

[JOSEPHIDES, J.]

1961
June 29

ANGELA COSGROVE,

Petitioner,

ANGELA
COSGROVE

v.

ALFRED COSGROVE,

Respondent.

v.
ALFRED
COSGROVE

(*Matrimonial Petition No. 10/60*).

Matrimonial causes—Petition for divorce—Jurisdiction.

Marriage celebrated in Athens—In accordance with the rites and ceremonies of the Roman Catholic Church—Wife, a member of the Greek Orthodox Church, though presumably not of the Greek Orthodox Church of Cyprus—Husband, an Englishman member of the Roman Catholic Church and, at all material times, domiciled in England—Parties to the marriage not members of any of the Communities or any “religious group” within the provisions of Article 2. 1, 2 and 3 of the Constitution, —Nor do the provisions of Article 22 of the Constitution apply to them—Therefore, this is not a case cognizable, under Articles 111 and 160 of the Constitution, either by a tribunal of a Church or a Communal Court—Consequently, the case, so far, comes within the jurisdiction of the High Court of Justice under the provisions of section 19(b) of the Courts of Justice Law, 1960.

Wife petitioner—Ordinarily residing in Cyprus for a period of three years immediately preceding the commencement of these proceedings—Jurisdiction of the High Court of Justice in such case. under section 29 (2) (b) of the Courts of Justice Law, 1960, section 33(2) of the Courts of Justice Law, Cap. 8 and section 18 (1) (b) of the English Matrimonial Causes Act, 1950.

Section 19 of the Courts of Justice Law, 1960, provides: “The High Court shall, in addition to the powers and jurisdiction conferred upon it by the Constitution, have exclusive original jurisdiction —

(a).....(b) save where a matrimonial cause is, under Article 111 of the Constitution, cognizable by a tribunal of a Church or by a court established by a Communal Law under Article 160 of the Constitution, in relation to matrimonial causes and matters..... and such other powers as were before Independence Day (*viz.* 16th

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August, 1960) vested in or exercisable by the Supreme Court of Cyprus under the Law repealed by this Law". The Law repealed just referred to is the Courts of Justice Law, Cap.8.

There is no doubt that a case like the present one would be cognizable by the former Supreme Court under the repealed Law, Cap. 8, subject, of course, to the question regarding its territorial jurisdiction. On the other hand, by section 29(2) of the Courts of Justice Law, 1960, it is provided that the High Court in exercise of the jurisdiction "conferred by paragraph (b) of section 19 (*supra*) shall apply the law relating to matrimonial causes which was applied by the Supreme Court of Cyprus on the day preceding Independence Day (*i.e.* 16th August, 1960) as may be modified by any law made under the Constitution". The law relating to matrimonial causes which was applied by the Supreme Court of Cyprus on the 15th August, 1960, was, under the provisions of section 33 (2) of the Courts of Justice Law, Cap. 8. the law relating to matrimonial causes for the time being administered by the High Court of Justice in England.

The petitioner and the respondent were married in Athens on the 16th April, 1947, in accordance with the rites and ceremonies of the Roman Catholic Church. The petitioner (wife) is a member of the Greek Orthodox Church, though, presumably, not of the Greek Orthodox church of Cyprus. She alleges to be ordinarily resident in Cyprus for the period of three years immediately preceding the commencement of the present proceedings. The respondent (husband) who is an Englishman, is a member of the Roman Catholic Church domiciled in England. Neither of the parties to the marriage is member of any of the communities or any "religious group" referred to in Article 2 (1) (2) and (3) of the Constitution, respectively. Nor do the provisions of Article 22 of the Constitution apply to them.

On those facts (and allegations) the following questions fall to be determined with regard to the jurisdiction of the High Court of Justice to entertain the present petition: (1) Is this matrimonial cause under the provisions of Article 111 of the Constitution cognizable by a tribunal of a Church or by a Court established by a Communal Law under Article 160 of the Constitution? If yes, the High Court of Justice has no jurisdiction to entertain the petition. (2) If, on the other hand, the answer to question (1) is in the negative, the case

would be, so far, cognizable by the High Court of Justice under section 19 (b) of the Courts of Justice Law, 1960. But the final answer to the question whether the High Court has jurisdiction to deal with the petition, once the domicile of the respondent (husband) is admittedly an English one — and, clearly, the High Court has no such jurisdiction on the basis of domicile — will depend on whether the petitioner will succeed in bringing her case within the provisions of section 18 (1) (b) of the English Matrimonial Causes Act, 1950.

Held: (1) (a) As the marriage was not celebrated by the Greek Orthodox Church, obviously a matter relating to the dissolution of marriage cannot be governed by the law of that Church.

(b) And as it appears that the respondent is not a member of a religious group to which the provisions of Article 2.3 of the Constitution apply, it follows that the provisions of Article 111 of the Constitution do not apply either to the present case. Neither do the provisions of Article 22 of the Constitution apply to the parties in these proceedings, nor do they alter the situation.

(c) Consequently this case is, so far, cognizable under section 19 (b) of the Courts of Justice Law, 1960, by this Court.

(2) (a) It follows that, under section 29 (2) (b) of the Courts of Justice Law, 1960, the law applicable to this case is the law relating to matrimonial causes which was applied by the former Supreme Court of Cyprus on the day preceding Independence Day (*i.e.* 16th August, 1960) as modified by any law made under the Constitution; and no law has so far been enacted modifying the law applicable to matrimonial causes.

(b) Now, by section 33(2) of the Courts of Justice Law, Cap. 8, the law relating to matrimonial causes which was applied by the former Supreme Court on the 15th August, 1960, was the law relating to matrimonial causes for the time being administered by the High Court of Justice in England.

