

**EP No.4/2025**

**ORDER ON I.A.NO.4 U/SEC.151 OF CPC**

The decree holder has filed this application U/Sec.151 of CPC and sought direction to the bailiff to break open the door to deliver possession of the house along with household articles belonging to the decree holder.

The decree holder has sworn to an affidavit in support of IA and stated that he had filed suit for recovery of possession of the suit house in OS No.46/2017 against the judgment debtors and the same was decree. As per the decree the possession of the suit house has to be delivered to the decree holder. But the judgment debtor locked the house to avoid delivery of possession. Hence, prays to allow the I.A.

The judgment debtor No.1 has filed objections to the IA No.1 and contended that the application is not maintainable. When there is a specific provision under order 21 of CPC IA U/Sec.151 of CPC is not maintainable. The inherent powers cannot be invoked to execute delivery warrant. The Hon'ble IV Addl. Dist. & Sessions Judge, disposed off RA No.127/2025 on 27.02.2026. Therefore, the judgment debtor is having right to file second appeal before the Hon'ble High Court. Therefore, until completion of appeal period the Jdr is having right to be in possession of the suit house. Hence,

prays to dismiss the I.A.

Perused the records. Heard arguments.

The decree of this court in OS No.46/2017 dtd: 21.10.2024 shows that this court held that the plaintiff/decreed holder is entitled for recovery of possession of the suit property from the defendants. Further, the judgment of the Hon'ble IV Addl. Dist. & Sessions Judge, Sedam in RA NO.127/2025 shows that the defendants/judgment debtors preferred appeal challenging the decree of this court in OS NO.46/2017 and the same was dismissed. The same goes to show that there is no impediment to execute the decree.

The contention of the Jdr that there is a specific provision U/O 21 of CPC i.e., order 21 rule 35(3) of CPC has to be accepted. But it cannot be accepted that when there is a specific provision IA U/Sec.151 of CPC is not maintainable as it is settled law that mere mentioning of wrong provision is not fatal to the case of the party who filed the IA.

Under order 21 rule 35(3) of CPC this court is empowered to pass orders to remove or open any lock or bolt or break open any door for the purpose of delivering the possession of the suit property. In this case the Bailiff report shows that when he went to execute the warrant the house was locked. Therefore, this court find it just and proper to pass orders to break open the door of the suit property acting under order 21 rule 35(3) of CPC.

The Dhr has sought to deliver possession of the suit house along with household articles belonging to the Dhr. But in the decree there is no mention that the plaintiff/decreed holder is entitled for possession of the suit house along with household articles. Therefore, this court find it just and proper to deliver vacant possession of the suit house to the decreed holder. Hence, the following;

**ORDER**

The application filed by the decree holder U/Sec.151 of CPC is hereby allowed.

Office to reissue warrant of delivery of possession of the suit property through special Bailiff.

The Bailiff is hereby directed to break open the door of the suit house and deliver vacant possession of the suit house to the decree holder.

For await report 18.04.2026.

**Senior Civil Judge & JMFC, Sedam.**