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HELENA
FREDERICK
WALLIS
THEN HELENA
WALLIS
v.
FREDERICK
JOHN WALLIS

[JOSEPHIDES, J.]

HELENA FREDERICK WALLIS THEN HELENA
DELLAS,

Petitioner,

v.

FREDERICK JOHN WALLIS,

Respondent.

(*Matrimonial Peition No. 8/61*).

Matrimonial Causes—Practice—Petition for divorce—Respondent did not enter an appearance—Application for amendment—Service of application not necessary—Whether the amended petition should be re-served—Discretion—Matters to be considered in exercising the discretion—Matrimonial Causes Rules, rule 102—Rules of Court (Transitional Provisions), 1960, (dated the 17th December 1960), rule 3—Matrimonial Causes Rules, 1957, (English), rule 15(3) and (6)—Matrimonial Causes Rules, rule 33(1).

Matrimonial Causes—Divorce—Jurisdiction—Domicile—Wife's residence for more than three years—Matrimonial Causes Act (English) 1950, section 18 (1) (b)—Applicable in Cyprus by virtue of section 29 (2) (b) of the Courts of Justice Law, 1960 (Law No. 14 of 1960).

Matrimonial Causes—Petition for divorce—Desertion—Discretion—Matters to be considered in the exercise of such discretion.

The petitioner, a Greek from Greece, came to Cyprus in 1953 and has been residing here ever since. The respondent, an Englishman, came to Cyprus for a period of seven months in the year 1954. During this time he became acquainted with the petitioner and their marriage was celebrated at the Commissioner's Office, Nicosia, on the 28th August 1954. The respondent left Cyprus for England in October 1954, telling the petitioner that he would return to Cyprus very soon. In fact he never returned to Cyprus, and the petitioner lost trace of him until she located him through an Investigations Agency.

A petition for divorce, on the ground of desertion was filed on the 15th July 1961 and was served on the respondent in August 1961 who did not enter an appearance. On the evidence it was found that the respondent was not domiciled in Cyprus and therefore the Court had no jurisdiction on that

ground to entertain the petition. Subsequently an application was made for the amendment of the petition by the addition of a new paragraph showing that the petitioner had not less than three years residence in Cyprus, which would give jurisdiction to the High Court to entertain the petition under the provision of section 18 (1) (b) of the English Matrimonial Causes Act 1950 which is applicable to Cyprus by virtue of the provisions of section 29 (2) (b) of the Courts of Justice Law, 1960 (Law No. 14 of 1960).

Service of the application for amendment on the respondent was held to be unnecessary. The Court allowed the amendment and, exercising its discretion, dispensed with the re-service of the amended petition. Eventually, the Court exercised its discretion in favour of the petitioner and granted to her a decree of divorce nisi on the ground of desertion.

Held : 1. On the preliminary issues :

- (1) Service of the application for amendment need not be effected.
- (2) The amendment sought for, allowed.
- (3) As a general rule re-service of the amended petition should be directed, unless there are special circumstances justifying the Court to dispense with such service.
- (4) Regard being had to the special circumstances of this case, the Court's discretion must be exercised in favour of the petitioner and, accordingly, such service will be dispensed with.

Forman v. Forman and Davis (1863) 32 L.J.P.M. and A.80, distinguished.

(5) In the result :

- (a) Amendment allowed.
- (b) The amended petition together with a drawn up copy of the order to be filed with the Chief Registrar within two weeks from to-day.
- (c) Stay of the hearing of the petition ordered until the Chief Registrar's certificate under rule 33(1) has been renewed.
- (d) No order as to costs.

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- (e) On the filing of the Chief Registrar's certificate the petition to be refixed for hearing at an early date.

Held : II. As to the question of jurisdiction :

- (1) On her evidence, the Court was satisfied that the petitioner has been resident in Cyprus for a period exceeding three years and, consequently, this Court has jurisdiction to deal with her petition for divorce.

Held : III. As to the merits of the case :

- (1) The respondent deserted without any cause the petitioner some time in October, 1954, and he has not returned ever since. In spite of her endeavours the petitioner has not been successful in persuading the respondent to return to the matrimonial home.
- (2) On the question of the exercise of discretion in petitioner's favour the Court should be guided by the considerations referred to in the case of *Blunt v. Blunt* (1943) 2 All E.R.76, at p. 78.
- (3) A fifth consideration has been added of a more general character, which must indeed be regarded as of primary importance, namely, the interest of the community at large, to be judged by maintaining a true balance between respect for the binding sanctity of marriage and the social consideration which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down.
- (4) Considering the circumstances of this case (see ruling in this case dated 19th March, 1962, *infra*, I exercise the discretion in petitioner's favour and grant the decree.

