consummate the marriage by the respondent, JOSEPHIDES, J.:—

Held, (1) from the evidence of the parties it is quite obvious that this was a marriage of convenience to enable the wife who is an Austrian citizen, to obtain residence in Cyprus by her marriage to a citizen of the Republic. The fact remains that they were married, as already stated, on the 3rd May, 1963.

(2) According to Rayden, on Divorce 8th ed., p. 116: “A marriage is voidable at the suit of a spouse if it has not been consummated owing to the wilful refusal of the other spouse to consummate it. The consummation must be proposed to the refusing party with such tact, persuasion and encouragement as an ordinary spouse would use in such circumstances . . . Wilful refusal must have persisted up to the day

of presentation of the petition". The burden of proof is on the petitioner. *Harthan v. Harthan* (1948) 2 All E.R. 639, at p. 642. Consequently, in this case the burden lies on the husband to prove affirmatively that the marriage has not been consummated owing to the wilful refusal of the wife to consummate it.

(3) Having watched both of them in the witness box I am not prepared to accept the husband's version that in the circumstances of this case no sexual intercourse took place. He has failed to satisfy me that the wife has wilfully refused to consummate the marriage.

Petition fails and is dismissed with costs.

Cases referred to :

Harthan v. Harthan (1948) 2 All E.R. 639, at p. 642 followed.

Matrimonial petition.

Petition by husband for declaring marriage null and void on the ground of non-consummation due to the wilful refusal of the wife.

L. N. Clerides for the petitioner.

Cl. A. Antoniadis, for the respondent.

The facts sufficiently appear in the judgment of JOSEPHIDES, J. :—

JOSEPHIDES, J. : This is a husband's petition for nullity of marriage on the ground of non-consummation due to the wilful refusal of the wife.

The parties were married at the District Office, Nicosia, on the 3rd May, 1963, under the provisions of the Marriage Law, Cap. 279. There was no religious ceremony in any Church. The petitioner, aged 24, is a Greek-Cypriot and a member of the Greek-Orthodox Church. The respondent, aged 31, is Austrian and a member of the Roman Catholic Church and she came to Cyprus in March, 1963. She was previously married and divorced in Austria and she has a son aged 11 by her first husband.

At the time of the marriage the petitioner was an ordinary labourer in the Public Works Department earning about £5 or £5.500 mils wages a week and the respondent described herself as a cosmetician. The mother tongue of the petitioner is Greek and that of the respondent is German. Neither knows the other's language and they both know

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very little English. Only the parties gave evidence in this case and no other evidence in support of either's case was called.

The circumstances under which they both stated that they met for the first time, that they fell in love and decided to marry, are highly improbable and sound more like a film play rather than what actually took place in Nicosia at the end of April or the beginning of May, 1963. Nevertheless, they are both agreed that one day as the respondent was walking in Ledra Street, the petitioner told her that she was beautiful and he was in love with her and that they went together to a cafe nearby where they met again by arrangement on the following day and from there they went to the District Office and filled in the forms for a civil marriage.

From the evidence of the parties it is quite obvious to me that this was a marriage of convenience to enable the wife who is an Austrian citizen, to obtain residence in Cyprus by her marriage to a citizen of the Republic. The fact remains that they were married, as already stated, on the 3rd May, 1963.

The petitioner's version is that after they were married at the District Office they went to live for a week in a room in a boarding house in Makarios II Street, at Pallouriotissa, but that, although they lived together and they slept together in the same bed for seven nights the wife refused sexual intercourse although he repeatedly requested her and he tried to persuade her to agree. She eventually left him on the 10th May, to go and reside in the Florida hotel in Famagusta. He further stated that he went and saw her twice at Famagusta and that he asked her to return to him but she refused.

It seems that on the first occasion that he went to Famagusta to see her they went together to the Aliens Office in the Famagusta police where he stated that his wife was staying in the Florida Hotel with his consent until he found a better place for her in Nicosia. Finally, he denied that he tried to get money from his wife and he repeated that she refused him sexual intercourse.

The respondent's version is that after their marriage they went to live together as husband and wife at the address stated by the husband and that she did not refuse sexual intercourse to the petitioner. On the contrary, she stated that they had intercourse on the first and second night

after the marriage. She further stated that the petitioner failed to provide for their living expenses and that she gave him three or four five-pound notes on the fourth day of their marriage. At the end of the week she informed her husband that she was not prepared to help him financially indefinitely and they agreed that she should go and live in the Florida Hotel, Famagusta, until the husband was able to provide a home for her, as they could not go on living in a room in a boarding house. While in Famagusta she was visited twice by her husband and on the first occasion they went together to the Aliens Office in the Famagusta Police, where, according to her, the petitioner stated to the Police that he had sexual intercourse with her every night after their marriage. She frankly admitted in her evidence that two years ago she wanted to open a beauty-saloon in Nicosia but that the Ministry of Labour refused her permit as she was not a citizen of the Republic, and she finally stated that the reason that she got married to a Cypriot was that she wanted permanent residence in Cyprus to be able to exercise her occupation as a cosmetician and, incidentally, to have a husband.

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I have given above a broad summary of the evidence of the parties which, so far as the question of consummation is concerned, is in direct conflict. According to Rayden, on *Divorce* 8th edition, page 116: "A marriage is voidable at the suit of a spouse if it has not been consummated owing to the wilful refusal of the other spouse to consummate it. The consummation must be proposed to the refusing party with such tact, persuasion and encouragement as an ordinary spouse would use in such circumstances. . . . Wilful refusal must have persisted up to the day of presentation of the petition." The burden of proof is on the petitioner. *Harthan v. Harthan* (1948) 2 All E.R. 639 at page 642. Consequently, in this case the burden lies on the husband to prove affirmatively that the marriage has not been consummated owing to the wilful refusal of the wife to consummate it.

Although, as I have indicated earlier in this judgment, I am of the view that both parties have concealed the truth from the Court as to how their marriage was arranged, and that it appears to me that it is a marriage of convenience, nevertheless, I have now to consider and weigh the evidence of the parties the one against the other, having in mind that it is on the petitioner to satisfy me of the wife's wilful refusal to consummate.

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Now what are the facts as regards this question?

They are both agreed that after their marriage they occupied a room for seven days which had only one bed and in which they slept together on seven consecutive nights. The husband is a healthy and robust man of 24 and the wife a young woman of 31 who had been previously married. In the circumstances I am asked by the petitioner to believe that the wife refused him sexual intercourse on seven consecutive nights and that he accepted that without making any scene and that actually no intercourse took place. As against that the wife stated that they had intercourse on two occasions. Having watched both of them in the witness box I am not prepared to accept the husband's version that in the circumstances of this case no sexual intercourse took place. He has failed to satisfy me that the wife has wilfully refused to consummate the marriage and his petition must accordingly fail, and it is dismissed with costs.

Petition dismissed with costs.