

1971
April 13

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ELLADA
KRIKOR
KRZENTZ
v.
KRIKOR
KRZENTZ

[JOSEPHIDES, J.]

ELLADA KRIKOR KRZENTZ,

Petitioner,

v.

KRIKOR KRZENTZ,

Respondent.

• (Matrimonial Petition No. 6/69).

Matrimonial causes—Jurisdiction—Wife's petition for divorce on the ground of desertion—Husband not domiciled in Cyprus—Wife petitioner ordinarily resident in Cyprus for a period exceeding three years before filing of petition—Therefore, the Court has jurisdiction to entertain the suit—Section 18 (1) (b) of the (English) Matrimonial Causes Act, 1950, applicable in this respect by virtue of sections 19 (b) and 29 (2) (b) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960). Cf. infra.

Matrimonial causes—Jurisdiction of the Court ratione materiae—Husband, an Armenian born in Aleppo, Syria, appears to be of Syrian nationality—Wife a Greek Cypriot of Greek Cypriot parentage, a member of the Greek Orthodox Church of Cyprus and a citizen of Cyprus—Parties were married on March 7, 1959, by the Marriage Registrar in Kuwait under the Indian Christian Marriage Act of 1872—They were married in the Political Agency, Kuwait—There was no religious ceremony—Petition cognizable by the Court.

Divorce—Desertion—Wife's petition—Decree nisi granted.

Children—Custody—Court satisfied that the petitioner mother is a fit person to have the child—And that arrangements for the child are satisfactory—Custody order in favour of mother petitioner made.

The facts sufficiently appear in the judgment of the Court granting a decree *nisi* in this wife's undefended petition for divorce on the ground of desertion.

Matrimonial Petition.

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

A. Emilianides, for the petitioner.

The respondent was not represented.

Also present the Assistant Welfare Officer, Mrs. M. Nicolaidou.

The following judgment was delivered by :—

JOSEPHIDES, J.: This is an undefended wife's petition for divorce on the ground of desertion. The respondent, although duly served, failed to put in an appearance or defend the proceedings. Notice was given to him, as directed by the Court, by double registered post at his postal address in Beirut, Lebanon, which reached him on the 29th January, 1970. He subsequently addressed a letter to the Court regarding his case and the Registrar of the Court replied on the 10th April, 1970, advising him as to the proper procedure he should follow under the Rules to enter an appearance and defend the proceedings, but he took no action whatsoever.

The parties were married on the 7th March, 1959, by the Marriage Registrar in Kuwait under the Indian Christian Marriage Act of 1872. They were married in the Political Agency, Kuwait. At the time the wife (petitioner) was aged 23 and a spinster, and the husband (respondent) was aged 31 and a bachelor. There was no religious ceremony. A child was born to the parties on the 28th December, 1960, in Emirie Hospital, Kuwait. The child was named Chris.

The petitioner was born on the 6th April, 1936, in Ayios Cassianos quarter, Nicosia. She is a Greek Cypriot of Greek Cypriot parentage, a member of the Greek Orthodox Church and a citizen of Cyprus. She has lived all her life in Cyprus, except for a period of about four years and nine months, from January, 1959 to the 21st September, 1963, when she lived in Kuwait. She has been ordinarily resident in Cyprus since September, 1963.

The husband is an Armerian born in Aleppo, Syria, and he appears to be of Syrian nationality, at present residing in Beirut, Lebanon. At the time of the marriage he was the traffic manager of the Swiss Air Company in Kuwait. He never lived in, or visited, Cyprus and he is, therefore, not domiciled here.

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First, with regard to the question of *jurisdiction* : The law applicable to the present case, by virtue of sections 19 (b) and 29 (2) (b) of the Courts of Justice Law, 1960, is section 18 (1) (b) of the English Matrimonial Causes Act, 1950, which (*mutatis mutandis*) provides that even if the husband is not domiciled in this country the Court has jurisdiction to entertain a matrimonial cause if the wife is resident in Cyprus and has been ordinarily resident here for a period of three years immediately preceding the commencement of these proceedings. On the facts of this case I am satisfied that the wife, who is a Cypriot, is a resident in Cyprus and has been ordinarily resident here for a period exceeding three years immediately before the presentation of this petition, and this Court has, therefore, jurisdiction to hear and determine such petition.

Now, as regards the question of *desertion* : The petitioner gave evidence herself and called two witnesses, *viz.* her sister Chariklia Michaelidou, who, lived with her in Kuwait between 1960 and 1961, and her half-sister Androulla Stephanidou, who lived with her in Kuwait between 1961 and 1963. On the evidence of the wife (petitioner), which is corroborated in material particulars by the other two witnesses, I find the facts as follows :—

The parties met in Kuwait, where the wife had gone to work, in January, 1959. As already stated, they were married on the 7th March, 1959. At the time the husband, as traffic manager of the Swiss Air Company, was earning a monthly salary of £200, but this was an unhappy marriage. He was an alcoholic and drug-addict. He was drunk most of the time and he used to ill-treat and beat the wife. At times he used to lock her up for hours in a room. This went on until September, 1963, when a police or Court bailiff went to the matrimonial home and seized all the furniture of the couple except a bed and one or two chairs. It appears that the husband had embezzled money belonging to his employers and that he had been imprisoned for six months. The wife visited him while he was in prison and he said to her "you must go to Cyprus as I cannot maintain you now or pay any other household expenses. The manager of my company will provide you with tickets to return to Cyprus and I will join you there after six months". In fact, he never came to Cyprus until the present day, in spite of repeated letters which were sent by the wife to him asking him to join her here. He never replied to her letters. The only letter he sent was

after the filing of the present petition to the wife's advocates. He never contributed anything towards the maintenance of the wife or the child.

On this evidence I find that the husband was released from prison some time in March 1964 and that, although he had promised to join the wife in Cyprus, he never did despite her repeated requests. I am, therefore, satisfied that the husband has deserted the wife for a period exceeding three years without cause, and the wife is, therefore, entitled to a decree *nisi*.

Finally, I have to decide the question of the *custody* of the child, named Chris, who is now aged 10. Pursuant to the directions given by the Court on the 14th December, 1970, a social investigation report was prepared and filed by the Assistant Welfare Officer, Mrs. M. Nicolaidou and is now before the Court. It would appear that the wife runs a bar in Regaena Street, Nicosia, and that she earns a good income from her business and has substantial savings. Moreover, she has bought a house in Ayios Antonios quarter, Nicosia, where her mother and two sisters have been living for the past two months. The wife defrays all the costs of the maintenance and education of the child who has been attending the Terra Santa School in Nicosia as a boarder for the past five years. This costs the wife £20 a month. The welfare officer is of the view that the wife loves her child and that she is a fit person who could be entrusted with the custody of the child. The arrangements for the child are as follows : During the school term he is a boarder at the Terra Santa School (as already stated), during the school vacations he lives with the grandmother and aunts, and in the summer he is sent with an aunt to Kyrenia or some other place to spend his holidays.

On the evidence I am satisfied (as I have a duty to be satisfied before I grant a decree) that the arrangements for the child are satisfactory and that the wife (petitioner) is a fit person to have custody of the child.

In the result, I grant a *decree nisi* to the petitioner and make a *custody order* in respect of the child in her favour.

As the petitioner does not claim costs I make no order as to costs.

Decree nisi granted. No order as to costs.

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