

1972
May 22

[L. LOIZOU, J.]

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JOSEPH
MICHAEL
HARAKIS

JOSEPH MICHAEL HARAKIS,

Petitioner,

and

v.
PAVLINA TAKI
PARASKEVA
LOIZOU

PAVLINA TAKI PARASKEVA LOIZOU,

Respondent.

(*Matrimonial Petition No. 4/70*).

Matrimonial causes—Decree of divorce—Recognition—Marriage at Registry office in England between Greek Cypriot members of the Greek Orthodox Church—Followed by religious ceremony of marriage in a Greek Orthodox Church in Cyprus—Decree of Divorce given by Ecclesiastical tribunal of Greek Orthodox Church of Cyprus—Not only dissolves ceremony of wedding but also the status of marriage.

Decree of divorce—Recognition—See, also, under “ Matrimonial causes ”.

Recognition of decree of divorce—See, also, under “ Matrimonial causes ”.

The parties to this petition, who are Greek Cypriots and members of the Greek Orthodox Church, went through a ceremony of marriage in the Registry Office of St. Pancras in London on the 23rd September, 1964. On the 10th November of the same year they went through a religious ceremony of marriage in the Greek Orthodox Church of Ayia Trias in Limassol in accordance with the rites and ceremonies of that Church.

The husband petitioned (a) for a declaration that the civil marriage celebrated between the parties was void *ab initio* and (b) for a declaration that, in any case, the marriage between the parties was validly dissolved by the decree of divorce given to the husband by the Ecclesiastical tribunal of Limassol. With the consent of the parties prayer (b) was heard first.

The Court after hearing the evidence of the petitioner heard the evidence of Mr. Klitides, advocate, of Nicosia, who is conversant with the Canon Law of the Greek Orthodox

Church. He expressed the view that the Ecclesiastical Court had, under the provisions of Articles 15-18 of the Ecclesiastical Tribunal's Code of Procedure, jurisdiction to dissolve the marriage which was solemnised at the Greek Orthodox Church. He further stated that the grounds for divorce, which are set out in Article 75 of the Charter, include refusal of the wife to follow the husband to the Matrimonial home, which was the ground set out in the petition for divorce before the Ecclesiastical Court and upon which the marriage was dissolved.

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Held, 1. There is authority in support of the proposition that the decree of divorce of the Ecclesiastical Tribunal of Limassol dissolves the status of marriage between the parties. The case in question is that of *Peters v. Peters* cited in [1968] C.L.Y. 479 (adopted by Josephides J. in *Michael v. Michael* (1971) 1 C.L.R. 211, at p. 224).

2. Even assuming that the civil marriage performed on the 23rd September, 1964, was a valid marriage, the decree of dissolution given by the Ecclesiastical Tribunal of the Greek Orthodox Church of Cyprus did not only dissolve the ceremony of the wedding but also the status of marriage.

Declaration accordingly.

Cases referred to :

Peters v. Peters [1968] C.L.Y. 479 ;

Michael v. Michael (1971) 1 C.L.R. 211, at p. 224.

Matrimonial Petition.

Petition by the husband for a declaration that the civil marriage celebrated between the parties is void *ab initio* and for declaration that, in any case, the marriage between the parties was validly dissolved by the decree of divorce given to the petitioner-husband by the Ecclesiastical Tribunal of Limassol.

A. Eftychiou, for the petitioner.

No appearance for the respondent.

No appearance on behalf of the Attorney-General of the Republic as *amicus curiae* pursuant to Court's directions dated 9th November, 1971.

The following judgment was delivered by :—

L. LOIZOU, J. : This is a husband's petition (a) for a declaration that the civil marriage celebrated between

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the parties is void *ab initio* and (b) for a declaration that, in any case, the marriage between the parties was validly dissolved by the decree of divorce given to the husband by the Ecclesiastical Tribunal of Limassol.

The respondent entered an appearance to the petition but took no further part in the proceedings.

The facts in so far as they are relevant for the purposes of these proceedings are briefly as follows :

The parties are Greek Cypriots and members of the Greek Orthodox Church. On the 23rd September, 1964, they went through a ceremony of marriage in the Registry Office of St. Pancras in London. On the 10th November of the same year they went through a religious ceremony of marriage in the Greek Orthodox Church of Ayia Trias in Limassol in accordance with the rites and ceremonies of that church.

