

1970
April 3

[JOSEPHIDES, J.]

KYVELI
PANAYIOTOU
DOKIDHOU
THEN
KYVELI
GEORGHIOU
KAZAKOU
v.
PANAYIOTIS
DOKIDHES

KYVELI PANAYIOTOU DOKIDHOU then
KYVELI GEORGHIOU KAZAKOU,
Petitioner,
v.
PANAYIOTIS DOKIDHES,
Respondent.

(*Matrimonial Petition No. 13/67*).

Matrimonial Causes—Jurisdiction—Both territorial and razione materiae—Divorce—Wife's petition for divorce on the ground of desertion—Domicil of husband in Greece—Wife ordinarily resident in Cyprus for the last ten years—On this score therefore, the Court has jurisdiction to entertain the suit—The Courts of Justice Law 1960 (Law of the Republic No. 14 of 1960), sections 19 (b) and 29 (2) (b)—Section 18 (1) (b) of the (English) Matrimonial Causes Act 1950—See also infra, especially with regard to the issue of the jurisdiction of the Court razione materiae.

Matrimonial Causes—Jurisdiction of the Court razione materiae—Wife, a citizen of the Republic of Cyprus and a member of the Greek Orthodox Church of Cyprus—Husband, a Greek national and a member of the Greek Orthodox Church—Marriage of the parties being a civil marriage solemnized in 1957 at a Register Office in the United Kingdom in the District of Sheffield—No religious ceremony—No competence of the Ecclesiastical Tribunal of the Church of Cyprus to deal with the matter—Article 16 of the "Procedure of the Ecclesiastical Tribunals" made by the Holy Synod of the Church of Cyprus—Consequently, the only Court which has exclusive jurisdiction in the matter is this Court—Provisions of Article 111, para. 1, of the constitution apply only where both parties are citizens of the Republic of Cyprus—See HjiJovanni v. HjiJovanni (1969) 1 C.L.R. 207 at pp. 228-9.

Private International Law—Family law—Personal status—Husband and wife—Marriage—Validity—Civil marriage between a member of the Greek Orthodox Church of Cyprus and a member of the Greek Orthodox Church solemnized, as in this case, at a Register Office in the United Kingdom—Wife a citizen of the Republic of Cyprus—Husband a Greek national—Such marriage not recognised as valid under the law of the

husband's domicil (in Greece) or his personal law (Greek law)—Such provision offending intolerably against the concepts of justice prevailing in our Courts in Cyprus should not be accorded recognition here (Papadopoulos v. Papadopoulos) [1930] P. 55; HjiJovanni v. HjiJovanni (supra) at p. 231)—Consequently, the Civil marriage of the parties held to be valid in Cyprus.

Divorce—Desertion—Desertion by husband without reasonable cause some time in 1962 established—Decree nisi granted.

Desertion by husband—Supra.

Divorce—Custody of the child—Welfare report favourable towards the mother-wife, who is eager and financially able to bring up the child—Custody granted to the petitioner mother.

Custody of the child—See supra.

Jurisdiction of the Supreme Court in Matrimonial causes—Article 111.1 of the Constitution etc. etc.—See supra.

Marriage—Civil marriage solemnized in the United Kingdom—Not valid under the law of the husband's domicil (in Greece) or under his personal law (Greek law)—Should be held nonetheless valid in Cyprus—See supra.

Article 111.1 of the Constitution—Applies only where both parties to the marriage are citizens of the Republic of Cyprus (HjiJovanni v. HjiJovanni supra followed).

This is a wife's petition for divorce on the ground of desertion. The parties were married at the Register Office in the District of Sheffield, in the County Borough of Sheffield in the United Kingdom, on June 15, 1957. There was no religious ceremony.

The wife is a citizen of the Republic of Cyprus and a member of the Greek Orthodox Church of Cyprus. She was born of Greek Cypriot parents and has lived all her life in Cyprus, except for a period of 10 years, from 1949 to 1959, when she lived in England. Since November 1959 she has been ordinarily resident in Cyprus.

The husband is a Greek citizen and a member of the Greek Orthodox Church. He is not domiciled in Cyprus.

Article 111.1 of the Constitution reads as follows :

“ Subject to the provisions of this Constitution any matter relating to betrothal, marriage, divorce, nullity

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of marriage, judicial separation or restitution of conjugal rights or to family relations other than legitimation by order of the court or adoption of members of the Greek Orthodox Church or of a religious group to which the provisions of paragraph 3 of Article 2 shall apply shall, on and after the date of the coming into operation of this Constitution, be governed by the law of the Greek-Orthodox Church or of the Church of such religious group, as the case may be, and shall be cognizable by a tribunal of such Church and no Communal Chamber shall act inconsistently with the provisions of such Law”.

It appears that the marriage is not recognized as valid under Greek law which is the law of the husband’s domicil or his personal law in Greece.

Granting the petition, the Court :—

Held, I : As to the question of territorial jurisdiction : On the question of domicil this Court would not have jurisdiction to entertain this petition, but as the wife is ordinarily resident in Cyprus for a period exceeding three years immediately preceding the institution of these proceedings, this Court has jurisdiction to entertain this petition under the provisions of sections 19 (b) and 29 (2) (b) of the Courts of Justice Law, 1960, and section 18 (1) (b) of the (English) Matrimonial Causes Act, 1950.

