

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition No.1892 of 2015

ORDER:

This revision is directed against the order dt: 02.03.2015 in E.P.No.2 of 2015 in OS No.56 of 2007 passed by Principal Junior Civil Judge, Sompeta whereby and whereunder the learned Judge issued warrant under Order 21 Rule 35 C.P.C to the bailiff to give possession of the land to the Decree Holder and remove Judgment Debtors.

2) It is the contention of the petitioner that lower court ought to have seen that before executing the order Under 21 Rule 35 CPC, notice is prerequisite without which no execution is permitted under law and in the instant case no notice was given to the petitioners before executing the warrant given in the impugned order dt:02.03.2015. It is further contended that Judgment Debtor is still in possession of the suit schedule property and the report of the Ameen that he had executed the warrant issued by the Court is not correct and the delivery of possession if any, is paper delivery. It is further contended that aggrieved by the order of the lower court the Judgment Debtor preferred an appeal—AS.No.29 of 2014 and the same is pending before the appellate Court. Hence, the impugned order of delivery of possession of suit schedule property without giving opportunity to the petitioner is unsustainable.

Hence the C.R.P.

3) Heard learned counsel for petitioner. His contention is that no notice was issued to the Judgment Debtors before executing the warrant order dt:02.03.2015 and hence the delivery recorded by Ameen is liable to be set aside as illegal.

4) The above contention cannot be upheld in view of the contents in delivery warrant receipt dt:07.03.2015 submitted by the Field Assistant wherein he mentioned that he delivered the property in the presence of the mediators, Judgments Debtors and Decree Holder and when he intimated about the contents of the delivery warrant to Judgment Debtors and requested them to sign on the warrant, they refused and hence he effected the delivery. Thus the said contention is untenable.

5) Accordingly, this Civil Revision Petition is dismissed at the admission stage.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 21.08.2015
scs / murthy