Decree nisi granted.

No order as to costs.

Cases referred to :

Blunt v. Blunt (1943) 2 All E.R.76, at page 78 ;

Forman v. Forman and Davis (1863) 32 L.J.P.M. and A.80.

Matrimonial Petition

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

R. Michaelides for the Petitioner.

The respondent absent ; not represented.

On March 19, 1962, the following ruling was delivered by:

JOSEPHIDES, J. : This is an application for the amendment of the petition. The amendment asked for is to add a new paragraph (paragraph 9) showing that the petitioner has not less than three years' residence in Cyprus, which would give jurisdiction to this Court to deal with the petition under the provisions of section 18(1) (b) of the English Matrimonial Causes Act, 1950, which is applicable to Cyprus by virtue of the provisions of section 29(2) (b) of the Courts of Justice Law, 1960.

The petition, filed on the 15th July, 1961, alleged that the petitioner's husband, the respondent, was domiciled in Cyprus. If that were proved that would give jurisdiction to this Court to deal with the petition. After hearing the petitioner's evidence, which showed that the respondent's husband had only lived in Cyprus for a very short period - *i.e.* for a few months in the year 1954 - I intimated that that would not be sufficient evidence to satisfy the Court that the respondent, who is an Englishman and has been living in England (according to the evidence), is domiciled in Cyprus. I further intimated that counsel for the petitioner should consider whether he would apply for amendment of the petition on the basis that the petitioner has been resident in Cyprus for not less than three years.

Having considered the position, counsel for the petitioner filed the present application for amendment on the 10th February, 1962. As the respondent has failed to enter an appearance to the petition I ruled that it was not necessary for a copy of the present application to be served on him.

Having regard to the facts, as stated in the petitioner's affidavit, sworn on the 18th February, 1962, in support of this application, I am satisfied that this is a proper case to allow the application. The only question which arises is whether the amended petition should be re-served or not. Our Rules (Matrimonial Causes Rules) are silent on this point and, consequently, under rule 102 of the Matrimonial Causes Rules and the Rules of Court (Transitional Provisions), 1960, the practice and procedure in regard to this matter is governed

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by the practice and procedure of the Supreme Court of Judicature in England. Rule 15(3) of the English Matrimonial Causes Rules, 1957, provides that "an application for leave to amend a petition after service.....shall, unless otherwise directed, be supported by an affidavit....." This has been complied with. Rule 15(6) provides that "unless otherwise directed, a copy of the amended petition.. together with a copy of the order (if any) made under this Rule, shall be served upon the respondent....." The words "unless otherwise directed", to my mind, give a discretion to this Court to decide in a proper case whether to dispense with service or not.

Under the former practice obtaining in England, if any alteration other than an immaterial one had been made in the petition after it had been served, re-service on any party affected by the alteration was required (see Halsbury's Laws, 3rd Edition, volume 12, page 321, paragraph 649, note (r) ; and an amendment relating to the jurisdiction of the Court cannot be said to be immaterial. I am inclined to the view that as a general rule re-service should be directed unless there are special circumstances justifying the Court to dispense with such service.

As the Judge Ordinary said in *Forman v. Forman and Davis* (1863) 32 L.J.P.M. & A.80, "I have granted leave to amend in former cases when there was no appearance but I doubt the propriety of doing so, as it tends to encourage ignorance and carelessness. The petition may be amended, but it must be re-served". In that case neither of the respondents appeared ; the petition contained no direct charge of adultery, but merely alleged that the respondent and co-respondent were "living and co-habiting together". In this case the facts which I have to take into consideration are the following :

- (a) service of the original petition was effected in England with some difficulty ; and it took just over a month to effect service ;
- (b) the petitioner, according to her evidence, is in an advanced stage of pregnancy, I believe in the eighth month ; and
- (c) the man by whom she is pregnant gave evidence before me at the hearing of this petition admitting

that he is the person responsible for the pregnancy of the petitioner and stating further that he is prepared to marry the petitioner as soon as she obtains her divorce.