Held, II : As to the question of jurisdiction racione materiae i.e. as to whether the matter is cognizable by the Court :

(1) The marriage is a civil marriage. There was no religious ceremony and it would appear that the Ecclesiastical Tribunal of the Greek Orthodox Church of Cyprus has no competence to hear and determine a matrimonial cause between the parties. (Cf. Article 16 of the “ Procedure of the Ecclesiastical Tribunal ” made by the Holy Synod of the Church of Cyprus).

(2) (a) Consequently I am of the view that the only Court which has exclusive jurisdiction in the matter is this Court : See, *inter alia*, the case *Kaprielian v. Kaprielian* (1963) 2 C.L.R. 143, at pages 151 and 152.

(b) Another reason for which this Court has jurisdiction in such matters is that Article 111.1 of the Constitution applies only where both parties are citizens of the Republic of Cyprus and members of the Greek Orthodox Church. (See *HjiJovanni v. HjiJovanni* (1969) 1 C.L.R. 207 at pp. 228-9).

Held, III : As to the position in view of the invalidity of the marriage of the parties under Greek law :

(1) Assuming that a marriage not celebrated in accordance with the rites and ceremonies of the Greek Orthodox Church would not be recognised as valid under the law of the husband's domicile in Greece, or his personal law, i.e. under Greek law, still this Court would have jurisdiction to entertain these proceedings. Because, as it has recently been held by this Court in the *HjiJovanni* case (*supra*), this provision in the personal law of the husband would offend intolerably against the concept of justice prevailing in our Courts and should not be accorded recognition (see page 229 *et seq.*). Several cases have been quoted in support of that proposition, and the case nearest to the point is that of *Papadopoulos v. Papadopoulos* [1930] P. 55 a summary of which is given at page 231 in the *HjiJovanni* case (*supra*).

(2) For these reasons I hold that the civil marriage between the parties, solemnized in England in 1957, is a valid marriage and that this Court has jurisdiction to deal with the present case.

Held, IV : As to the merits of the case :

After reviewing the evidence :

I am satisfied on the evidence that the husband deserted the wife at the end of August 1962 without reasonable cause, and that a *decree nisi* should be granted.

Held, V : As to custody of the child :

(1) I have before me the welfare report, which is very favourable as regards the wife. She is financially able to bring up the child which is very happy with her ; she is looking after it properly. On the other hand the husband never contributed anything towards the maintenance of the child.

(2) I accordingly grant custody of the child to the petitioner wife.

Decree nisi granted; custody order as above; no costs claimed; no order as to costs.

Cases referred to :

Kaprielian v. Kaprielian (1963) 2 C.L.R. 143, at pages 151 and 152 ;

HjiJovanni v. HjiJovanni (1969) 1 C.L.R. 207 at pp. 228, 229 and 231 .

Papadopoulos v. Papadopoulos [1930] P. 55.

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Matrimonial Petition.

Petition by wife for dissolution of marriage because of the husband's desertion.

M. Christofides, for the petitioner.

The respondent was not represented.

The following judgment was delivered by :

JOSEPHIDES, J. : This is a wife's petition for divorce on the ground of desertion. The respondent was duly served but he did not defend the proceedings. He sent by post to the Registrar of this Court a written statement denying the petitioner's allegations, the jurisdiction of this Court and the validity of the marriage. But, although he was duly notified in writing by the Registrar, he failed to enter an appearance or file an answer to the petition and he was not represented at the trial.

The parties were married at the Register Office in the District of Sheffield, in the County Borough of Sheffield, in the United Kingdom, on the 15th June, 1957. At the time, the respondent husband was a divorcee, aged 32, and he is described in the marriage certificate, as a university student. The petitioner was a spinster, aged 30, and she is described as a " restaurant clerk, typist ". There was no religious ceremony. The parties lived together in Sheffield from the 15th June, 1957, until April 1959, when the husband left the United Kingdom. In November 1959 he was joined by the wife in Cyprus where they lived together (except for a break) until about the end of August, 1962, when the husband is stated to have left for Greece and deserted the wife. He has not returned since. They have a child, Anthea, which was born on the 16th July, 1961.

The wife is a citizen of the Republic of Cyprus and a member of the Greek Orthodox Church of Cyprus. She was born of Greek Cypriot parents and has lived all her life in Cyprus, except for a period of about 10 years, from 1949 to 1959, when she lived and worked in the United Kingdom. She also went there for a period of about four or five months in 1961 to give birth to the child. Since November, 1959, she has been ordinarily resident in Cyprus.

The husband is a Greek National and member of the Greek Orthodox Church. He lived and worked in Cyprus

for a period of only three years, from the summer of 1959 until about the end of August, 1962. He is not domiciled in Cyprus and he is probably domiciled in Greece.

