

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	22.03.2022
DELIVERED ON	11.04.2022

CORAM :**THE HONOURABLE MRS.JUSTICE S.ANANTHI****C.R.P. (MD)No.1090 of 2021**

T.G.Swaminathan

...Petitioner/Plaintiff

Vs.

S.Periyanayagam

...Respondent/Defendant

PRAYER: Civil Revision Petition under Section 115 of Civil Procedure Code, to set aside the decree made in S.C.No.2 of 2014 on the file of the II Additional District Munsif, Trichy, dated 22.12.2020, by allowing this revision.

For Petitioner :Mr.R.Sundar

For Respondent :Mr.B.Jameel Arasu

ORDER

This Civil Revision Petition has been filed to set aside the decree, dated 22.12.2020, in S.C.No.2 of 2014 passed by the learned II Additional District Munsif, Trichy.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The plaintiff has filed a suit in S.C.No.2 of 2014 on the file of the II Additional District Munsif [Small Cause Case], Trichy, seeking direction to the defendant to pay the suit amount of Rs.5,000/-[Rupees Five Thousand Only]. The said suit was dismissed on 22.12.2020. Aggrieved over the same, the plaintiff is before this Court.

4.Heard on either side and perused the material documents available on record.

5.The Civil Revision Petition is filed on the ground that the trial Court has failed to note that non examination of any witness on the side of the defendant is fatal and the same also has not been considered properly. The Court below has completely ignored the evidence of P.W.2, who has been categorically narrated the events. Hence, the order passed by the Court below is liable to be set aside.



6.The plaintiff has filed a suit in S.C.No.2 of 2014 for damages. The plaintiff has stated in the plaint is extracted hereunder:

"The plaintiff is regularly visiting the saloon namely 'Sun Saloon' for getting the service of hair cut and shaving, the shop is situated at the ground floor and the owner of the building namely the present defendant is residing in the upstairs. On 23.03.2014, after getting service when the plaintiff leaving the shop, the defendant willfully poured huge quantity of water from the upstairs through the holes on the top of the saloon on the plaintiff. Consequently, the cell phone kept in the shirt pocket of the plaintiff has been wet and not functioned. The plaintiff has repaired the mobile at a cost of Rs.350/-(Rupees Three Hundred and Fifty Only). The defendant is liable to pay damage to the plaintiff for the damage sustained by the plaintiff. Therefore, the plaintiff asked the defendant to pay damages. However, he did not come forward to do so.

b).In the meanwhile, on 26.04.2014 when the plaintiff entered into the shop for getting service, the defendant again willfully poured water from the upstairs on the plaintiff. Pursuant to the same, the plaintiff lodged a complaint against the defendant before the Fort Police Station, Tiruchy. Further, the plaintiff came to know that the defendant is repeatedly causing nuisance in order to harass the tenant namely Pitchai who is running the Sun Saloon shop for vacating him from the premise. The plaintiff had sent a legal notice dated 06.05.2014 to the defendant to call upon him to pay the repairing cost of his mobile and the damages. However, the defendant had neither repaid nor paid the amount. Hence, the suit."

7.Whether the defendant caused damage to the cellphone of the plaintiff?

8.There is no complaint from the tenant/shop keeper. The plaintiff only gave the complaint to the police.

9.In paragraph No.6 of the plaint, the plaintiff has stated as follows:

"As usual manner, on 26.04.2014 when again

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my client had entered upon the shop for his hair cut, as the same manner again the defendant had poured water through the holes on the top of the above shop and the same was fell down upon the plaintiff. The plaintiff was very much shocked by the habitual unlawful activities of the defendant. The plaintiff has not taken his mobile with him and hence it has been saved from further damages."

10.If really, the defendant caused nuisance to the tenant why he poured water on the plaintiff. No other complaint except complaint from the plaintiff.

11.No other eye witness was examined except the witness of P.W.1. The Pitchai, Saloon Keeper also was not examined as witness to prove the said occurrence.

12.P.W.2 was examined but not produced any document to show that he is running a mobile repair shop. P.W.2 is also a hearsay witness and hence, his evidence cannot be considered.

13.Only, the plaintiff has to prove the case. The plaintiff may examined some other independent witness to prove the occurrence. It is unbelievable that the cellphone which was in the shirt pocket damaged by the water poured from upstairs.

14.So, the trial Court has rightly dismissed the suit. This Court has no valid reason to interfere with the order passed by the Court below.

15.Finally, this Civil Revision Petition is dismissed by confirming the decree, dated 22.12.2020, in S.C.No.2 of 2014 passed by the learned II Additional District Munsif, Trichy. No Costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To
The II Additional District Munsif,
Trichy.

Copy to:
The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.R. SUNDAR, Advocate (SR-17696[F] dated 11/04/2022)

Order made in
C.R.P. (MD) No.1090 of 2021
11.04.2022

ks (CO)
TR(09.05.2022) 4P 5C