

CHRYSSO JAMES LAWRENCE DUNNE (OTHERWISE
EVANGELOU) (No. 1)),

Applicant,

v.

JAMES LAWRENCE DUNNE,

Respondent.

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CHRYSSO
JAMES
LAWRENCE
DUNNE
v.
JAMES
LAWRENCE
DUNNE

(Civil Application No. 3/64)

Practice—Divorce—Service—Substituted service—Ex parte application for substituted service—The Matrimonial Causes Rules (Cyprus), rule 12, and the English Matrimonial Causes Rules, 1957, rule 9, paragraph 3—Affidavit evidence is the only evidence in such applications—There is no question of oral evidence before the Court.

Practice—Evidence—Evidence by the Police—Privilege—Observation concerning the Police with regard to the law of privilege.

This is an *ex parte* application for substituted service.

Both under the Matrimonial Causes Rules (Cyprus), rule 12, and under the English Matrimonial Causes Rules, 1957, rule 9, paragraph 3, the only evidence in such applications is affidavit evidence.

Counsel of applicant, in the course of the hearing of the application, applied for Court's leave to prove the facts that the respondent in this case and another person who is married to the sister of the applicant are now deserters from the British Army and that their whereabouts are not known, by the evidence of the investigating officer of the C.I.D., Nicosia who is in touch with the Scotland Yard in England on this point, because, counsel added, the investigations being of a confidential nature the police are not willing to divulge by a letter to him but that they are prepared to send the investigating officer aforesaid to give evidence in Court about this affair.

The Court made the following observations for the record and for the guidance of the Police.

First observation: If this is a matter for which the Police feel that they ought to claim privilege, basing themselves on the allegation that if they divulge this information it would be contrary to public interest, then they

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ought to seek the advice of the Attorney-General to decide whether this is so or not. If it would be contrary to the public interest to divulge the information, that is the end of the matter. If it would not be contrary to the public interest, then it is their duty to give this information to responsible counsel acting in the case, so that counsel may decide for himself whether the information is material, relevant or hearsay. If the police are prepared to give it in Court and it proves to be irrelevant or hearsay, it is useless. If they are prepared to give it in Court there is no reason why they should not give the summary of the information to counsel to enable him to draft an affidavit.

Second observation : I would like to add this to my observations concerning the Police with regard to the law of privilege : that is, that there are General Orders and Government Circulars laying down that they should seek the advice of the Attorney-General, in the matter. I do not think that they can withhold information from counsel on the one hand and then say we are prepared to give oral evidence in Court. From what you have said I do not think that the police information will carry the case any further.

As regards the procedure, the Court held :

(I) as to the procedure :

(a) With regard to the procedure, this is an *ex-parte* application for substituted service. Both under our Rules, rule 12 of the Matrimonial Causes Rules, and under the English Matrimonial Causes Rules, 1957, rule 9, paragraph 3, the only evidence in such applications is affidavit evidence. There is no question of oral evidence before the Court. I would like to add this to my observations concerning the Police with regard to the law of privilege : that is, that there are General Orders and Government circulars laying down that they should seek the advice of the Attorney-General in the matter. I do not think that they can withhold information from counsel on the one hand and then say we are prepared to give oral evidence in Court.

(II) as regards service :

(a) I think that in the circumstances of this case and having regard to what I have already stated I shall direct service by advertisement in Cyprus and in a local paper where the last address of this man was given in England.

The Order :

(1) Notice of the application to be published once in each of the following newspapers :

(a) In the English newspaper "Cyprus Mail" published in Nicosia ; and

(b) In a local paper published in Camberley or in that district.

(2) Failing appearance within one month from the last publication, the application to proceed in default of appearance and all further notices to be considered as duly served by posting a copy on the Court Notice Board.

(3) The form of advertisement to be settled by the Chief Registrar following the usual form.

(4) Copy of the notice of the application to be posted also on the Court Notice Board.

(5) Costs in cause.

Order in terms.

Ex-parte Application.

Ex parte Application for Substituted Service of an application for leave to present a matrimonial petition.