In considering whether I should exercise my discretion to dispense with re-service of the amended petition in the circumstances of this case, I think I should be guided by two of the considerations which warrant the exercise of the judicial discretion in the petitioner's favour. These are (a) the interest of the party with whom the petitioner has been guilty of misconduct, with special regard to the prospect of their future marriage, and (b) the interest of the petitioner, and in particular the interest that the petitioner should be able to re-marry and live respectably without any avoidable delay.

Taking all these into consideration I hold that this is a proper case in which to dispense with re-service of the amended petition on the respondent.

I, accordingly, make the following order :—

- (1) Application granted. Amendment allowed.
- (2) The amended petition together with a drawn up copy of the order to be filed with the Chief Registrar within two weeks from to-day.
- (3) Stay of the hearing of the petition ordered until the Chief Registrar's certificate under rule 33 has been renewed.
- (4) No order as to costs.
- (5) On the filing of the Chief Registrar's certificate the petition to be refiled for hearing at an early date.

On April 19, 1962 the following judgment was delivered by :

JOSEPHIDES, J. : This is a petition for divorce on the ground of desertion. The petitioner gave evidence herself and she called a witness in support of her case, one Aristoteles Polemitis.

On the evidence before me I am satisfied that the marriage between the petitioner and the respondent was celebrated on the 28th August, 1954, at the Commissioner's Office, Nicosia, and that there is no issue of the said marriage. The

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petitioner who is a Greek from Greece came to Cyprus in 1953 and she has been residing here ever since. The respondent who is an Englishman and whose present address is at Oxted, Surrey, England, lived in Cyprus for a period of seven months during the year 1954. He came here some time in the spring of 1954, he became acquainted with the petitioner and five months after his arrival in Cyprus they were married. He lived in Cyprus for two months and then he left Cyprus some time in October, 1954, telling his wife that he was going to England for a short period and that he intended returning to the matrimonial home. In fact, he never returned to Cyprus nor did he ever write a letter to the wife. She lost trace of him and after about seven years she managed to trace him through an Investigations Agency.

The petition was filed on the 15th July, 1961, and it was eventually served on the respondent in August, 1961, who did not enter an appearance. On the date of the hearing of this petition, on the 23rd January last, I intimated to the petitioner's counsel that, on the evidence before me, I was unable to find that the respondent was domiciled in Cyprus, and if the respondent was not domiciled in Cyprus this Court did not have jurisdiction to deal with this matter unless there was some other statutory provision giving the Court competence in the matter. My grounds for ruling that the respondent was not domiciled in Cyprus were that he, on the evidence before me, was proved to be an Englishman who had lived his life in Kuwait and England and came to Cyprus only for seven months in 1954 when he left never to return. He had no business interests in Cyprus; he did not own any immovable property and on the petitioner's evidence I was not satisfied that this Englishman had changed his domicile to a Cyprus domicile.

Subsequently, the petitioner filed an application to amend the petition, which was granted, and now her amended petition is based on three years' residence in Cyprus, under the provisions of section 18 (1) (b) of the English Matrimonial Causes Act, 1950, which is applicable to Cyprus by virtue of the provisions of section 29(2)(b) of the Courts of Justice Law, 1960. On her evidence I am satisfied that the petitioner has been resident in Cyprus for a period exceeding three years and, consequently, this Court has jurisdiction to deal with her petition for divorce.

As to the merits of the case, I am satisfied on the evidence that the respondent deserted without any cause the petitioner some time in October, 1954, and that he has not returned ever since. In spite of her endeavours the petitioner has not been successful in persuading the respondent to return to the matrimonial home.

On the question of the exercise of my discretion in petitioner's favour the Court should be guided by the considerations referred to in the case of *Blunt v. Blunt* (1943) 2 All E.R. 76 at page 78. These considerations are :

- (a) the position and interest of any children of the marriage ;
- (b) the interest of the party with whom the petitioner has been guilty of misconduct, with special regard the prospect of their future marriage ;
- (c) the question of whether, if the marriage is not dissolved, there is a prospect of reconciliation between husband and wife ;
- (d) the interest of the petitioner, and in particular the interest that the petitioner should be able to remarry and live respectably.

A fifth consideration has been added of a more general character, which must indeed be regarded as of primary importance, namely, the interest of the community at large, to be judged by maintaining a true balance between respect for the binding sanctity of marriage and the social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down.

Considering the circumstances of this case (see my ruling dated 19th March, 1962), I exercise my discretion in petitioner's favour and grant the decree.

Mr. Michaelides : I claim no costs.

Court : Decree nisi granted.

No order as to costs.

Decree nisi granted.

No Order as to costs.

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