



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-07-2026

CORAM

THE HON'BLE MR.JUSTICE P.B. BALAJI

REV.APPL No. 218 of 2025

against

CRP No.4785 of 2024

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1. A.Mahendran

2. S Yogeeswaran,

..Petitioner(s)

Vs

1. M.V.Arul

2. S Siva Saravanan

..Respondent(s)

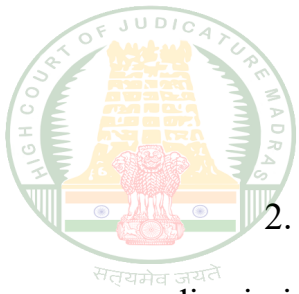
PRAYER : To review its order dated 12.09.2025 passed in CRP No. 4785 of 2024.

For Petitioner(s) : Mr.SP.Chockalingam

For Respondent(s) : Mr.P.Mathivanan

ORDER

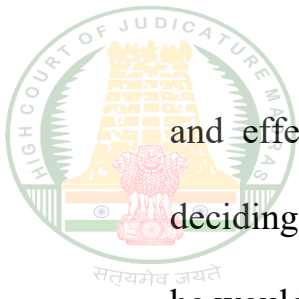
Heard Mr. SP.Chockalingam, learned counsel for the review petitioner and Mr.P.Mathivanan, learned counsel for the respondent.



2. I have dismissed CRP No.4785 of 2025, *vide* order dated 12.09.2025, dismissing the revision petition which sought to strike off the plaint in O.S.No.116 of 2024 on the file of the District Munsif Court, Sendamangalam.

3. Mr. SP.Chockalingam, learned counsel for the review petitioner/revision petitioner would contend that the applicable rule to have the plaint dismissed is to invoke order 14 Rule 2 CPC and not order 7 Rule 11 CPC. In this regard he would invite attention to an identical fact situation, dealt in ***Srihari Hanumandas Totala Vs. Hemanth Vithal Kamat and Ors***, reported in ***AIR 2021 SC 3802***. In the said decision, the Hon'ble Supreme Court was confronted with whether the course open to the defendant to have a suit dismissed was by recourse to Order 7 Rule 11 CPC or question the maintainability under Order 14 Rule 2 CPC. Ultimately, the Hon'ble Supreme Court held that Order 7 Rule 11 (d) cannot be invoked when the issue of *res judicata* is pressed into service and the trial Court has to frame a preliminary issue under Order 14 CPC and decide the same expeditiously and subject to decision on the preliminary issue, it will be open upon to the Court to proceed further or not in the main suit.

4. Mr. SP.Chockalingam, would also point that in the order dated 12.09.2025, at paragraph 26, I have referred to certain alienations and necessity



and effect of the said alienation on the alienes. He further stated that while deciding the preliminary issues these observations should not come in the way and he would therefore, seek for the review application to be allowed.

5. Mr.P.Mathivanan, learned counsel for the respondent, state that this Court had rightly dismissed the revisions which had straight away sought for striking of the plaint. However, he would fairly contend that it is always open to the revision petitioner to invoke Order 14 Rule 2 CPC and merely because there is a reference to order 7 rule 11 of the CPC in the order it will not come in way of the revision petitioner invoking order 14 of Rule 2 of the CPC.

6. In the light of the above, the review is disposed of by modifying the order dated 12.09.2025, by inserting paragraph 28 (a) in the manner following:

*28. (a). Applying the ratio laid down by the Hon'ble Supreme Court of India in **Srihari Hanumandas Totala Vs. Hemanth Vithal Kamat and Ors**, reported in **AIR 2021 SC 3802** to the facts of the present case case, where also the issue of res judicata has been raised, before going into the other issues, it shall be open to the petitioner to canvas the issue of maintainability by invoking Order 14 Rule 2 CPC. If any such application is filed, then, after affording an opportunity to the respondent/plaintiff to file the counter affidavit to the said application, the trial Court shall decide the issue of maintainability of the suit under Order 14 Rule 2*



P.B. BALASUBRAMANIAM, J.

vca

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CPC as a preliminary issue, within a period of three months from the date of the pleading being complete in the said application under Order 14 Rule 2 CPC. Subject to the result of the application proposed under Order 10 Rule 2 CPC objecting to the maintainability of the suit as being barred by Section 2 CPC, it shall be open to the trial Court to thereafter proceed or not to proceed with the suit. The trial Court shall decide the application filed under Order 14 Rule 2 CPC uninfluenced by the observations made by me vide orders dated 12.09.2025 and 23.07.2026.

23.07.2026.

vca

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