L. N. Clerides, for the applicant.

Mr. Clerides : Since Your Honour's last direction I wrote to the Embassy in London and I received a reply which was filed in Court and that the respondent was not traced at the address which is given in the letter. The reply is filed with an affidavit sworn by me.

(Mr. Clerides puts in evidence an affidavit sworn by himself dated the 30th April, 1965 with a copy of his letter to the Cyprus High Commissioner in London dated the 23rd February, 1965, annexed as exhibit A. The reply of the Cyprus High Commissioner, dated 21st April, 1965, is also put in and marked " B ".)

Mr. Clerides : I did not write to the regiment as you directed on the 1st of March, 1965, because we received information from the Cyprus Police that both the respondent in this case and another person who is married to the sister of the applicant are now deserters from the British Army and their whereabouts are not known to anyone. As a matter of fact, I got this information from Sgt. Kasapis of the C.I.D., Nicosia, who is the investigating officer into this complaint. The position is this : I immediately wrote a letter to the C.I.D. because Your Honour has asked me last

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time to produce documentary evidence to this effect and there is the letter and the reply of the police before Your Honour and in the reply I am told that the investigations being of a confidential nature the police are not willing to divulge by letter to me but they are prepared to send Sgt. Kasapis to give evidence in Court about this affair. I apply for Your Honour's leave to give me leave to prove the facts that they are deserters from the Army and that their whereabouts are not known, by the evidence of the investigating officer who is in touch with the Scotland Yard in England on this point.

Court : You appreciate that all this evidence must be by affidavit which should refer to your letter dated the 22nd May, 1965 (marked " C ") to the Divisional Commander of Police, Nicosia, and the reply of the Divisional Commander dated 27th May, 1965 (marked " D ").

Mr. Clerides : Yes.

Court : I think I ought to make these observations for the record and for the guidance of the Police. If this is a matter for which the Police feel that they ought to claim privilege, basing themselves on the allegation that if they divulge this information it would be contrary to public interest, then they ought to seek the advice of the Attorney-General to decide whether this is so or not. If it would be contrary to the public interest to divulge the information, that is the end of the matter. If it would not be contrary to the public interest, then it is their duty to give this information to responsible counsel acting in the case, so that counsel may decide for himself whether the information is material, relevant or hearsay. If the police are prepared to give it in Court and it proves to be irrelevant or hearsay, it is useless. If they are prepared to give it in Court there is no reason why they should not give the summary of the information to counsel to enable him to draft an affidavit.

Mr. Clerides : The Divisional Commander, Mr. Panteledes, as soon as he received my first letter he told me he was going to consult the Attorney-General. Then I got the reply, which I presume was written after the advice of one of the members of the staff of the Attorney-General's Office. The position is this that I have no doubt that the evidence the Police will give will be relevant.

Court : Will it be hearsay ?

Mr. Clerides : No, because it comes from letters received from London from the Scotland Yard and from the people who sent documents to Cyprus because there is a case

of bigamy. They will give everything relevant to this case so that the Court is satisfied that the respondent cannot be traced. That is the position.

Court : This information appears to be hearsay. With regard to the procedure, this is an *ex parte* application for substituted service. Both under our Rules, rule 12 of the Matrimonial Causes Rules, and under the English Matrimonial Causes Rules, 1957, rule 9, paragraph 3, the only evidence in such applications is affidavit evidence. There is no question of oral evidence before the Court. I would like to add this to my observations concerning the Police with regard to the law of privilege : that is, that there are General Orders and Government circulars laying down that they should seek the advice of the Attorney-General in the matter. I do not think that they can withhold information from counsel on the one hand and then say we are prepared to give oral evidence in Court. From what you have said I do not think that the police information will carry the case any further. I think that I have now reached a conclusion. Do you wish to put anything more before me ?

Mr. Clerides : No. The only thing is that there is no other way to serve the respondent.

Court : I think that in the circumstances of this case and having regard to what I have already stated I shall direct service by advertisement in Cyprus and in a local paper where the last address of this man was given in England.

Order :

1. Notice of the application to be published once in each of the following newspapers :—

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