(c) Therefore, as the petitioner is married to a husband domiciled in England, this Court has no jurisdiction to deal with the petition on the basis of domicile.

(d) There remain, however, the facts put forward on behalf of the petitioner — wife to the effect that she is or-

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dinarily resident in Cyprus for a period of three years immediately preceding the commencement of these proceedings, as well as other facts which would, it is submitted, bring the petitioner's case within the provisions of section 18(1)(b) of the English Matrimonial Causes Act, 1950 and, thus, empower this Court to hear the petition on its merits. But this is a matter which will have to be proved by evidence. Consequently, the question whether this Court has jurisdiction to deal with the present petition, under the provisions of section 18 (1) (b) of the English Act of 1950, can only be decided on the evidence to be adduced at the hearing.

Petition for dissolution of marriage by the wife.

Lefcos Clerides for the petitioner.

Respondent absent ; duly served.

On the question of jurisdiction of the Court to entertain the petition, the following ruling was made on the 29th June, 1961 by:

JOSEPHIDES, J.: This is a wife's petition for divorce on the ground of adultery. As the petition and the marriage certificate show, the petitioner and the respondent were married at the Roman Catholic Cathedral in Athens on the 16th April, 1947. The petitioner's residence at the time of the marriage was stated to be in Athens, Greece, while that of the respondent was given as 140 Ord. Depot (R.V.P.). The petitioner is a member of the Greek Orthodox Church, and the respondent is a member of the Roman Catholic Church. No other religious ceremony was celebrated except that in the Roman Catholic Cathedral in Athens (but see page 226 herein).

The petition further states that the petitioner now resides at Nicosia and is "domiciled in Cyprus" (para. 3); and that the respondent is employed in a factory and resides in England, where he is domiciled. Now, if the husband is domiciled in England, it is a fundamental principle of law that the wife is also domiciled in England. Consequently the statement with regard to the wife's domicile in paragraph 3 of the Petition is inaccurate.

The petition was duly served on the respondent who failed to enter an appearance within the time limited for that purpose, and consequently these proceedings are undefended.

The Court before proceeding with the hearing of the

petition invited counsel for the petitioner to argue the question of jurisdiction of this Court under the provisions of the new Courts of Justice Law, 1960, which he did.

Section 19(b) of the Courts of Justice Law provides that save where a matrimonial cause is under Article 111 of the Constitution cognizable by a tribunal of a Church or by a court established by a Communal Law under Article 160 of the Constitution, the High Court of Justice has jurisdiction in relation to matrimonial causes and such other powers as were before Independence Day (16th August, 1960) vested in or exercisable by the Supreme Court of Cyprus under the Courts of Justice Law, Cap.8, which has been repealed by the Courts of Justice Law, 1960.

Section 29(2)(b) of the 1960 Law provides that the High Court in exercise of the jurisdiction conferred by section 19(b) shall apply the law relating to matrimonial causes which was applied by the former Supreme Court of Cyprus on the day preceding Independence Day, as may be modified by any law made under the Constitution ; and no law has so far been enacted modifying the law applicable to matrimonial causes.

The law relating to matrimonial causes which was applied by the Supreme Court of Cyprus on the day preceding Independence Day was under the provisions of section 33(2) of the Courts of Justice Law, Cap.8, the law relating to matrimonial causes for the time being administered by the High Court of Justice in England.

As the petitioner is married to a husband who is domiciled in England this Court has no jurisdiction to deal with this petition on the basis of domicile and the petitioner must, therefore, bring her case within the provisions of the English Matrimonial Causes Act, 1950, section 18(1)(b) in order that this Court may be empowered to hear her petition.

From what has been stated so far it follows that two questions fall to be determined with regard to the question of jurisdiction of this Court:

1. Is this matrimonial cause under the provisions of Article 111 of the Constitution cognizable by a tribunal of a Church or by a court established by a Communal Law under Article 160 of the Constitution? If yes, then this Court has no jurisdiction to deal with the present petition.

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2. Does the present petition come within the provisions of section 18(1)(b) of the English Matrimonial Causes Act, 1950?

As to question (1), the petitioner who comes from Greece is a member of the Greek Orthodox Church, though presumably not of the Greek Orthodox Church of Cyprus. The respondent, who is an Englishman and a member of the Roman Catholic Church, is domiciled in England. They were married at the Roman Catholic Cathedral in Athens by the R.C. Chaplain to the Forces. The Marriage Certificate states that they were married in the "LINES" according to the rites and ceremonies of the Roman Catholic Church "in accordance with sec. 22 of the Foreign Marriage Act 1892".

As the marriage was not celebrated in the Greek Orthodox Church, obviously a matter relating to divorce cannot be governed by the law of that church. And as it appears that the respondent is not a member of a religious group to which the provisions of paragraph 3 of Article 2 of the Constitution apply, the provisions of Article 111 of the Constitution do not apply to the present case. Neither do the provisions of Article 22 of the Constitution apply to the parties in the present proceedings, nor do they alter the situation.

As to question (2), the facts put forward by counsel in support of his submission, to the effect that the petitioner is ordinarily resident in Cyprus for a period of three years immediately preceding the commencement of these proceedings, as well as other facts which are stated to bring the petitioner's case within the provisions of section 18(1)(b) of the English Matrimonial Causes Act, 1950, will have to be proved in evidence, before the Court will be in a position to consider that question. Consequently, the question whether this Court has jurisdiction to deal with the present petition under the provisions of section 18(1)(b) of the 1950 Act, can only be decided on the evidence to be adduced at the hearing of the case.