

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2462 OF 2016

ORDER:

This revision is filed under Section 115 of Code of Civil Procedure challenging the delivery warrant issued under Order XXI Rule 35 of Code of Civil Procedure directing the revision petitioner and 2nd respondent herein to deliver vacant possession of the schedule property.

The only contention urged before this Court is that the trial Court decreed the suit for eviction granting 90 days time for delivery of vacant possession and the 1st appellate Court by its order dated 23.02.2016 confirmed the decree and judgment passed by the trial Court, in all respects. In view of confirmation of decree passed by the trial Court, the petitioner is entitled to continue in possession for another 90 days after pronouncing the judgment by the trial Court. If that analogy is applied to the present facts of the case, decree was passed on 23.02.2016 and 90 days time was expired approximately by 23.05.2016. But the delivery warrant was issued before expiry of 90 days i.e. on 31.03.2016.

Smt. B.Neeraja. S. Reddy, learned counsel for the revision petitioner, fairly conceded that the delivery of property was taken by breaking open the locks and it is in the possession of Decree Holder/ 1st respondent herein.

No doubt, the issue of warrant before expiry of 90 days is not in accordance with law. But when the delivery is

effected, the remedy open to the petitioner is to file objections before the executing Court, which ordered delivery, for restoration of possession and admittedly the revision petitioner filed objections for handing over the possession of the property before the executing Court and the same is pending.

In those circumstances, it is appropriate to direct the petitioner to pursue the remedies before the executing Court and this Court cannot order for restoration of possession while exercising power under Section 115 of Code of Civil Procedure.

Granting liberty to the petitioner to pursue the available remedies before the executing Court, the revision is dismissed. No order as to costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:23.08.2016
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