

1965
Oct. 15

[JOSEPHIDES, J.]

CHRYSSO
JAMES
LAWRENCE
DUNNE
v.
JAMES
LAWRENCE
DUNNE

CHRYSSO JAMES LAWRENCE DUNNE (OTHERWISE
EVANGELOU), (No.2)

Applicant,

v.

JAMES LAWRENCE DUNNE,

Respondent.

(Civil Application No. 3/64)

Matrimonial Causes—Practice—Divorce—Application for leave to present a divorce petition within three years of marriage—Exceptional hardship suffered by petitioner—Exceptional depravity on part of respondent—No reasonable probability of reconciliation—English Matrimonial Causes Act, 1950, section 2 (1) (2).

Section 2 (1) of the English Matrimonial Causes Act, 1950, which is applicable to matrimonial causes in Cyprus, provides that a petition for divorce cannot be presented to the Court unless at the date of the presentation of the petition three years have passed since the date of marriage.

Section 2 of the English Matrimonial Causes Act, 1950, runs as follows :

“ 2.—(1) No petition for divorce shall be presented to the Court unless at the date of the presentation of the petition three years have passed since the date of the marriage :

Provided that a judge of the Court may, upon application being made to him in accordance with rules of Court, allow a petition to be presented before three years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the Court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the Court may, if it pronounces a decree *nisi*, do so subject to the condition that no application to make the decree absolute shall be made until after the expiration of three years from the date of the marriage, or may dismiss the petition, without prejudice to any petition which may be brought after the expiration of the said three years upon the same, or substantially the same, facts as those proved in support of the petition so dismissed.

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(2) In determining any application under this section for leave to present a petition before the expiration of three years from the date of the marriage, the judge shall have regard to the interests of any children of the marriage and to the question whether there is reasonable probability of a reconciliation between the parties before the expiration of the said three years.”

The applicant wife filed the present application for leave to present a divorce petition on the ground of cruelty, although three years have not passed since the date of the marriage.

The marriage was solemnized on the 21st October, 1964, and this application was filed on the 12th December, 1964.

Counsel for the applicant bases the application for leave on the ground that the case is one of exceptional depravity on the part of the respondent, within the proviso to section 2 (1) of the Act (*supra*).

Held, (1) I am satisfied that this is a case of exceptional hardship suffered by the petitioner and of exceptional depravity on the part of the respondent, and the letters of the respondent show that there is no reasonable probability of reconciliation between the parties before the expiration of the prescribed period of three years (section 2 (2) of the Act and *Bowman v. Bowman* (1949) 2 All E.R. 127, per Lord Denning at p. 129B).

(2) I grant leave for the presentation of the petition forthwith although three years have not passed from the date of the marriage.

(3) Costs in cause.

Leave for the presentation of the petition forthwith although three years have not passed from the date of marriage granted.

Cases referred to :

Bowman v. Bowman (1949) 2 All E.R. 127, per Lord Denning at p. 129B.

Application.

Application by a wife for leave to present a divorce petition on the ground of cruelty, although three years have not passed since the date of the marriage.

Lefcos N. Clerides, for the applicant.

Respondent, absent.

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The following decision was delivered by :

JOSEPHIDES, J. : This is a wife's application for leave to present a divorce petition on the ground of cruelty, although three years have not passed since the date of the marriage.

The marriage was solemnized on the 21st October, 1964, and under the provisions of section 2 (1) of the English Matrimonial Causes Act, 1950, which is applicable to matrimonial causes in Cyprus, a petition for divorce cannot be presented to the Court unless at the date of the presentation of the petition three years have passed since the date of marriage.

Learned counsel bases his application for leave on the ground that the case is one of exceptional hardship suffered by the petitioner and of exceptional depravity on the part of the respondent, within the proviso to section 2 (1). The affidavit evidence before the Court, including the supplementary affidavit by the applicant dated the 30th September, 1965, and that of her brother of the same date, shows that the respondent abandoned the matrimonial home on the 4th December, 1964, leaving a letter addressed to the applicant which is an exhibit in this case. In that letter he admits being cruel to the wife and beating her several times, and he states that he decided that the only way for them was to live apart. He left Cyprus and, in spite of efforts to trace him for the service of notice of this application in England at the address given by him, no service could be effected because he could not be traced at the aforesaid address and, consequently, the Court had to grant leave for substituted service on certain terms which have been complied with. The latest letter from the respondent was received by the applicant's brother early in January, 1965, and is an exhibit before this Court. There again he says " I am sorry for what I did but it is too late now I suppose ". Furthermore, the applicant in her affidavit states that, apart from the exceptional cruelty of the respondent coupled with continuous beatings, the respondent has also been guilty of sexual perversions. There are no children of the marriage.

On this evidence I am satisfied that this is a case of exceptional hardship suffered by the petitioner and of exceptional depravity on the part of the respondent, and

the letters of the respondent show that there is no reasonable probability of reconciliation between the parties before the expiration of the prescribed period of three years (section 2 (2) of the Act and *Bowman v. Bowman* (1949) 2 All E.R. 127, per Lord Denning at page 129B.).

For these reasons I grant leave for the presentation of the petition forthwith although three years have not passed from the date of the marriage.

Costs in cause.

Order in terms.

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