

**THE HON'BLE SRI JUSTICE K.C.BHANU**

**CIVIL REVISION PETITION No.1719 OF 2013**

**ORDER:**

The Civil Revision Petition is directed against the order, dated 25.02.2013, in E.A.No.61 of 2013 in E.P.No.69 of 2012 in O.S.No.16 of 2012 on the file of the Senior Civil Judge, Bapatla, whereunder and whereby, petition filed by respondent No.1 herein/decreed holder under Order XXI Rule 97 and Section 151 of the Code of Civil Procedure, 1908 (for short, "C.P.C.") to direct the Amin to remove the obstruction made by the petitioners and respondent No.2 herein/judgment debtors and their henchmen by taking the aid of police and to deliver possession of the suit schedule property to the decree holder, was allowed.

2. Heard the learned counsel for the petitioners.

3. Respondent No.1 herein filed O.S.No.16 of 2012 against the petitioners and respondent No.2 herein for recovery of possession of the suit schedule property and the same was decreed. In pursuance of the said decree, he filed E.P.No.69 of 2012 seeking delivery of possession of the suit schedule property. When the Court Amin, who was appointed for that purpose, went to the suit schedule premises, he was obstructed by the judgment debtors from delivering possession of it to respondent No.1. Hence, respondent No.1 filed E.A.No.61 of 2013 and the same was allowed. Challenging the same, judgment debtor Nos.1 and 2 filed the present Revision Petition.

4. The petitioners claim to be the tenants of the suit schedule property. The only ground taken by the learned counsel for the petitioners herein is that the procedure to be followed for removing a person, who caused obstruction, is under Order XXI Rule 36 C.P.C.

and not under Order XXI Rule 35 C.P.C. and therefore, the Execution Application itself is not maintainable.

5. It is not in dispute that quoting a wrong provision by itself is not a ground to dismiss a petition. The contents of the petition have to be looked into. When the Amin went to the schedule property, it was locked and therefore, he filed report before the Executing Court about the ground reality. It must be shown by the petitioners that they are the lawful tenants to retain possession. The petitioners have not filed any registered lease deed to show their lawful possession. If a person is not in lawful possession of the property, the decree holder can insist for actual physical possession of the property. The petitioners, who are not being shown to be the lawful tenants, are bound to vacate the premises in question. Therefore, the Court below rightly passed the impugned order and that order needs no interference by this Court.

6. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions pending, if any, in this Civil Revision Petition shall stand closed.

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**JUSTICE K.C.BHANU**

Date: 06.02.2015  
AMD

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