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R/AT NO.11, 1<sup>ST</sup> MAIN,  
 1<sup>ST</sup> CROSS, PRASHANTHINAGAR EXTN,  
 BANGALORE – 560 078  
 BY ITS ATTORNEY  
 DR.L.PRASHANTH

... RESPONDENT

(BY SRI. SHWORI H.R, ADV.)

THIS CRP IS FILED UNDER SECTION 115 of CPC, AGAINST THE ORDER DATED 10.07.2016 PASSED IN O.S NO.2938/2012 ON THE FILE OF THE XL ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DISMISSING THE IA. NO.II FILED UNDER ORDER VII RULE 11 OF CPC, R/W SECTION 34 OF SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT 2002 (SARFAESI ACT).

THIS PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING

### **ORDER**

The respondent filed a suit for eviction of the petitioners from the suit schedule property and for payment of arrears of rent. The respondent and third petitioner are said to be the co-owners of the suit schedule property. The petitioners who are the defendants appeared before the court and submitted that some portion of the schedule property has been vacated and they are going to vacate remaining portion of the suit schedule property. The respondents No.1 and 2 before the court below filed an application in I.A.No.II under Order VII Rule 2 of CPC r/w Sec.34 of Securitization & Reconstruction

of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI ACT). The said application came to be rejected. Hence, this petition is filed.

2. The learned counsel for the petitioners submits that when the relationship between the respondents and 3<sup>rd</sup> petitioner is admitted by virtue of vacating and handing over the possession of the suit schedule property, the suit does not survive for consideration and hence the court below ought to have allowed the I.A.No.II filed by the petitioners for rejecting the plaint.

3. Per contra, the learned counsel for the respondent submits the relationship between tenant and respondent still subsists since the tenants have not vacated and handed over key of the suit schedule property to the respondent.

4. The learned counsel for the petitioners submits that the petitioners No.1 & 2 after vacating the suit schedule property have handed over key of the suit schedule property to the 3<sup>rd</sup> petitioner, who is also a co-owner. The co-ownership in respect of the suit schedule property is not in dispute. However, case of the respondent is that since he is also co-

owner of the suit schedule property, the key of the suit schedule property should have been handed over to him. The ground for making such submission is that it is the respondent who has issued notice of termination under Sec.106 of T.P. Act and also filed the suit. So, he is entitled to acknowledge the receipt of key and handing over vacant possession of the suit schedule property. Hence, since there is dispute between ownership of respondent and 3<sup>rd</sup> petitioner, it is appropriate to direct the petitioners to deposit key of the suit schedule property with the learned trial court judge, where the suit is still pending and the learned trial court judge is directed to decide to whom the key of the suit schedule property shall be handed over after consideration of the entire case.

With these observations, this petition is disposed of. The court below shall decide as to whom key is to be handed over on the basis of the pleadings of the parties, evidence and material available on record.

**Sd/-  
JUDGE**

Nm