

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.3350 of 2016

ORDER:

Heard the learned counsel for the petitioner.

2. This Civil Revision Petition is filed challenging the docket Order dt.05-05-2016 in E.A.No.45 of 2016 in E.P.No.24 of 2011 in O.S.No.707 of 2005 of the Junior Civil Judge, Bhimadole.

3. The petitioner herein is the J.Dr. in the said suit which was decreed on 28-10-2010 granting relief of recovery of possession of the plaint schedule property to the respondents.

4. After the suit was decreed on 28-10-2010, E.P.No.24 of 2011 was filed by the respondent under Order 21 Rule 2 CPC before the I Additional Junior Civil Judge, Eluru, for issuance of delivery warrant under Order 21 Rule 35 CPC by evicting the petitioner from the E.P. schedule property.

5. The said E.P. was transferred to the Court of Junior Civil Judge, Bhimadole and was renumbered as E.P.No.2 of 2014.

6. In that E.P., E.A.Nos.44 and 45 of 2016 were filed by the respondent to break open the lock of the E.P. schedule house for executing the delivery warrant and also to direct the police of Bhimadole Police Station to assist the Field Assistant for executing the delivery warrant ordered by the Court on the ground that the

petitioner refused to deliver possession of the E.P. schedule property compelling the Field Assistant of the Court to return the unexecuted warrant to the Court.

7. These applications were allowed on 05-05-2016 and fresh delivery warrant was directed to be issued on payment of batta.

8. Assailing the same, this Revision Petition is filed alleging that on the same day as E.A.Nos.44 and 45 of 2016 were filed, the Court below ought not to have allowed them and directed issuance of fresh delivery warrant.

9. It is not in dispute that the suit has been decreed on 28-10-2010 and an appeal preferred against the judgment is also dismissed. Therefore, there is no impediment to the execution of the decree for delivery of possession in favour of the respondent. The petitioner however resisted to deliver possession when the Field Assistant was appointed by the executing Court to execute the warrant of delivery of possession.

10. Therefore, the respondents had no option but to seek police aid and also a direction to break open the lock to facilitate the execution of delivery warrant.

11. In my considered opinion, no prejudice is caused to the petitioner if these E.A.Nos.44 and 45 of 2016 were allowed since the

petitioner, having suffered judgment was bound to comply with the judgment but was resisting the execution of the judgment.

12. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 115 CPC.

13. Therefore, the Civil Revision Petition is dismissed. No costs.

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

Date: 20-01-2017
kvr

JUSTICE M.S.RAMACHANDRA RAO

