



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	30.01.2026
Pronounced on	13.02.2026

CORAM

THE HON'BLE DR.JUSTICE R.N.MANJULA

A.Nos.5944 & 3541 of 2024 in
TOS.No.25 of 2024**A.No.5944 of 2024**

Mr.C.Sivakumar

... Applicant

Vs

1.Mr.C.Murugan

... Plaintiff /
1st respondent

2.Smt.G.Uma Ganesan @ G.Uma Maheswari

... Defendant /
2nd respondent**PRAYER** : To permit the applicant to be impleaded as a 2nd defendant
in TOS.No.25 of 2024.**A.No.3541 of 2024**

1.Mrs.S.Andal Sivaraman

2.S.Deepa

3. S.Sunitha

4.S.Nisha

... Applicants

Vs.

1.Mr.C.Murugan

... Plaintiff /
1st respondent

2.Smt.G.Uma Ganesan @ G.Uma Maheswari

...Defendant /
2nd respondent



PRAYER : To implead the applicants as defendants 2 to 5 in TOS.No.25 of 2024.

For Applicant(s) : Mr.V.G.Suresh Kumar for applicant
in A.No.5944 of 2024
Mr.A.R.Ramanathan for applicants
in A.No.3541 of 2024

For Respondent(s) : Mr.K.S.Saravanan for R1
Mr.T.Thiagarajan for R2
in both Applications

COMMON ORDER

The Application in A.No.5944 of 2024 has been filed to permit the applicant to be impleaded as a 2nd defendant in TOS.No.25 of 2024. The Application in A.No.3541 of 2024 has been filed to implead the applicants as defendants 2 to 5 in TOS.No.25 of 2024.

The averments of the applicants in brief:

2. The first respondent / plaintiff has filed a suit for seeking the relief of probate of the will dated 17.2.2006 executed by his late father G.Chandrasekaran. The original petition has been converted into Testamentary Original Suit in view of the caveat filed by the sixth respondent. The first respondent and the applicant in A.No.5944 of 2024 are the brothers and the defendant is their sister and the plaintiff and the deceased Sivaraman for whom



the applicants in A.No.3541 of 2024 have been impleaded as legal heirs are the beneficiaries under the will. The suit for partition has been filed by the defendant in C.S.No.54 of 2003. Since the applicants being the beneficiaries under the will dated 17.2.2006, they are the necessary parties to support the will and the case of the plaintiff. Hence, these applications should be allowed.

3. The first respondent / plaintiff did not have any objection to the relief sought by the applicants.

The counter filed by the second respondent in brief:

4. The second respondent / sole defendant has filed a counter by stating that the applicants have not filed any caveat under Order 25 Rule 51 of Original Side Rules and in fact, the applicants intended to support the probate proceedings along with the first respondent / plaintiff. So, they need not be impleaded as parties to the proceedings. It is further submitted that the testamentary succession and probate proceedings are governed by the provisions of Order 25 of the Original Side Rules and as per Order 25 Rule 51, any person who has a right or caveatable interest in the estate of the deceased and intending to oppose the issue of granting probate, must file a caveat in the Registrar's Office in Form No.69. The applicants / proposed parties have not filed any caveat as mandated under Order 25 Rule 51. As the applicants have



lost the only way to get impleaded in the suit, that is, by filing a caveat, these applications to implead them as parties are not maintainable.

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5. The only contention raised by the applicants is that they are entitled to get impleaded as parties to the proceedings, even though they have not preferred to file any caveat in the original petition seeking probate. It is contended that because of their interest in the proceedings by being the beneficiaries of the will, they are entitled to get themselves impleaded as parties and that Order 25 Rule 51 has to be read along with Order 1 Rule 10 of CPC. The applicants have attempted to draw analogy between Order 14 Rule 10(1) of the Original Side Rules which deals with rejection of plaint along with Order 7 Rule 11 C.P.C.