On the question of domicile this Court would not have jurisdiction to entertain the present proceedings, but as the wife is ordinarily resident in Cyprus for a period exceeding three years this Court has jurisdiction to entertain this petition under the provisions of the Courts of Justice Law, 1960, sections 19 (b) and 29 (2) (b), and section 18 (1) (b) of the English Matrimonial Causes Act, 1950.

The next question which I have to consider is the effect of Article 111, paragraph 1, of the Constitution on the jurisdiction of this Court in the present proceedings. The marriage, as already stated, is a civil marriage. There was no religious ceremony and it would appear that the Ecclesiastical Tribunal of the Greek Orthodox Church of Cyprus has no competence to hear and determine a matrimonial cause between the parties (cf. Article 16 of the "Procedure of the Ecclesiastical Tribunals", made by the Holy Synod of the Church of Cyprus). Consequently, I am of the view that the only Court which has exclusive jurisdiction in the matter is this Court: See, *inter alia*, the case of *Kaprielian v. Kaprielian* (1963) 2 C.L.R. 143, at pp. 151 and 152. Another reason, which was given in *Hji Jovanni v. Hji Jovanni* (1969) 1 C.L.R. 207, at pages 228-9, for which this Court has jurisdiction in such matters, is that Article 111 applies only where both parties are citizens of the Republic of Cyprus.

I have also considered the question of the validity of the civil marriage of the parties, which was solemnized in 1957 in England. I did so on the assumption that a marriage not celebrated in a Greek Orthodox Church would not be recognised as valid under the law of the husband's domicile, or his personal law, in Greece. But it has recently been held by this Court in the *Hji Jovanni* case (*supra*) that this provision in the personal law of the husband would offend intolerably against the concept of justice prevailing in our Courts and should not be accorded recognition (see page 229 *et seq.*). Several cases are quoted in support of that proposition, and the case nearest to the point is that of *Papadopoulos v. Papadopoulos* [1930] P. 55, a summary of which is given at page 231 in the *Hji Jovanni* case. For these reasons I hold that the civil marriage between the parties, solemnized in England in 1957, is a valid marriage and that this Court has jurisdiction to deal with the present case.

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Coming now to the question of the desertion, I have heard the evidence of the wife and that of Mrs. Stella Vayanou who corroborates the wife's evidence in material particulars. I accept this evidence as true and I accordingly make the following findings of fact.

The parties first met in England some time in 1957 and, as already stated, they were married in June, 1957. It was an arranged match and not a happy one. This was not only a case of clash of personalities but also of personal violence by the husband against the wife. They lived together after the marriage for about two years, until April 1959, when the husband, without any warning, left England. Some two or three months later she received a letter from Cyprus asking her to join him there. As she had a snack-bar business at the time she wrote back saying that she had to wind up the business, which she did, and she eventually joined him in Cyprus some time in November 1959.

At the time he was employed as a teacher at Polemi village. They lived for about a month together until the Christmas holidays in 1959 when they quarrelled because the husband wanted the wife to buy him a car. At the time of the incident they were in Nicosia and he left her saying " I am going to Polemi and if you do not give me money to buy the car I shall abandon you ". In fact, he did go to Polemi at the end of the Christmas vacation (1959) and the parties lived apart until June, 1960, when they became reconciled and they lived together. Shortly after she became pregnant and, with the husband's consent, she went to England to give birth to the child, and she stayed there between April and September, 1961. As already stated, the child was born on the 16th July, 1961 in Sheffield.

On her return from England in September, 1961, they lived together at Engomi and Ayios Dometios until 1962 when the wife rented a house at Platres and went there with the child to spend the summer. This was with the husband's consent, to whom the wife left her car, at his request, to enable him to visit the family at Platres ; but, in fact, he never did so and he left Cyprus, never to return, at the end of August, 1962.

During the school-year September 1960 to June 1961, he was employed as a teacher at Trikomo and the school-year September 1961 to June 1962 as a teacher at a private school in Kyrenia ; but during the whole of this period he

lived together with the wife, either at Engomi or Ayios Dometios, as he was commuting to and from his place of work daily.

Reverting to the question of his departure from Cyprus, this is fully corroborated by the evidence of Stella Vayanou to whom he went and delivered the wife's car and stated that he was leaving Cyprus. After he left Cyprus he sent two letters to the wife, one in September or October 1962, and another in November or December 1962, but it is unfortunate that the wife destroyed these letters and she was unable to produce them to Court. According to the wife, he did not give an address in any of his letters ; and he wrote no other letter nor did he contribute anything towards the maintenance of the wife or the child ever since he left Cyprus.

On this evidence I am satisfied that the husband deserted the wife at the end of August 1962, without any reasonable cause, and that a *decree nisi* should be granted.

With regard to the *custody* of the child, I have before me the welfare report, which is very favourable as regards the wife. The net result is that she is financially able to bring up the child which is very happy with her, and that she is looking after it properly. Her present income is about £830 a year as a secretary. The husband has never contributed anything towards the maintenance of the child. I accordingly grant custody of the child to the wife.

In the result, *decree nisi* granted ; custody order as above.

No costs are claimed. No order as to costs.

Decree nisi granted ; custody order as above ; no costs claimed ; no order as to costs.

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