The parties lived together in England until September, 1966, and then they returned and settled down permanently in Cyprus.

On the 24th October, 1969, the religious marriage was dissolved by the Ecclesiastical Tribunal of Limassol in the Bishopric of Kitium. The relative certificate which is dated 2nd March, 1971, is exhibit 4 in these proceedings.

On the 9th November, 1970, it was, with the consent of the parties, directed by the Court that paragraph (b) of the prayer, which is to the effect following should be tried as a first issue in this case, *i.e.* : A declaration that the marriage celebrated first at the Registry Office of St. Pancras on the 23rd September, 1964 and at a Greek Orthodox Church in Limassol on the 10th November, 1964 was validly dissolved by a decree of divorce given to the husband by the Ecclesiastical Tribunal of Limassol in the Bishopric of Kitium on the 24th October, 1969.

It is this issue that was heard by the Court today. The petitioner gave evidence himself and stated the facts above set out and called one witness, Mr. Klitides, advocate, of Nicosia who is conversant with the Canon Law of the Greek Orthodox Church having studied the subject in the University of Athens and having practised law before the Cyprus Courts and in particular before the Ecclesiastical Courts since 1924. He expressed the view that the Ecclesiastical Court had, under the provisions of Articles 15—18 of the Ecclesiastical Tribunal's Code of Procedure,

jurisdiction to dissolve the marriage which was solemnized on the 10th November, 1964. He further stated that the grounds for divorce, which are set out in Article 75 of the Charter, include refusal of the wife to follow the husband to the matrimonial home, which was the ground set out in the petition for divorce before the Ecclesiastical Court and upon which the marriage was dissolved.

With regard to the issue before the Court today there is authority in support of the proposition that the decree of divorce of the Ecclesiastical Tribunal of Limassol dissolved the status of marriage between the parties. The case in question is that of *Peters v. Peters* cited in [1968] C.L.Y. 479. The parties in that case went through ceremonies of marriage in 1960 first at St. Pancras Register Office and then at the Greek Orthodox Church in Bayswater. The wife was born and had always lived in London. The husband was at all material times domiciled in Cyprus. Both were Greek Cypriots and members of the Greek Orthodox church. The husband petitioned for divorce in the Ecclesiastical Court in Cyprus and was granted a decree. On the wife's application for a declaration that the marriage had been validly dissolved it was held that it had so been dissolved.

According to the law report in "The Times" of the 20th March, 1968 (see *Michael v. Michael* (1971) 1 C.L.R. 211, at p. 224) Wrangham J., in the course of his judgment, is reported to have said :

"A judgment of that Court (the ecclesiastical Court) in November, 1964, declared the marriage dissolved. That could only mean that the status of husband and wife that had previously existed between the parties had come to an end.

Some confusion could be created if it was forgotten that the word 'marriage' concealed ambiguity and might be used to mean the ceremony of wedding and also the status which began on the conclusion of the ceremony. As used in the judgment of the ecclesiastical Court 'marriage' meant the status of husband and wife which was derived in the view of that Court from the religious ceremony.

But whichever ceremony gave origin to the status it was the status itself that was terminated by the decree. As the Cyprus Court had jurisdiction to terminate the status its judgment ought to be recognized as valid. Accordingly, there would be a declaration that Mrs. Peters's marriage had been validly dissolved."

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Like Josephides, J., in the *Michael* case (*supra*) I adopt, with respect, the learned Judge's reasoning and I hold that, even assuming that the civil marriage performed on the 23rd September, 1964, was a valid marriage, the decree of dissolution given by the Ecclesiastical Tribunal of the Greek-Orthodox Church of Cyprus did not only dissolve the ceremony of the wedding but also the status of marriage.

In the result there will be a declaration as per paragraph (b) of the prayer that the civil marriage was validly dissolved by the decree of divorce given to the husband by the Ecclesiastical Tribunal of Limassol.

In the circumstances I make no order as to costs.

Declaration accordingly.