

FISHER,
C.J.
&
GRIM-
SHAW,
ACTING P.J.
1921

[FISHER, C.J. AND GRIMSHAW, ACTING P.J.]

SAVA NICOLA

ELENE HAJI EFSTATHIOU

v.

HAJI KYRIAKOU EFSTATHIOU

AND

HARIKLOU HAJI DEMETRI GELLA AND FOUR OTHERS,

Applicants.

JOINDER OF PARTIES—RULES OF COURT, ORDER IX. RULE 11—COLLUSION—
RULES OF COURT, ORDER XVII. RULE 3A.

Appeal of Plaintiffs from order of a District Court, amending the title of the action, by inserting the names of the Applicants as co-defendants in the action.

The facts are as follows:—

The action was for damages for breach of contract. The contract sued on is between the Defendant and the two Plaintiffs, whereby Defendant undertook to transfer certain properties into the names of the two Plaintiffs. Plaintiffs assert Defendant has not carried out her undertaking, and they claim damages for breach of contract.

Defendant is the mother of Plaintiffs and also of the Applicants. Applicants allege an agreement, subsequent to the contract sued on, to which subsequent agreement they were all parties, and that one of the effects of this subsequent agreement was, that the contract now sued on should be regarded as null and void.

Applicants made an *ex parte* application to be joined as co-defendants on the strength of their allegation, and the District Court granted the application and amended the title of the action.

For Appellants (Plaintiffs) *Ioannides*.

For Respondent (Defendant) no appearance.

For Respondents (Applicants) *Chrysafinis*.

HELD, reversing the District Court: That as the action was on a contract to which Applicants were not parties, they were not entitled to apply to be joined as Defendants. That the allegations on which they relied in support of their application could be used as a defence to the action by the Defendant.

That Plaintiffs cannot be forced to sue and prosecute an action against persons against whom they have no cause of action.

That if Applicants find there is collusion between Plaintiffs and Defendant which causes injury to them or their rights, they have their remedy under Rules of Court Order XVII. rule 3a.

The appeal is allowed and the order of the District Court amending the title of action set aside.

June 11