

FISHER, C.J. AND STUART, P.J.]

ELENITSA N. DERVI

v.

YEORGHIOS P. KOLOKASIDES

AND

KATINA NICOLA, EXPARTE APPLICANT.

FISHER,
C.J.
&
STUART,
P.J.
1921
} June 11
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COLLUSION—JOINER OF PARTIES—CONSOLIDATION OF ACTIONS—RULES OF COURT
ORDER IX. RULE 11—ORDER VIII. RULE 22—ORDER XVII. RULES 3 AND 3A.

Appeal from Exparte Applicant from an order of the District Court dismissing her application (1) to have action No. 46/21 consolidated and tried with present action, (2) to be joined as co-defendant in the present action.

Facts are as follows:—

Applicant claims to be a Shefi over a house purchased by Defendant and in respect of this house she instituted an action, 46/21, against present Defendant, claiming the house by pre-emption as Shefi. Action No. 46/21 was instituted on January 10th, 1921. The present Plaintiff instituted the present action No. 81/21 on January 17th, 1921, by which present Plaintiff also claims to be a Shefi over the same house, and also claims the house by pre-emption. Applicant desires to protect her claim in respect of her action No. 46/21, against a possible collusive judgment in favour of present Plaintiff, and applied to the Court to have (1) the two actions consolidated and tried together and (2) to be joined as co-defendant in this action. At issues in action No. 46/21 Defendant contested the Plaintiff's (Applicant's) claim.

The District Court dismissed the application in respect of both the consolidation and the joinder of Applicant as co-defendant.

G. Ioannides for Appellant (Applicant).

Triantafyllides for Respondent (Plaintiff).

Chrysaftinis for Respondent (Defendant).

HELD: Dismissing the Appeal that Order XVII., rules 3 and 3a apply where collusion has been established; that in this case Appellant is anticipating collusion, and that she is premature in asking for a remedy. If judgment is given, by default, in favour of Plaintiff in this action, Applicant has her remedy in applying to set such judgment aside as collusive, or, alternatively, Applicant may join the present Plaintiff as co-defendant in Applicant's action No. 46/21.