6. So far as the testamentary original suit is concerned, the original side special rules would state the procedure to be adopted while filing the original petition. As per Order 14 Rule 8 of the original side rules, applications for issue of proceedings other than those mentioned under its sub rule 10 has to be disposed of by a Judge. There is no quarrel on those rules of the original side and to read it along with Order 1 Rule 10 and Section 151 of CPC.

7. So far as Order 25 Rule 51 position is concerned, there is a gateway for the parties to the probate proceedings to contest the matter and that is by way of



filing a caveat. A person who chooses to file a caveat cannot get an automatic right to contest the suit, unless he files a supporting affidavit. As per Order 25 Rule 52 of the original side rules, the affidavit is required to be filed within 8 days of filing the caveat. But the matter in issue does not revolve around the procedural aspect of filing caveat and the supporting affidavit.

8. The applicants at the first instance did not intend to file any caveat or affidavit. Even now, they did not opt to implead themselves as parties to the proceedings because they have got no difference of opinion with the plaintiff. But they wish to join hands with the plaintiff and add strength to him by being impleaded as defendants.

9. In certain extraneous circumstances, especially when the court has failed to issue notice to the persons who have given consent affidavit for the verification purpose, the concerned individual who are interested can be impleaded as party even without filing caveat. This is permitted by taking into consideration of the violation of individual rights and in the interest of justice.

10. The above legal position has been laid down in the case of *Sanjay Srinivasan and another vs. T.V. Prabhakaran and others, reported in CDJ*



2021 MHC 1322. For a better understanding, the relevant paragraphs of the above judgment are extracted here under:

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"9. Since non-service of notice is a procedural violation which would violate the rights of the Appellants, even though it is stated that the Appellants have already filed consent affidavits, in an endeavour to do complete justice, this Court is of the view that the Appellants should be given an opportunity as they have not been given an opportunity before the Learned Single judge. Therefore, the order passed by the Learned Single Judge is set aside and the application in A.No.6643 of 2019 is ordered and they are impleaded as Second and Third Defendants. Further, Registry is directed to issue notice to the persons who have filed consent affidavits.

10. This Court is of the view that the surviving son of the Testator, viz., Mr.Murali Rengarajan, who has been suo motu impleaded in this Appeal as Respondent, has to be impleaded as Defendant in the Suit, since he has not filed caveat before the Learned Single Judge, though he has given consent affidavit. More over, he is a beneficiary under the Will having two properties. Therefore the said Murali Rengarajan is also a necessary party in the TOS and hence, this Court, suo motu impleads the said Mr.Murali Rengarajan as Fourth Defendant in TOS.No. 2 of 2015."

11. Now the issue involved in this case do not even touch upon the superiority of the special original side rules over the general rules in CPC. As held by the Supreme Court in ***Iridium India Telecom Ltd. vs. Motorola Inc., reported in***



2005 1 CTC 304, in all these cases the party interested to be impleaded should either be an interested party who did not file a caveat or that a consent affidavit filed has not been verified by the court by issuing notice.

12. It is neither the case of the applicants that the applicants have not been impleaded as parties to the original petition itself and hence, they were not aware of the proceedings. This applicants were very much parties to the original petition and have voluntarily given their consent affidavits. It is seen that the applicants have not even chosen to retract from their earlier consent and wish to contest the suit. Their only contention is that being the persons who sail along with the plaintiff, they should be impleaded as parties to the proceeding just in order to add strength to the case of the plaintiff. So, in such case, no consideration can be shown to implead the applicants as parties to the proceedings either under the special original side rules or under CPC.

13. Hence, there is no necessity to compare between original side special rules and the CPC in order to appreciate which of the rules prevail over the other. As the situation raised by the applicants is completely different from the facts involved in the earlier case referred, I do not find any merit to consider the applications favourably.



14. In the result, the applications in A.Nos.5944 & 3541 of 2024 are dismissed.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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A.No.5944 of 2



DR.R.N.MANJULA J.

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**A.Nos.5944, 3541 of 2024 in
TOS.No.25 of 2024**

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